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Implementation of judgments of the European Court of Human Rights

Addendum to the report
Committee on Legal Affairs and Human Rights
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1. Introduction

1. This document is an addendum to the report on "Implementation of judgments of the European Court of Human Rights",[1] which was adopted by the Committee on Legal Affairs and Human Rights on 23 June 2015. It is aimed at updating the information contained in the said report, concerning main problems in the implementation of judgments of the European Court of Human Rights ("the Court") against the following 10 States: Italy, Turkey, the Russian Federation, Ukraine, Romania, Greece, Poland, Hungary, Bulgaria and the United Kingdom. In the report, I focused on cases that are under the enhanced supervision of the Committee of Ministers. Due to time constraints related to the preparation of my report, I was not able to include in it issues raised at the 1230th Committee of Ministers (DH) meeting, which took place from 9 to 11 June 2015;[2] these are referred to in the present addendum. The addendum also takes into account, to the extent possible, other recent developments.[3]

2. State-by-State overview

2.1. Italy

2. No major developments have been noted concerning the implementation of the judgments against Italy mentioned in the report. As regards excessive length of judicial proceedings and the lack of an effective remedy in that regard, following my visit to Rome in October 2014, the authorities sent comprehensive information to the Committee of Ministers in July 2015.[4] They also provided an action plan concerning the case of *Sharifi and Others v. Italy and Greece*.[5]

2.2. Turkey

3. As regards the problem of repeated imprisonment for conscientious objection revealed in the case of *Ülke v. Turkey*, the Turkish authorities provided additional information on 7 May 2015 on individual measures in the cases from this group, including *Erçep* and *Feti Demirtaş*.[6]

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1. Doc. 13864.
2. See decisions adopted at the 1230th (DH) meeting.
3. That said, it has not been possible – for obvious reasons – to take into account a number of issues and information made available to the Committee of Ministers for its meeting 1236th (DH) meeting held from 22 to 24 September 2015.
4. Groups of cases *Ceteroni v. Italy* (Application No. 22461/93), *Luordo v. Italy* (Application No. 22461/93) and *Mostacciuolo v. Italy* (Application No. 64705/01), DD(2015)760 and DD(2015)761 – Communication from the Italian authorities prepared for the visit of Mr Klaas de Vries (PACE Rapporteur) in Italy on 22-23 October 2014, 7 July 2015.
5. DD(2015)808, Communication from the Italian authorities – Action plan (in French), 23 July 2015.
6. DD(2015)627, Communication from the Turkish authorities, 7 May 2015.

4. Concerning freedom of expression (Inçal v. Turkey group), the Committee of Ministers examined judgments concerning this problem at its 1230th (DH) meeting in June 2015. It reiterated its call on the authorities to revise Article 301 of the Criminal Code,[7] "noted with satisfaction the ongoing positive trend in the manner domestic courts apply Convention standards" (item 3), encouraged the authorities to intensify their efforts to continue to incorporate the Court's case law and invited the Turkish authorities to provide statistical information to show the decrease in the number of convictions under Article 216 of the Criminal Code[8] and the anti-terrorist legislation. It also stressed the role of the Turkish Constitutional Court in setting precedents following the introduction of the right to individual application before this jurisdiction. However, despite these positive developments, it looks like the problem of freedom of expression remains an issue of concern in Turkey, in particular in the light of recent Assembly's reports (see the most recent election observation report[9] and the information note of the rapporteur of the Monitoring Committee.[10])

5. At its 1230th (DH) meeting, the Committee of Ministers examined again issues concerning Cyprus (*Cyprus v. Turkey, Varnava and Others v. Turkey* and the group of cases *Xenides-Arestis v. Turkey).* Concerning the issue of missing persons, the Committee of Ministers welcomed the progress made by the Committee on Missing Persons in Cyprus (CMP) and noted that 2014 had been a landmark year as regards the number of persons identified. It also recalled its previous conclusions on the necessity of adopting a proactive approach by the Turkish authorities and took note with interest of the additional information provided by them on the investigations into the deaths of identified persons. The Committee of Ministers invited delegations to transmit written questions, if they so wished, to the CMP and the Turkish authorities through its Secretariat by the end of September 2015 and decided to resume the consideration of this aspect of the judgment at its meeting (DH) in March 2016.[11] It also recalled that the obligation to pay just satisfaction awarded by the Court was unconditional[12] (in all three cases); as regards the case *Varnava and Others v. Turkey* and the group of cases *Xenides-Arestis v. Turkey,* it exhorted once again the Turkish authorities to pay without further delay the sums awarded to the applicants and invited the Secretary General of the Council of Europe to raise this issue in his contacts with the Turkish authorities.

6. As regards the problem of excessive force used to disperse peaceful demonstrations (*Oya Ataman* group of cases), it should be noted that the controversial security bill, increasing the powers of police and penalties for protesters, was adopted on 27 March 2015.[13]

2.3. Russian Federation

7. At its 1230th meeting (DH), the Committee of Ministers examined again the cases from the *Garabayev* group (concerning risk of ill treatment in cases of extradition/expulsion, disregard of interim measures of the European Court of Human Rights under Rule 39 of the Rules of the Court and illegal abductions and forcible transfers) on the basis of the updated action plan provided by the authorities in April 2015. The Committee of Ministers noted with concern, as regards the situation of the applicants remaining on the Russian territory, that a number of applicants might remain in detention pending expulsion notwithstanding the fact that such removal was not possible having been found by the Court to be in breach of Article 3. Thus the Committee of Ministers invited the authorities to provide information on the current situation of these applicants. As regards the situation of the applicants removed to Tajikistan and Uzbekistan in violation of the European Convention on Human Rights (ETS No. 5), the Committee of Ministers noted the information regarding the requests for up-to-date submitted by the Russian authorities to the Tajik and Uzbek authorities; however, it found that this measure alone was not sufficient and reiterated its call for further initiatives to obtain regular access, for monitoring purposes, to the detained applicants in Tajikistan and Uzbekistan either by Russian diplomatic personnel or by representatives of reputable and independent national and international organisations. While welcoming the information that some applicants had been found alive, the Committee of Ministers reiterated its grave concern that the fate of other applicants still remained unknown. As regards general measures, the

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7. On "insulting or vilifying the Turkish nation, the Turkish Republic, the Grand National Assembly, or the moral personality of the Government, ministries or armed forces".
8. On "inciting to hatred or hostility".
9. Election observation report, Doc. 13822 of 22 June 2015, Observation of the parliamentary elections in Turkey (7 June 2015), Ad hoc Committee of the Bureau (rapporteur: Mr Tiny Kox, Netherlands, UEL), paragraphs 8 and 39.
10. AS/Mon (2015) 18 rev declassified of 26 June 2015, Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), Post-monitoring dialogue with Turkey, Information note by the rapporteur on her fact-finding visit to Istanbul, Şanlıurfa and Ankara (30 April-4 May 2015), rapporteur: Ms Josette Durrieu (France, Socialist Group), paragraph 38.
11. *Supra* note 3, decision, Cases Nos. 23 and 24.
12. Ibid. and *supra* note 3, decision, Cases Nos. 24 and 25.
13. *Supra* note 11, paragraphs 42-46.

Committee of Ministers noted information on measures concerning automatic protection against unlawful or irregular removal from the Russian territory, but considered that the effectiveness of the measures taken remained to be seen. Thus, it encouraged the Russian authorities to provide regular updates concerning the holding of meetings between the competent authorities and applicants, the lodging of any complaints by the persons concerned regarding perceived risks of abduction, forcible removal or to their health/life, and the authorities' response to such complaints.

8. The Committee of Ministers also examined the case *Alekseyev v. Russia* (concerning repeated bans on the holding of gay rights marches and pickets) on the basis of the updated action plan of April 2015. The Committee of Ministers noted the judgment of the Constitutional Court of 23 September 2014, which examined the Federal Law prohibiting "propaganda of non-traditional sexual relations". It found that administrative sanctions in respect of such propaganda, which should not be interpreted broadly, complied with the Constitution. However, the prohibition of such propaganda should not be interpreted as a ban imposed on "non-traditional sexual relations". Thus, the Committee of Ministers invited the Russian authorities to clarify the impact of the said judgment on the decisions of local authorities to accept or to reject a request made to hold a public event. Moreover, the Committee of Ministers expressed serious concern that the local authorities continued to reject most of the requests made to hold public events similar to those in the *Alekseyev* judgment, including on the basis of the Federal Law prohibiting "propaganda of non-traditional sexual relations", and therefore urged the authorities to take concrete measures to ensure that such requests would be accepted unless there were well-grounded reasons justifying their rejection in compliance with Convention standards. The Committee of Ministers invited the Russian authorities to provide a comprehensive action plan, outlining measures, including awareness-raising measures, to ensure the exercise of the right to assembly and concrete information on how judicial practice had been developing. It further invited the Russian authorities to provide detailed information on all requests to hold public events similar to the one in the *Alekseyev* judgment between 1 October 2014 and 30 September 2015 in Moscow and St Petersburg, and in the Kostroma, Arkhangelsk, Murmansk and Tyumen regions. As regards the issue of effective remedy, the Committee of Ministers noted with satisfaction the adoption, on 8 March 2015, of the Code of Administrative Procedure, which provided for a legally binding time frame so that any dispute concerning public events could be decided before the planned date of the public event.

9. As regards more recent issues, the Committee of Ministers examined the *Catan and Others* case (violation of the right to education of children and parents from Moldovan/Romanian language schools in the Transdniestrian region of the Republic of Moldova*).* Once again, it deplored the absence of information on the payment of just satisfaction and of any other measure to implement the Court's judgment and expressed concern about a continuous violation of the applicant's right to education, resulting from acts of intimidation and pressure affecting the functioning of the Latin script schools in the Transdniestrian region.

10. The Committee of Ministers is also examining the implementation of the judgment *OAO Neftyanaya Kompaniya YUKOS,*[14] in which the Court found various violations of the Convention (mainly of its Article 6 and Article 1 of Protocol No. 1 (ETS No. 9) concerning tax and enforcement proceedings brought against the applicant oil company, leading to its liquidation in 2007*.* On 31 July 2014, the Court delivered a judgment on just satisfaction in this case and awarded a total of €1 866 104 634 to the applicant company's shareholders and their legal successors and heirs. The judgment became final on 15 December 2014. It also indicated that the Russian authorities were to produce by 15 June 2015, in co-operation with the Committee of Ministers, a comprehensive action plan, including a binding time frame, for the distribution of the just satisfaction awarded in respect of pecuniary damage. As the Russian authorities had given no indication as to the drawing up of the said action plan, at their 1230th meeting (DH) the Committee of Ministers urged them to deploy all their efforts, in close co-operation with its Secretariat, to respect the relevant operative part of the judgment of the European Court of Human Rights.[15] On 16 June 2015, the Russian authorities informed the Committee of Ministers that on 11 June 2015 members of the State Duma had submitted a request to the Constitutional Court and that the outcome of that request would be "determinative for the procedure and possibility of execution" of the said judgments.[16]

11. On 14 July 2015, the Constitutional Court issued a statement in which it said that "the participation of the Russian Federation in any international treaty does not mean giving up national sovereignty. Neither the European Convention on Human Rights, nor the legal positions of the European Court of Human Rights based on it, can cancel the priority of the Constitution. Their practical implementation in the Russian legal system is only possible through recognition of the supremacy of the Constitution's legal force".[17] In her

14. Application No. 14902/04, judgment of 20 September 2011.
15. *Supra* note 3, decision, Case No. 18.
16. DD(2015)640, Communication from the Russian authorities, 16 June 2015.

statement of 16 July 2015, the President of the Assembly, Ms Anne Brasseur, expressed concern about this position of the Constitutional Court, stressing, amongst others, that it should not lead to a selective implementation of the judgments of the European Court of Human Rights.[18]

12. As regards other groups of cases examined in the Appendix to my report, the Russian authorities have provided new information concerning the case of *Gerasimov and Others* (on non-enforcement of domestic final judgments),[19] the group of cases *Ananyev* (on poor prison conditions)[20] as well as the group of cases *Khashiyev and Akayeva* (on actions of the security forces in the Chechen Republic),[21] which is now being examined by the Committee of Ministers.

2.4. Ukraine

13. As regards the non-enforcement of domestic judicial decisions (cases from the *Zhovner* group), in their latest action plan of 10 April 2015,[22] the Ukrainian authorities provided information on a number of general measures adopted and/or envisaged. In particular, they indicated that they were developing a new alternative mechanism of enforcement of judicial decisions, which consisted in the transformation of debts under the non-enforced judicial decisions, the enforcement of which was guaranteed by the State and the Court's judgments, accrued as of 1 January 2015 (totalling up to 7 544 562 370 UAH), into treasury bonds payable up to seven years. It was envisaged that only a small part of the debt would be paid in cash (up to 10%), within the limit of the funds provided to this end by the Law "On the 2015 State Budget".

14. The Committee of Ministers, at its 1230th (DH) meeting, took note of this information and expressed its concern that the said scheme, if not carefully designed, could run contrary to the authorities' efforts to introduce an effective remedy and requested further information on the details of it. It also stressed that the envisaged scheme could not, in any case, be applied to the payment of the just satisfaction awarded by the Court, which should be done exclusively according to the terms and during the time-limits set by the Court.[23] It also noted with concern that the remedy introduced in 2013 appeared not to have solved the problem at stake, which persisted for more than a decade, notwithstanding the guidance given by the Committee of Ministers (including its five interim resolutions) and the Court over the years. The Committee of Ministers pointed out that the European Court of Human Rights continued to communicate similar cases to the Government of Ukraine. On 9 July 2015, the authorities submitted an updated action plan to the Committee of Ministers.[24]

15. As regards the problem of impartiality and independence of judges revealed in the judgment *Oleksandr Volkov v. Ukraine,*[25] the authorities provided an updated action plan in April 2015,[26] detailing their analysis of the issues at stake as well as the recently adopted law "On Ensuring the Right to Fair Trial". The Committee of Ministers assessed this information at its 1230th meeting (DH). It stressed that the reform of the Constitution was "essential to a full execution of the present judgment in order to restructure the institutional basis of the system of judicial discipline" and encouraged the authorities to accelerate the constitutional reform.[27] On 24 July 2015, the European Commission for Democracy through Law (Venice Commission) published its preliminary opinion on the amendments to the Constitution relating to the judiciary, proposed by the competent Working Group of the Constitutional Commission.[28]

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17. M. Smirnova, Russian Constitutional Court Affirms Russian Constitution's Supremacy over ECtHR Decisions , 17 July 2015.
18. PACE President concerned by decision on "selective implementation" of Strasbourg rulings in Russia .
19. DD(2015)772, Communication from the Russian authorities – Action plan, 17 July 2015, and DD(2015)885E – Communication from the Russian authorities, 3 September 2015.
20. DD(2015)862, Communication from the Russian authorities – Action plan, 10 August 2015.
21. DD(2015)773, Communication from the Russian authorities – Updated action plan, 17 July 2015. On 17 June 2015, the applicant's representative provided a model plan for the distribution of the compensation; see DD(2015)665, Communication from the applicant's representative.
22. DH-DD(2015)419 .
23. *Supra* note 3, Decision, Cases No. 26.
24. DD(2015)763, Communication from the Ukrainian authorities – Updated Action Plan, 9 July 2015.
25. Application No. 21722/11, judgment of 9 January 2013.
26. DD(2015)404, Communication from the Ukrainian authorities – Updated action plan, 9 April 2015
27. *Supra* note 3, decision, Cases No. 27, items 3 and 4.
28. Opinion No. 803/2015, CDL-PI(2015)016.

2.5. Romania

16. No major developments have been noted concerning the implementation of the judgments against Romania mentioned in my report. The authorities provided new information concerning the group of cases *Strain v. Romania* and *Maria Atanasiu and Others v. Romania* (failure to restore or compensate for nationalised property)[29] and *Bragadireanu v. Romania* (poor conditions of detention).[30]

2.6. Greece

17. At its 1230th meeting (DH), the Committee of Ministers examined the cases from the *M.S.S. v. Belgium and Greece* and *Rahimi v. Greece* groups focusing on the situation of unaccompanied minor asylum seekers.[31] It took note of the measures taken, welcomed the commitment of the Greek authorities to treat this problem as a matter of priority and encouraged them to pursue their efforts to create an effective and sustainable system of guardianship for such minors. The Committee of Ministers also examined the cases from the group *Nisiotis v. Greece* concerning prison overcrowding.[32] It recalled the structural character of this problem and considered that, despite the measures taken by the Greek authorities, according to the statistics received, this remained a matter of serious concern. Thus the Committee of Ministers again urged the Greek authorities to enhance their efforts to draw up a comprehensive strategy to solve this problem with the help of the relevant Council of Europe bodies.

18. Furthermore, the authorities provided new information on the implementation of judgments concerning excessive length of proceedings before administrative courts and lack of an effective remedy (the *Manios* group)[33] as well as those concerning the use of lethal force and ill treatment by law-enforcement officials and lack of effective investigation into such abuses (*Makaratzis v. Greece)*.[34]

2.7. Poland

19. The Polish authorities provided new information concerning the measures taken and/or envisaged to deal with the excessive length of proceedings and the lack of an effective remedy (group cases *Fuchs v. Poland,*[35] *Kudła v. Poland* and *Podbielski v. Poland*[36]*).* However, on 7 July 2015, the Court delivered a pilot judgment in the case of *Rutkowski and Others,*[37] in which it found a violation of Article 6.1 of the Convention due to the excessively lengthy proceedings in the applicants' criminal and civil cases and a violation of Article 13, due to the low level of domestic compensation, which was due to the "fragmentation of proceedings", a principle being applied by Polish courts in examining complaints about protracted proceedings. The Court noted that about 650 similar cases were pending before it at different stages of procedure and decided to communicate to the Polish Government all new applications, giving it a two-year time limit for processing those cases and affording redress to all victims.

20. The authorities also provided the Committee of Ministers with information on the implementation of the judgment *Bączkowski and Others v. Poland* concerning freedom of assembly,[38] giving details about work on a new Act on Assemblies being prepared by the Ministry of Administration and Digitilisation. The law in question, providing for a judiciary control of local authorities' bans on marches, was initially adopted by the Sejm on 24 July 2015, and is now again pending before it, following the amendments proposed by the Senate.[39] Moreover, the authorities provided new information on the implementation measures for the group of cases *Kaprykowski*[40] (concerning lack of adequate health care in prisons).

21. At its 1230th meeting (DH), the Committee of Ministers examined the cases of *Al Nashiri* and *Husayn (Abu Zubaydah)* concerning secret rendition and detention by the CIA, in Poland, of the applicants who were suspected of terrorist acts. The Committee of Ministers "noted with satisfaction the prompt action of the Polish authorities with a view to requesting from United States authorities diplomatic assurances that Mr Al Nashiri

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29. DD(2015)703, Communication from the Romanian authorities (in French), 30 June 2015.
30. DD(2015)674, Communication from the Romanian authorities – Updated action plan (in French), 19 June 2015.
31. *Supra* note 3, decision, Cases No. 8.
32. Ibid., decision, Cases No. 9.
33. DD(2015)621, Communication from the Greek authorities – Action report (in French), 2 June 2015.
34. DD(2015)757, Communication from the Greek authorities – Action report (in French), 9 July 2015.
35. DD(2015)493, Communication from the Polish authorities – Action plan, 27 April 2015.
36. DD(2015)618, Communication from the Polish authorities – Updated action plan, 26 May 2015.
37. Application No. 72287/10+, judgment of 7 July 2015 (not final yet).
38. DD(2015)492, Communication from the Polish authorities – Action plan, 27 April 2015.
39. DD(2015)888, Communication from the Polish authorities – Updated action plan, 2 September 2015.
40. DD(2015)889, Communication from the Polish authorities – Updated action plan, 2 September 2015.

would not be subjected to the death penalty, and that neither applicant would be exposed to a flagrant denial of justice" and strongly encouraged them to follow up these requests.[41] In August 2015, the Polish authorities provided further information on the implementation of this judgment.[42]

22. Moreover, the Committee of Ministers also examined the *Horych* group of cases concerning "dangerous detainees". It noted with interest, amongst others, the legislative amendments under way which would eliminate automatic classification of certain categories of detainees under the regime and invited the authorities to submit the outstanding information regarding the timetable for these amendments.

2.8. Hungary

23. Concerning the excessive length of proceedings and the lack of an effective remedy in this respect (cases from the *Timár* group), on 16 July 2015, the Court delivered a pilot judgment concerning this problem.[43] According to the European Court of Human Rights, the violations of Articles 6.1 and 13 originated from a practice incompatible with the Convention, namely Hungary's recurrent failure to ensure that civil proceedings were completed within a reasonable time. It pointed out that 400 similar cases were pending before it, held that Hungary had to introduce, at the latest within one year from the date on which the judgment became final, an effective domestic remedy and decided to adjourn for one year the examination of any similar new cases.

24. As regards overcrowding in detention facilities (group of cases *István Gábor Kovács v. Hungary*), the Hungarian authorities provided an action plan on 3 July 2015.[44] They also provided an action plan for the case *Horváth and Kiss v. Hungary* concerning discriminatory assignment of Roma children to special schools for children with mental disabilities.[45]

2.9. Bulgaria

25. No major developments have been noted concerning the implementation of judgments against Bulgaria. In June 2015, the Bulgarian authorities provided new information concerning the issue of excessive length of civil and criminal proceedings and the lack of an effective remedy,[46] foreigners' expulsion cases[47] and poor conditions of detention.[48]

2.10. United Kingdom

26. As regards the cases concerning the blanket ban on voting for prisoners (*Hirst v. the United Kingdom (No. 2)* and *Greens and M.T. v. the United Kingdom*), the Committee of Ministers will examine them at its 1236th meeting (DH) (22-24 September 2015). In a letter of 6 August sent to the Director of the Directorate of Human Rights, the United Kingdom's deputy permanent representative in Strasbourg indicated that they were awaiting the judgment of the Court of Justice of the European Union in the French prisoner voting case, Delvigne, addressing the same issues as the European Court of Human Rights judgments. She also pointed out that "it is clear following the result of the General Election in the United Kingdom that there remains widespread hostility in Parliament to giving prisoners the vote".[49]

27. As concerns the implementation of the judgment *S. and Marper v. the United Kingdom* (concerning the retention of DNA profiles and fingerprints), in August 2015, the authorities provided an action report, containing an update on the situation in Northern Ireland.[50]

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41. *Supra* note 3, decision, Cases No. 11.
42. DD(2015)839, Communication from the Polish authorities, 13 August 2015.
43. *Gazsó v. Hungary*, Application No. 48322/12, judgment of 16 July 2015 (not final yet).
44. DD(2015)753, Communication from the Hungarian authorities – Action plan, 3 July 2015.
45. DD(2015)551, Communication from the Hungarian authorities – Revised action plan, 20 May 2015.
46. Group of cases *Djangozov v. Bulgaria* (Application No. 45950/99), DD(2015)664 – Communication from the Bulgarian authorities – Action report, 15 June 2015, and groups of cases *Kitov v. Bulgaria* (Application No. 37104/97) and *Djangozov v. Bulgaria* (Application No. 45950/99), DD(2015)672, Communication from the Bulgarian authorities – Action plan, 22 June 2015.
47. *C.G. and Others v. Bulgaria,* DD(2015)771, Communication from the Bulgarian authorities – Action plan, 2 July 2015.
48. *Kehayov v. Bulgaria* and *Neshkov and Others v. Bulgaria,* DD(2015)755rev, Communication from the Bulgarian authorities – Revised action report, 31 August 2015.
49. DD(2015)782, Communication from the authorities of the United Kingdom, 6 August 2015.
50. DD(2015)836, Communication from the authorities of the United Kingdom – Action report, 5 August 2015.