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Implementation of judgments of the European Court of Human Rights

Report[1]
Committee on Legal Affairs and Human Rights
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Summary

In its tenth report on implementation of the judgments of the European Court of Human Rights, the Committee on Legal Affairs and Human Rights has highlighted the progress made by certain member States in implementing the Court's judgments and the impact of the "Interlaken reform" on this process.

The Committee of Ministers is now supervising the implementation of some 5 000 judgments. Although the number of pending cases fell considerably in the past few years, many judgments concerning structural problems have not been implemented for over 10 years (mainly against the Russian Federation, Turkey, Ukraine, Romania, Hungary, Italy, Greece, the Republic of Moldova, Azerbaijan and Bulgaria). Moreover, the implementation of inter-State cases or individual cases displaying inter-State features reveals particular difficulties.

The committee calls on member States to swiftly and fully implement the Court's judgments, in particular by providing sufficient resources to relevant national stakeholders, and to institute parliamentary structures to monitor compliance with the European Convention on Human Rights. The Committee of Ministers should, inter alia, give priority to complex cases pending for over five years and use again Article 46 paragraphs 3, 4 and 5 of the Convention, in case of strong resistance from the respondent State.

1. Reference to committee: Bureau decision. Reference 4313 of 30 June 2017.

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A. Draft resolution[2]

1. Although primary responsibility for supervision of the implementation of judgments of the European Court of Human Rights ("the Court"), signed nearly 70 years ago, lies with the Committee of Ministers in accordance with Article 46.2 of the European Convention on Human Rights (ETS No 5, "the Convention"), since its Resolution 1226 (2000), the Parliamentary Assembly has significantly contributed to this process, as stressed in its recent Resolution 2277 (2019) on the "Role and mission of the Parliamentary Assembly: main challenges for the future".

2. The Assembly recalls in particular its Resolutions 2178 (2017), 2075 (2015), 1787 (2011), 1516 (2006) and Recommendations 2110 (2017) and 2079 (2015) on the "Implementation of judgments of the European Court of Human Rights", in which it promoted national parliaments' involvement in this process. It also recalls that the implementation of a Court judgment, required by Article 46.2 of the Convention, may relate not only to the payment of just satisfaction awarded by the Court, but also to the adoption of other individual measures (aimed at *restitutio in integrum* for applicants) and/or general measures (aimed at preventing fresh violations of the Convention).

3. Since last examining this question in 2017, the Assembly notes further progress in the implementation of Court judgments, notably a constant reduction in the number of judgments pending before the Committee of Ministers (5 231 at the end of 2019) and the adoption of individual and general measures in many complex cases, which are still pending. This shows the efficiency of the reform of the Convention system started in 2010 after the high-level conference in Interlaken and the impact of Protocol No. 14 to the Convention, which entered into force in June 2010, in response to the extremely critical situation of the Court and over 10,000 judgments pending before the Committee of Ministers at that time. The Assembly welcomes the measures taken by the Committee of Ministers to make its supervision of the implementation of Court judgments more efficient and the synergies that have been developed in this context within the Council of Europe as well as between its bodies and national authorities.

4. However, the Assembly remains deeply concerned over the number of cases revealing structural problems pending before the Committee of Ministers for more than five years. The number of such cases has only slightly decreased over the last three years. The Assembly also notes that the Russian Federation, Turkey, Ukraine, Romania, Hungary, Italy, Greece, the Republic of Moldova, Azerbaijan and Bulgaria have the highest number of non-implemented Court judgments and still face serious structural or complex problems, some of which have not been resolved for over ten years. This might be due to deeply rooted problems such as persistent prejudice against certain groups in society, inadequate management at national level, lack of necessary resources or political will or even open disagreement with the Court's judgment.

5. The Assembly is particularly concerned with the increasing legal and political difficulties surrounding the implementation of the Court's judgments and notes that any national legislative or administrative measure cannot add further obstacle to this process.

6. The Assembly further expresses its concern for the obstacles to the implementation of the Court's judgments delivered in inter-States cases or showing inter-State features. It calls on all States Parties to the Convention involved in the process of implementation of such judgments not to hinder this process and to fully co-operate with the Committee of Ministers.

7. The Assembly once again condemns the delays in implementing the Court's judgments and recalls that the legal obligation for the States Parties to the Convention to implement the Court's judgments is binding on all branches of State authority and cannot be avoided through the invocation of technical problems or obstacles which are due, in particular, to the lack of political will, lack of resources or changes in national legislation, including the Constitution.

8. Thus, almost 70 years after the signing of the Convention, the Assembly invites all States Parties to the Convention to reaffirm their primordial commitment to the protection and promotion of human rights and fundamental freedoms, in particular though full, effective and swift implementation of the judgments and the terms of friendly settlements handed down by the Court. For this purpose, it strongly calls on States Parties to the Convention to:

8.1. co-operate, to that end, with the Committee of Ministers, the Court and the Department for the Execution of Judgments of the European Court of Human Rights as well as with other relevant Council of Europe bodies;

2. Draft resolution adopted by the committee on 5 June 2020.

8.2. submit action plans, action reports and information on the payment of just satisfaction to the Committee of Ministers in a timely manner; and to provide replies to submissions made by applicants, national institutions for the promotion and protection of human rights (NHRIs) and NGOs under Rule 9 of the Rules of the Committee of Ministers' for the supervision of the execution of judgments and of the terms of friendly settlements;

8.3. provide for effective domestic remedies to address violations of the Convention;

8.4. pay particular attention to cases raising structural or complex problems identified by the Court or the Committee of Ministers, especially those pending for over ten years;

8.5. not to adopt laws or other measures that would hinder the process of implementation of the Court's judgments;

8.6. take into account the relevant opinions of the European Commission for Democracy through Law (Venice Commission) when taking measures aimed at implementing the Court's judgments;

8.7. provide sufficient resources to relevant Council of Europe bodies and national stakeholders responsible for implementing Court judgments, including government agents' offices, and encourage them to co-ordinate their work in this area;

8.8. strengthen the role of civil society and NHRIs in the process of implementing the Court's judgments;

8.9. condemn statements discrediting the Court's authority and attacks against government agents working for the implementation of the Court' and NGOs working for the promotion and the protection of human rights.

9. Referring to its Resolution 1823 (2011) "National parliaments: guarantors of human rights in Europe", the Assembly calls on the national parliaments of Council of Europe member States to implement the "Basic principles for parliamentary supervision of international human rights standards", included in the appendix to the latter resolution. In this context, it stresses once again the need to establish parliamentary structures to monitor compliance with international human rights obligations, and in particular those stemming from the Convention and the Court's case law.

10. The Assembly calls on Council of Europe member States which have not yet ratified Protocols Nos. 15 and 16 to the Convention to do so rapidly.

11. In view of the urgent need to speed up implementation of the Court's judgments, the Assembly resolves to remain seized of this matter and to continue to give it priority.

B. Draft recommendation[3]

1. Referring to its Resolution … (2020) on the implementation of judgments of the European Court of Human Rights, the Parliamentary Assembly welcomes the measures taken by the Committee of Ministers to fulfil its tasks arising under Article 46.2 of the European Convention on Human Rights (ETS No. 5, "the Convention") and improve the efficiency of its supervision of the implementation of judgments of the Court. In particular it welcomes the use of the procedures provided for in Article 46, paragraphs 3 to 5, of the Convention in the case of *Ilgar Mammadov v. Azerbaijan*.

2. As the implementation of Court's judgments still presents many challenges, the Assembly recommends that the Committee of Ministers:

2.1. continue to use all available means (including interim resolutions) to fulfil its tasks arising under Article 46.2 of the Convention;

2.2. use once again the procedures provided for in Article 46, paragraphs 3 to 5, of the Convention, in the event of implementation of a judgment encountering strong resistance from the respondent State; however, this should continue to be done sparingly and in very exceptional circumstances;

2.3. give priority to leading cases pending for over five years;

2.4. consider transferring leading cases examined under standard procedure and pending for over ten years to enhanced supervision procedure;

2.5. continue to take measures aimed at ensuring greater transparency of the process of supervision of the implementation of Court judgments and a greater role for applicants, civil society and national institutions for the protection and promotion of human rights in this process;

2.6. continue to organise thematic debates on the execution of the Court's judgments during its meetings and consider organising special debates on leading cases pending for over ten years;

2.7. continue to increase the resources of the Department for the Execution of Judgments of the European Court of Human Rights;

2.8. continue to step up synergies, within the Council of Europe, between all the stakeholders concerned, in particular the Court and its Registry, the Parliamentary Assembly, the Secretary General, the Commissioner for Human Rights, the Steering Committee for Human Rights (CDDH), the European Commission for Democracy through Law (Venice Commission), the European Committee for the Prevention of Torture (CPT) and the Human Rights Trust Fund (HRTF);

2.9. regularly inform the Assembly about judgments of the Court whose implementation reveals complex or structural problems and requires legislative action;

2.10. rapidly finalise its evaluation of the reform of the Convention system following the 2010 Interlaken high-level conference.

3. Draft recommendation unanimously adopted by the committee on 5 June 2020.

C. Explanatory memorandum by Mr Efstathiou, rapporteur

1. Introduction

1.1. Procedure

1. Since 2000, the Parliamentary Assembly has taken a close interest in the implementation of the judgments of the European Court of Human Rights (hereinafter "the Court").[4] In its latest resolution on this subject – Resolution 2178 (2017) – it decided "to remain seized of this matter and to continue to give it priority". Consequently, on 10 October 2017, the committee on Legal Affairs and Human Rights appointed Mr Evangelos Venizelos (Greece, SOC) as the fifth successive rapporteur on this subject. The previous rapporteurs were Mr Erik Jurgens (Netherlands, SOC), Mr Christos Pourgourides (Cyprus, EPP/CD), Mr Klaas de Vries (Netherlands, SOC) and Mr Pierre-Yves Le Borgn' (France, SOC). Following Mr Venizelos's departure from the Assembly, the committee appointed me as rapporteur on 1 October 2019,

2. Mr Venizelos took a number of steps in the preparation of the 10th report on the implementation of the Court's judgments. The committee held two hearings with experts. The first one took place in Strasbourg on 24 April 2018 with the participation of Mr Christos Giakoumopoulos, Director General at the Directorate General Human Rights and Rule of Law (DG1) of the Council of Europe, Mr Abel de Campos, Section Registrar, Registry of the European Court of Human Rights, and Mr Christos Giannopoulos, Doctor of Public Law, Lecturer at the University of Strasbourg. The second one was held in Strasbourg on 9 October 2018 with the participation of Mr Martin Kuijer, substitute member in respect of the Netherlands of the European Commission for Democracy through Law ("Venice Commission"), Senior Legal Adviser, Ministry of Security and Justice, Professor, VU University Amsterdam, and Mr George Stafford, Co-Director, European Implementation Network, Strasbourg.

3. Moreover, following Mr Venizelos's competent proposal to hold exchanges of views with chairpersons of national delegations of a number of countries[5] presenting to a certain extent a problematic degree of implementation of the Court's judgments (the implementation of which I decided to continue after my appointment as rapporteur), the committee held five exchanges of views. On 22 January 2019, the committee held an exchange of views regarding Turkey with the participation of Mr Mustafa Yeneroğlu, member of the Turkish delegation to the Assembly and experts from the Turkish Ministry of Justice. It also held a discussion regarding Ukraine regrettably in the absence of the chairperson of the Ukrainian delegation to the Assembly. On 9 April 2019, the committee held two exchanges of views: one with Mr Zsolt Németh, chairperson of the Hungarian delegation to the Assembly, and another one with Mr Alvise Maniero, chairperson of the Italian delegation to the Assembly and Ms Maria Giuliana Civinini, co-agent for the Italian government at the European Court for Human Rights. On 10 December 2019, the committee held an exchange of views with the participation of Mr Titus Corlăţean, (Romania, SOC) and finally, on 28 January 2020, an exchange of views with Mr Petr Tolstoy, chairperson of the delegation of the Russian Federation to the Assembly, and a representative of the Ministry of Justice. The information documents prepared for these exchanges of views have been declassified and are available to the public.[6]

4. In February 2018, Mr Venizelos addressed a letter to national delegations asking about the state of play of implementation of Resolution 2178 (2017). The replies provided to this letter have been summarised in the appendix to my information note, which was considered by the committee on 14-15 November 2019 and subsequently declassified (see AS/Jur (2019) 45 declassified).

1.2. Parameters of my report

5. The Court's case law is an integral part of the action taken by the Council of Europe to protect democracy, the rule of law and human rights. It is now at the heart of European legal culture in the field of human rights and civil liberties. The *acquis* of the Assembly, which has always highlighted the obligation for member States to implement the Court's judgments, is considerable in this field. Even if, from the standpoint

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4. The first report was approved on 27 June 2000 (Doc. 8808, rapporteur Mr Erik Jurgens (Netherlands, SOC)). On the basis of this report, the Assembly adopted Resolution 1226 (2000). Since 2000, the Assembly has adopted nine reports and resolutions and eight recommendations relating to the implementation of the judgments of the European Court of Human Rights.

5. At its meeting on 9 October 2018, the committee agreed to hold exchanges of views in 2019 with chairpersons of national delegations of the Russian Federation, Turkey, Ukraine, Romania, Italy, Greece, the Republic of Moldova, Bulgaria, Hungary and Azerbaijan.

6. www.assembly.coe.int/nw/Page-EN.asp?LID=JurDocs.

of the Convention, this matter is above all the responsibility of the Committee of Ministers, the Assembly has shown that the monitoring it carries out in this field and the political influence it exerts on such occasions could provide greater support for the action of the Committee of Ministers and therefore present an added value. In particular, the Assembly has systematically called on national parliaments to be more proactive in the process of implementing the Court's judgments.

6. The Committee of Ministers' 2019 Annual report on the execution of judgments and decisions of the European Court of Human Rights ("2019 Annual report"), published on 1 April 2020, stresses the positive role of the ten years reforms of the system based on the European Convention on Human Rights (ETS No. 5, "the Convention") undertaken in the framework of the "Interlaken process" started in 2010. However, it also shows that a considerable number of cases are still outstanding and that many new and old challenges lie ahead: problems of capacity of domestic actors, problems of resources, insufficient political will or even clear disagreement with a judgment.[7] Therefore, in my report, I will focus on the findings of the Committee of Ministers concerning both achievements and problems in the implementation of the Court's judgments. With regard to the parameters for my report, I will follow the same methods as my predecessors, Mr de Vries, Mr Le Borgn' and Mr Venizelos, who focused respectively on the nine and ten member States with the largest number of judgments pending before the Committee of Ministers. Like Mr Le Borgn', I will also take into account judgments whose implementation entails particular difficulties due to their political or legal complexity (which were called "pockets of resistance" by my predecessor). Due to different constraints, I could not undertake any fact-finding visit. However, due to the hearings held in the committee, the increased number of cooperation activities undertaken by the Department for the Execution of Judgments of the European Court of Human Rights ("Department for the Execution of Judgments") and the activities of the Assembly Secretariat's Parliamentary Project Support Division, such fact-finding visits were not indispensable for the preparation of this report.

2. Ninth report of the Assembly and its follow-up

7. The ninth report on the implementation of the judgments of the Court[8] highlighted the progress made by some member States in this field. Nevertheless, it drew attention to the serious structural problems encountered over at least the past ten years by the 10 member States which had the largest number of non-executed judgments, according to the statistics of the Committee of Ministers as at 31 December 2016: Italy, the Russian Federation, Turkey, Ukraine, Romania, Hungary, Greece, Bulgaria, the Republic of Moldova and Poland. This report also pointed out that the Committee of Ministers was still monitoring the execution of some 10 000 judgments, even if these judgments were not all at the same stage of execution. It focused on the difficulties in implementing certain judgments as a result of "pockets of resistance", which might be the result of political problems.

8. In its Resolution 2178 (2017), the Assembly once again deplored "the delays in implementing the Court's judgments, the lack of political will to implement judgments on the part of certain States Parties and all the attempts made to undermine the Court's authority and the Convention-based human rights protection system". It reiterated its call on the States Parties to the Convention to fully and swiftly implement the Court's judgments and to co-operate, to that end, with the Committee of Ministers, the Department for the Execution of Judgments and other Council of Europe organs and bodies.

9. Recommendation 2110 (2017) urged the Committee of Ministers "to use all available means to fulfil its tasks under Article 46.2 of the Convention", to continue to strengthen synergies, within the Council of Europe, between all the stakeholders concerned, to give renewed consideration to the use of the procedures provided for in Article 46, paragraphs 3 to 5, of the Convention, to co-operate more closely with civil society and guarantee greater transparency in supervising the implementation of judgments.

10. In February 2018, the Committee of Ministers submitted a reply to this recommendation, in which it referred to a number of measures taken to improve supervision of the Court's judgments' implementation in the context of the Brussels Declaration of 2015 and to the increase in the number of closed cases.[9] It stressed that the resources of the Department for the Execution of Judgments had increased significantly in the biennium 2016-2017. Moreover, it had started devoting part of its Human Rights DH meetings (which focus on the execution of the Court's judgments) to thematic debates to allow the representatives of member States to discuss their practices in executing judgments in specific areas (for example a debate on conditions of detention took place during the 1310th meeting in March 2018).[10] On 1 June 2017, it held a debate on its 10th

7. 2019 Annual report, preface by the Chairs of Human Rights meetings, p. 3.
8. Doc. 14340 of 12 June 2017.
9. Doc. 14502, see in particular paragraphs 2, 5 and 7.

2016 Report on the supervision of the execution of judgments and decisions of the European Court of Human Rights, ("2016 Annual Report"). Several speakers representing the different bodies of the Council of Europe (including the then Vice-President of the Assembly Mr René Rouquet) and the European Network of National Human Rights Institutions took part in this debate.

11. In the contribution it prepared in response to Recommendation 2110 (2017) of the Assembly,[11] the Venice Commission stated that it could "usefully contribute to a better execution of the ECHR judgments", as its role consisted, mainly, in drawing the national authorities' attention to the incompatibility of a legal act or of a practice with the Convention. This statement was not a surprise since on several occasions, the Venice Commission had issued in the past opinions (sometimes in co-operation with other Council of Europe departments or the Bureau of Democratic Institutions and Human Rights of the OSCE) on general measures adopted by the authorities with a view to executing the Court's judgments (for example, in the context of the execution of the following judgments: *Vyerentsov v. Ukraine*, concerning two draft laws on the guarantees for freedom of peaceful assembly,[12]*Oleksandr Volkov v. Ukraine* concerning a draft law amending the law on the judicial system and the status of judges,[13] or *Bayatyan v. Armenia,*[14] concerning a draft law amending the law on alternative national service). The Venice Commission also took a stance on the amendment to the Russian Federal Constitutional Law adopted by the State Duma on 4 December 2015 and approved by the Council of the Federation on 9 December 2015;[15] according to this law, the Constitutional Court has authority to declare the decisions of international courts (including the Court) "non-executable" on the grounds that they are incompatible with the "foundations of the constitutional order of the Russian Federation" and "with the human rights system established by the Constitution of the Russian Federation". In its final opinion on this amendment, the Venice Commission pointed out that the execution of the Court's judgments was an unequivocal, imperative legal obligation, whose respect was vital for preserving and fostering the community of principles and values of the European continent.[16] In its 2002 opinion on the implementation of the Court's judgments, it had underlined the fact that the execution of judgments and its monitoring was not only a legal but also a political problem.[17] The Venice Commission's opinions prove to be a useful tool and method to ensure better implementation of the Court's judgments.

3. Member States having the most judgments pending before the Committee of Ministers

12. According to the 2019 Annual Report of the Committee of Ministers, 5 231 judgments were pending (on 31 December 2019) before the Committee of Ministers, at different stages of execution, in comparison with 6 151 at the end of 2018.[18] The 10 following countries had the largest number of pending cases: Russian Federation (1 663, in comparison with 1 585 in 2018), Turkey (689, in comparison with 1 237 in 2018), Ukraine (591, in comparison with 923 in 2018), Romania (284, in comparison with 309 in 2018), Hungary (266, in comparison with 252 in 2018), Italy (198, in comparison with 245 in 2018), Greece (195, in comparison with 238 in 2018), Azerbaijan (189, in comparison with 186 in 2018), the Republic of Moldova (173, likewise in 2018) and Bulgaria (170, in comparison with 208 in 2018). There are fewer than one hundred cases concerning the other member States (Poland, which had 100 cases at the end of 2018, had 98 of them at the end of 2019). The overall number of judgments pending before the Committee of Ministers has considerably fallen in comparison with the end of 2016 (9 941)[19], the basis for the report by Mr Le Borgn' of 2017.

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10. Committee of Ministers, Rapporteur Group on Human Rights, GR-H(2017)8-final.
11. Venice Commission, CDL-AD(2017)017, Comments on Recommendation 2110 (2017) of the Parliamentary Assembly of the Council of Europe on the implementation of the judgments of the European Court of Human Rights with a view to the Committee of Ministers' reply, adopted at its 112th plenary session (Venice, 6-7 October 2017), also appended to the Committee of Ministers' reply to Recommendation 2110 (2017).
12. Application No. 20372/11, judgment of 14 April 2013, see opinion of the Venice Commission CDL-AD(2016)030. However, the Venice Commission's opinion was not taken into account by the Ukrainian Parliament.
13. Application No. 21722/11, judgment of 9 January 2013, see opinion of the Venice Commission CDL-AD(2015)008.
14. Application No. 23459, judgment of 7 July 2011 (Grand Chamber), see opinion of the Venice Commission CDL-AD(2011)051.
15. Subsequently, signed by the President on 14 December 2015, this amendment came into force on 15 December 2015.
16. CDL-AD(2016)016, paragraph 38.
17. CDL-AD(2002)34, paragraph 50.
18. According to the 2018 Annual Report of the Committee of Ministers,
19. At the end of 2016, the 10 following countries had the largest number of pending cases Italy: (2 350), Russian Federation (1 573), Turkey (1 430), Ukraine (1 147), Romania (588), Hungary (440), Greece (311), Bulgaria (290), the Republic of Moldova (286) and Poland (225).

13. The issue is not only a quantitative one but also a qualitative one. Therefore, it is interesting to refer to the number of applications pending before the Court, whose statistics show slightly different figures from those of the Committee of Ministers. On 29 February 2020, of the 61 100 applications pending before the Court, more than two thirds came from the four following member States, namely the Russian Federation (25,2 %), Turkey (15.7%), Ukraine (15.1 %) and Romania (13%). They were followed by Italy (5.1%), Azerbaijan (3.3 %), Bosnia and Herzegovina (2.7%), Armenia (2.7%), Serbia (2.1%) and Poland (2.1%).[20] As my predecessor Mr Le Borgn'[21] already pointed out, these statistics, which concern applications on which the Court has not yet ruled, often illustrate the extent of structural problems at national level – problems which should have been resolved in the context of the execution of the Court's earlier judgments. This is particularly the case of the Russian Federation, Turkey, Ukraine and Romania, which come up high in both rankings. While Bosnia and Herzegovina, Armenia, Serbia and Poland are within the10 countries with the highest percentage of cases pending before the Court, they rank respectively 16th (39 cases), 17th (38 cases), 13th (57 cases) and 11th (98 cases) in the statistics of the Committee of Ministers. While Hungary, Greece, the Republic of Moldova and Bulgaria are not among the countries having the highest number of cases pending before the Court, they still have many 'leading' cases pending before the Committee of Ministers.

4. Specific challenges for the execution of Court judgments

14. In the 2019 Annual report, Mr Giakoumopoulos stressed that the implementation of the Court's judgments still implied new challenges and that the most difficult cases were inter-State cases and individual cases relating to unresolved conflicts, post-conflict situations or cases displaying other inter-State features. In 2019, there were few, if any, developments in the execution of such cases.[22] I would like to add here that inter-State cases are *par excellence* the most difficult ones, as they implicate political and national interest when it comes to the execution of the Court's judgments. Therefore, I will refer to such cases as well as to the most problematic cases described as "pockets of resistance" in the 2017 report of Mr Le Borgn'.

15. Since the adoption of the Committee on Legal Affairs and Human Rights' 9th report on 18 May 2017, the Committee of Ministers has held several DH meetings,[23] during which it continued to discuss the cases or groups of cases mentioned in Mr Le Borgn's report. Of seven such cases or groups of cases, only one, namely the *Hirst (No 2) v. United Kingdom*[24] group of cases (concerning the blanket ban on voting by prisoners) was closed by the Committee of Ministers, at its 1331st meeting (DH) (4-6 December 2018), over 13 years after the Court had delivered its judgment. In its Resolution CM/ResDH(2018)467 of 6 December 2018, the Committee of Ministers recalled the wide margin of appreciation in this area and noted "the administrative measures taken and in particular the changes to the policy and guidance to make it clear that two categories of prisoners that were previously effectively disenfranchised (prisoners released on temporary licence and on home detention curfew) were now able to vote." The other six cases or groups of cases considered as "pockets of resistance" by Mr Le Borgn' are still pending with little progress made since May 2017.

4.1. Ilgar Mammadov v. Azerbaijan and similar cases concerning politically motivated prosecutions

16. With regard to the *Ilgar Mammadov v. Azerbaijan (No. 1)* judgment,[25] in which the Court held that the applicant's detention was politically motivated and contrary to Articles 5.1c) and 18 of the Convention, after having served formal notice on the respondent State in its Interim Resolution CM/ResDH(2017)379 of 25 October 2017, on 5 December 2017 the Committee of Ministers adopted a decision to bring the matter before the Court on the basis of Article 46.4 of the Convention, by a majority vote of two-thirds (see its interim Resolution CM/ResDH(2017)429 adopted at its 1302nd meeting (DH) (5-7 December 2017)). For the first time, the Committee of Ministers made use of the infringement proceedings procedure to ask the Court whether the respondent State had refused to comply with the Court's final judgment. The Assembly had, on

20. Pending applications allocated to a judicial formation, 29 February 2020. These statistics only slightly differ from those of 31 December 2019, when 59 800 applications were pending before the Court, with 25.2% of them concerning the Russian Federation, 15.5% – Turkey, 14.8% – Ukraine, 13.2% – Romania, 5.1% – Italy, 3.3% – Azerbaijan, 2.8% – Armenia, 2.7% – Bosnia and Herzegovina, 2.3% – Serbia and 2.1% – Poland. See Pending applications allocated to a judicial formation, 31 December 2019.
21. Doc. 14340, paragraph 7.
22. 2019 Annual report, pp. 8 and 9.
23. At the 1288th, 1294th and 1302nd meetings (DH). The decisions adopted by the Committee of Ministers at its DH meetings can be consulted on the HUDOC-EXEC site.
24. Application No. 74025/01, judgment of 6 October 2005 (Grand Chamber).
25. Application No.15172/13, judgment of 22 May 2014.

several occasions, recommended recourse to this procedure. In its Resolution CM/ResDH(2017)429, the Committee of Ministers pointed out that since its first examination of this case on 4 December 2014, it had asked the Azerbaijani authorities to take the individual measure required, that is to release the applicant as soon as possible. Given that Mr Mammadov remained in detention on the basis of the flawed criminal proceedings, the Committee of Ministers considered that Azerbaijan was refusing to comply with the Court's judgment and called on the Court to rule on whether the respondent State had failed to fulfil its obligation under Article 46.1 of the Convention. Although the applicant was conditionally released on 13 August 2018, the Grand Chamber of the Court, in its judgment of 29 May 2019, found a violation of Article 46.1 of the Convention, as the respondent State had not acted "(…) in "good faith", in a manner compatible with the "conclusions and spirit" of the first Mammadov judgment, or in a way that would make practical and effective the protection of the Convention rights which the Court found to have been violated in that judgment".[26] Hence, under Article 46.5 of the Convention, the case was sent back to the Committee of Ministers "for consideration of the measures to be taken", namely both by the respondent State and the Committee of Ministers in response to the finding of infringement.

17. The Committee of Ministers is now examining this case along with a group of cases concerning civil society activists and human rights defenders who had been subject to criminal proceedings which the Court found to constitute a misuse of criminal law, intended to punish and silence them (violations of Article 18 taken in conjunction with Article 5 of the Convention and also Article 8 in one case).[27] The Court noted "a troubling pattern of arbitrary arrest and detention of government critics, civil society activists and human rights defenders through retaliatory prosecutions and misuse of criminal law in defiance of the rule of law".[28] The Committee of Ministers examined these cases at its 1355th (23-25 September 2019), 1362nd (3-5 December 2019) and 1369th (3-5 March 2020) meetings (DH). As regards individual measures, at its 1355th meeting (DH), the Committee of Ministers underlined that Azerbaijan had to eliminate all the remaining negative consequences of the criminal charges brought against each of the applicants, in particular by quashing the convictions and deleting them from the criminal record. It reiterated this position at its 1362nd meeting (DH), adding that in order to ensure *restitutio in integrum* in this group of cases, the authorities should fully restore the applicants' civil and political rights in time for the next parliamentary elections[29] (which were called ahead of schedule, for 9 February 2020). However, the applicants' convictions still stood and the applicants have been unable to resume their former professional and political activities; in particular MM. Mammadov, Jafarov and Aliyev could not present themselves as candidates in the parliamentary elections.[30] Therefore, at its 1369th meeting (DH), on 5 March 2020, the Committee of Ministers adopted Interim Resolution CM/ResDH(2020)47, in which it reiterated its previous findings on the issue of *restitutio in integrum* and deeply regretted that some nine months after the Court's Article 46.4, judgment the applicants' convictions still stood and they suffered from the negative consequences thereof. Consequently, it urged the authorities to "ensure that all the necessary individual measures are taken in respect of each of the applicants without any further delay" and to report to it by 30 April 2020 at the latest.

18. The Committee of Ministers is also awaiting confirmation of payments of just satisfaction in cases other than *Ilgar Mammadov*[31] and examined the issue of general measures for the last time at the December 2019 meeting (DH). It then noted with interest the measures taken and planned to strengthen the ethical conduct of prosecutors and the independence of the judiciary and strongly encouraged the authorities to pursue these efforts.[32]

19. The implementation of these judgments was recently examined by the Assembly in the context of the report by our committee colleague Ms Thorhildur Sunna Ævarsdóttir (Iceland, SOC) on "Reported cases of political prisoners in Azerbaijan".[33] In its Resolution 2322 (2020) of 30 January 2020 based on this report, the Assembly stressed that "there can no longer be any doubt that Azerbaijan has a problem of political prisoners

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26. *Proceedings under Article 46§4 in the case of Ilgar Mammadov v. Azerbaijan*, application No. 15172/13, judgment of 29 May 2019, paragraph 217.
27. *Rasul Jafarov v. Azerbaijan*, application No. 69981/14, judgment of 17 March 2016; *Ilgar Mammadov (No. 2) v. Azerbaijan,* application No. 919/15, judgment of 16 November 2017; *Mammadli v. Azerbaijan,* application No. 47145/14, judgment of 19 April 2018; *Rashad Hasanov and Others v. Azerbaijan,* application No. 48653/13+, judgment of 7 June 2018 and *Aliyev v. Azerbaijan,* application No. 68762/14+, judgment of 20 September 2018.
28. Op. cit. *Aliyev v. Azerbaijan*, paragraph 223.
29. CM/Del/Dec(2019)1355/H46-2, paragraph 5.
30. See submissions by the applicants: DH-DD(2020)14 of 7 January 2020, DH-DD(2020)150 of 17 February 2020, DH-DD(2020)25 of 10 January 2020 and DH-DD(2020)105 of 6 February 2020. See also the latest submission by Mr Ilgar Mammadov, DH-DD(2020)185 of 27 February 2020.
31. See Case Description in HUDOC-EXEC, as of 14 April 2020.
32. CM/Del/Dec(2019)1362/H46-2, paragraph 6.
33. Doc. 15020, 18 December 2019.

and that this problem is due to structural and systemic causes". It also called on the Azerbaijani Government to "take promptly every possible step towards full implementation of the judgments of the European Court of Human Rights, so as to ensure (…) that Mr Ilgar Mammadov and Mr Anar Mammadli are able to stand as candidates in elections and that Mr Rasul Jafarov can resume his professional activities as a lawyer" and to "co-operate fully with the Committee of Ministers in its supervision of the implementation of the judgments of the European Court of Human Rights, (…) including by promptly submitting detailed and comprehensive action plans setting out the measures to be taken and by providing full and up-to-date information in good time before relevant meetings of the Committee of Ministers". Moreover, the Azerbaijani Parliament and Government have been invited to "recognise formally all of the findings of the European Court of Human Rights in its judgments establishing a violation of Article 18 of the Convention,(…), as a necessary precondition for the success of the measures required to implement those judgments fully and effectively". According to Mr Giakoumopoulos, Azerbaijan's ongoing failure to respond adequately to the *Ilgar Mammadov* judgment "has brought the execution process to a situation of unprecedented gravity, raising the question of measures to be taken under Article 46.5 of the Convention."[34]

20. On 23 April 2020, the Supreme Court of Azerbaijan acquitted MM. Ilgar Mammadov and Rasul Jafarov, which was welcomed by the Council of Europe Secretary General Marija Pejčinović Burić, in her statement made on that day, and by Ms Ævarsdóttir, who also called on the authorities to restore the situation of the six other applicants.[35]

4.2. Sejdić and Finci v. Bosnia and Herzegovina group concerning the reluctance to reform national legislation in order to implement the Court's judgments

21. The judgments in the *Sejdić and Finci v. Bosnia and Herzegovina*[36] group concerning discrimination against persons belonging to groups other than the "constituent peoples" of Bosnia and Herzegovina (i.e. Bosnians, Croats and Serbs) as regards their right to stand for election to the House of Peoples and the Presidency of Bosnia and Herzegovina (violations of Article 1 of Protocol No. 12) were examined by the Committee of Ministers at its 1288th (6-7 June 2017), 1324th (18-20 September 2018), 1348th (4-6 June 2019) and 1369th (3-5 March 2020) (DH) meetings. The Committee of Ministers has on several occasions called on political leaders to step up their dialogue with a view to making the necessary changes to the Constitution and to electoral legislation and expressed its concern with regard to the lack of information on the progress on this matter.[37] In September 2018, shortly before the elections of October 2018 to the Presidency and the House of Peoples, the Committee of Ministers noted with "the gravest concern" that they would be the third elections, following those in 2010 and 2014, "based on a discriminatory electoral system in clear violation of the requirements" of the Convention, and regretted the lack of an effective remedy for persons discriminated against, despite the Constitution's requirement "that (…) all persons within the territory of Bosnia and Herzegovina shall enjoy the rights and freedoms set forth in the Convention; which shall apply directly and have priority over all other law". It also considered that these elections would "constitute a manifest breach of obligations under Article 46 of the Convention and potentially undermine the legitimacy and the credibility of the country's future elected bodies".[38] After the October 2018 elections, the Committee of Ministers expressed similar criticism and stressed "the utmost importance" of relaunching the work on the reform without delay. It also urged the political leaders and the authorities to pursue consultations in order to bring to an end the "continuing and long-standing violation" of the country's obligations under the Convention, before the next elections in 2022, to speedily follow up the high level preparatory discussions engaged with the secretariat under a Human Rights Trust Fund (HRTF) project and renewed its invitation to a competent minister to hold an exchange of views with the Committee of Ministers.[39] Due to the delay in the forming a new government of Bosnia and Herzegovina, the Council of Europe Director General of Human Rights and Rule of Law wrote to the Minister of Foreign Affairs asking to examine possible avenues to move forward. In response, the Minister of Foreign Affairs welcomed the initiative and promised to examine the matter with her authorities. Between April 2019 and January 2020, a delegation from the secretariat went to Sarajevo on three occasions to meet with top officials, in the framework of a HRTF project on "Facilitation of the process of

34. 2019 Annual report, p. 9.
35. See her statement of 24 April 2020.
36. Application No. 27996/06, judgment of 22 December 2009 (Grand Chamber), and three other judgments: *Zornić v. Bosnia and Herzegovina,* application No. 3681/06*,* judgment of 15 July 2014; *Šlaku v. Bosnia and Herzegovina,* application No. 56666/12, judgment of 26 May 2016 and *Pilav v. Bosnia and Herzegovina,* application No. 41939/07, judgment of 9 June 2016.
37. See, in particular, paragraphs 2 and 3 of its decision adopted at the 1288th (DH) meeting, CM/Del/Dec(2017)1288/H46-6.
38. Decision adopted at the 1324th (DH) meeting, 20 September 2018, CM/Del/Dec(2018)1324/4, paragraph 1.
39. Decision adopted at the 1348th (DH) meeting, 6 June 2019, CM/Del/Dec(2019)1348/H46-4.

amending the Constitution in Bosnia and Herzegovina".[40] On 22 December 2019, on the occasion of the 10th anniversary of the *Sejdić and Finci* judgment, the Council of Europe and several international stakeholders made statements inviting the authorities to take steps to implement this judgment,[41] which is now one of the 14 priorities for the accession of Bosnia and Herzegovina to the European Union.[42] It appears that as a result of these relaunched efforts to find a solution, a public hearing on the implementation of the *Sejdić and Finci* judgment was scheduled in the national parliament for 27 March 2020. However, due to the COVID-19 pandemic it had to be rescheduled for a later date.

22. Following the forming of a new government at the end of December 2019, the Minister of Foreign Affairs of Bosnia and Herzegovina took part in the 1369th meeting (DH) in March 2020 and stated that the matter would be examined within parliamentary framework. Consequently, although it recalled that the retention of the current election system was in breach of the Convention and the country's Constitution, the Committee of Ministers "noted with satisfaction the renewed engagement of the authorities (…) to find a solution to the pressing issue of discrimination in the electoral system" and encouraged them to continue their co-operation with the Council of Europe, including the Venice Commission, in order to ensure the adoption of "the necessary constitutional and other reforms before the 2022 elections".[43] A similar issue is now being examined in the context of the implementation of a recent Court judgment *Baralija v. Bosnia and Herzegovina*[44], which concerns the absence of local elections in Mostar, despite a decision of the Constitutional Court, and thus the applicant's inability to vote or to stand in any such elections, a situation amounting to unjustified discrimination based on place of residence (violation of Article 1 of Protocol No. 12).

4.3. Paksas v. Lithuania

23. The Committee of Ministers examined several times[45] the *Paksas v. Lithuania* case,[46] concerning a violation of the applicant's right to free elections due to the permanent and irreversible nature of his disqualification from standing for election to Parliament as a result of his removal from presidential office following impeachment proceedings conducted against him in accordance with the Constitutional Court's ruling of 25 May 2004 and the Seimas Elections Act of 15 July 2004 (violation of Article 3 of Protocol No.1). In its Interim Resolution CM/ResDH(2018)469 of 6 December 2018, the Committee of Ministers recalled that since 2004 the applicant continued to be banned from standing for parliamentary elections and that since 2011 four successive amendment proposals had failed in the Seimas despite the government's efforts. It expressed concern that no tangible progress had been achieved and the situation found to be in breach of the Convention still persisted and called on the authorities to redouble their efforts to achieve concrete progress at parliamentary level. At its 1355th meeting (DH) (23-25 September 2019), the Committee of Ministers expressed again its concerns about the lack of progress. However, it took note of the Constitutional Court's position that remedial action was also required as a matter of national constitutional law and of a new legislative proposal (Draft Law No. XIIIP-3867), which appeared to provide a viable solution to remedy the violation of the Convention both at the individual and general level and which the Seimas started to consider on 24 September 2019.[47] Thus, it stressed the importance of the adoption of the necessary amendments before the next parliamentary elections scheduled for October 2020. Following receipt of new information from the Lithuanian authorities,[48] at its 1362nd meeting (DH) (3-5 December 2019), the Committee of Ministers, reiterating, however, its previous concerns, noted with interest the fact that the Human Rights Committee and the Constitutional Commission of the Seimas had approved on 13 and 27 November 2019 respectively the Draft Law No. XIIIP-3867 and recalled that it appeared to be a "viable solution" to remedy the violation found by the Court.[49]

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40. See Case Description in HUDOC-EXEC (15 April 2020).
41. See the news item on the webpage of the Department for the Execution of Judgments, 22 December 2019.
42. European Commission, Commission Opinion on Bosnia and Herzegovina's membership of the European Union, SWD(2019)222, 29 May 2019.
43. CM/Del/Dec(2020)1369/H46-7, 5 March 2020, paragraphs 3 and 4.
44. Application No. 30100/18, judgment of 29 October 2019. The case was examined by the Committee of Ministers for the last time at its 1369th meeting (DH), see CM/Del/Dec(2020)1369/H46-39 of 5 March 2020.
45. At its 1288th (6-7 June 2017), 1310th (13-15 March 2018), 1331st (4-6 December 2018), 1355th (23-25 September 2019), 1362nd (3-5 December 2019) and 1369th (3-5 March 2020) meetings (DH).
46. Application No. 34932/04, judgment of 6 January 2011 (Grand Chamber).
47. CM/Del/Dec(2019)1355/H46-13, 25 September 2019, paragraphs 3, 5, 7 and 8.
48. DH-DD(2019)1424, 28 November 2019.
49. CM/Del/Dec(2019)1362/H46-15, 5 December 2019, see, in particular, paragraphs 4 and 5.

24. During the latest examination of this case at its 1369th meeting (DH) in March 2020, the Committee of Ministers reiterated its previous concerns, but noted with interest that the above-mentioned legislative process had advanced further "in line with the procedure foreseen under domestic law with a hearing by the Committee on Legal Affairs devoted to this on 19 February 2020". It also noted that according to the timeline provided by the authorities, the plenary of the Seimas needed to hold its first vote no later than 7 April 2020 in order for the amendments to come into force in a timely manner for the applicant to be able to register as a candidate for the parliamentary elections scheduled for 11 October 2020. The Committee of Ministers reiterated its expectation that this timeline would be kept and invited the authorities to continue providing information on a monthly basis, by 5 April and 5 May 2020, on each step taken in the legislative process. It instructed its secretariat once again to prepare a draft interim resolution for consideration at the next meeting (in June 2020), should the legislative process come to a standstill.[50] The authorities submitted updated information on 3 April 2020, from which it results that the applicant would not be able to stand for the October 2020 elections.[51]

4.4. The lack of tangible progress to prevent the risk of imposition of the death penalty or amounting to the flagrant denial of justice: the Al Nashiri and Abu Zubaydah cases

25. These cases reveal a worrying timid reaction of the Committee of Ministers towards the situation where a transfer of detainees may amount to a risk of imposition of the death penalty or to the flagrant denial of justice. At several (DH) meetings,[52] the Committee of Ministers has examined the *Al Nashiri* and *Husayn (Abu Zubaydah) v. Poland* judgments[53] concerning the secret detention of the applicants, suspected of terrorist acts, in the Central Intelligence Agency (CIA) detention facility in Poland and their subsequent transfer (multiple violations of the Convention, and in particular of Article 3 in both its substantive and procedural aspects, of Article 6§1, and, with regard to Mr Al Nashiri, also of Articles 2 and 3 taken together with Article 1 of Protocol No. 6). These issues were first examined in the two reports by our former colleague Mr Dick Marty (Switzerland, ALDE)[54], which led to the adoption of the Assembly's Resolutions 1507 (2006) and 1562 (2007) and Recommendations 1754 (2006) and 1801 (2007).

26. Despite the Committee of Ministers' repeated calls concerning individual measures, the applicants' situation remains unchanged: Mr Al Nashiri continues to face a real risk of being subjected to the death penalty and both applicants are subjected to a flagrant denial of justice, notably due to their "indefinite detention" without charge since 2002, there having been very little progress in the domestic investigation for more than 12 years. The applicants are detained in the Internment Facility at the US Guantánamo Bay Naval Base in Cuba.

27. At its 1348th meeting (DH) (4-6 June 2019), the Committee of Ministers noted with deep regret that the lack of progress concerning the adoption of individual and general measures and even instructed its secretariat to prepare a draft interim resolution if no concrete information on these issues was provided before 1 December 2019. In particular, it was concerned about the lack of information on any further action taken to seek diplomatic assurances for the applicants from the United States (which the US authorities first refused in 2016)[55] and the incomplete criminal investigation at national level. However, it noted with interest that the said investigation also covered the crime of torture and inhuman and degrading treatment as proscribed by Article 123.2 of the Polish Criminal Code, and that the offences under investigation would not become time-barred.[56] It also invited the Secretary General to transmit its decision to the Permanent Observer of the United States to the Council of Europe, which was done on 24 June 2019.[57]

28. In response to the decision adopted at the 1348th meeting (DH), the Polish authorities submitted an updated action plan on 3 February 2020, indicating that a diplomatic note was going to be sent to the US Embassy in Warsaw.[58] Submissions were also made by NGOs.[59] The Committee of Ministers examined again this case at its 1369th meeting (DH) in March 2020. As regards individual measures, it took note of the

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50. CM/Del/Dec(2020)1369/H46-16, 5 March 2020, see in particular paragraph 4.
51. DH-DD(2020)305, 6 April 2020.
52. Since the adoption of Mr Le Borgn's: 1288th (6-7 June 2017), 1294th (19-21 September 2017), 1302th (5-7 December 2017), 1324th (18-20 September 2018), 1348th (4-6 June 2019) and 1369th (3-5 March 2020) meetings (DH).
53. Applications Nos. 28761/11 and 7511/13, judgment of 24 July 2014.
54. Doc. 10957 of 12 June 2006: "Alleged secret detentions and unlawful inter-state transfers of detainees involving Council of Europe member States" and Doc. 11302 of 11 June 2007: "Secret detentions and illegal transfers of detainees involving Council of Europe member states: second report".
55. Decision adopted in this case at the 1348th meeting (DH), CM/Del/Dec(2019)1348/H46-18, paragraph 3.
56. Ibid, paragraphs 5,6 and 7.
57. See Case Description in HUDOC-EXEC (as of 15 April 2020).
58. DH-DD(2020)100, 3 February 2020.

information concerning the new Polish request for diplomatic assurances for both applicants and underlined that it was crucial that "the Polish authorities actively continue their diplomatic efforts and pursue all possible means to seek to remove the risks incurred by the applicants". Recalling the previous unsuccessful attempts to obtain such assurances, it encouraged the Polish authorities to consider exploring other avenues, such as intervening as *amicus curiae* in any relevant proceedings pending in the United States; in this context it also invited the Council of Europe member States concerned to provide the Polish authorities with all possible assistance. In the domestic criminal investigation, one suspect was identified, which was noted with interest by the Committee of Ministers. However, more details on the criminal charges against this person are expected. The Committee of Ministers also welcomed the authorities' efforts to co-operate with the applicants' representatives in exploring alternative means to overcome the effects of the US authorities' refusal to grant the Polish request for legal assistance and to obtain evidence necessary for the domestic investigation and encouraged the authorities to continue their efforts in this regard. However, it noted "with deep concern" that this investigation has been pending for almost 12 years and strongly urged the Polish authorities to redouble their efforts to complete it without further delay as well as to complete their reflection on whether selected elements could be made public or at least transmitted to the Committee of Ministers in a confidential manner. Once again, it strongly urged the authorities of the United States (which has observer status with the Council of Europe) to reconsider their position and to provide the necessary assurances and assistance, or take other equivalent measures.[60] As regards general measures, the Committee of Ministers deeply regretted the lack of information on legislative proposals to strengthen oversight of the intelligence service and the lack of "a clear message at high level to the intelligence and security services as to the absolute unacceptability of and zero tolerance towards arbitrary detention, torture and secret rendition operations" and urged the authorities to intensify their work in these areas and to provide information on the measures taken or envisaged to "acknowledge Poland's role in and responsibility for the human rights violations that occurred in these cases".[61]

29. The applicants' situation is also examined by the Committee of Ministers in the context of the implementation of two subsequent judgments concerning the CIA "extraordinary rendition" operations in Romania (between 2004 and 2005) and Lithuania (between 2005 and 2006) and finding the same violations of the Convention as in the two above-mentioned cases against Poland. These judgments, namely *Al Nashiri v. Romania*[62] and *Abu Zubaydah v. Lithuania*,[63] were examined most recently at the 1369th meeting (DH) in March 2020. As regards individual measures in *Al Nashiri v. Romania*, the Committee of Ministers expressed "deep concern" at the Unites States authorities' decision not to grant the request for diplomatic assurances against the imposition of the death penalty and flagrant denial in the applicant's trial; welcomed the Romanian authorities' readiness to repeat their request in this respect and invited them actively to follow up on their new request. Likewise in *Al Nashiri v. Poland*, it encouraged them, while "pursuing and intensifying the diplomatic efforts", to consider exploring other avenues that would enable them to seek to remove the risks facing the applicant such as intervening as *amicus curiae* in any relevant proceedings pending in the United States and called on the latter's authorities to reconsider their position. Since the domestic investigation has been pending for almost eight years, the Committee of Ministers strongly urged the authorities to take all necessary actions to ensure that its effectiveness is not hampered by prescription, to intensify their efforts to complete it and to provide information on further investigative steps, including those envisaged following the United States' authorities refusal to grant legal assistance.[64]

30. As regards individual measures in *Abu Zubaydah v. Lithuania*, the Committee of Ministers reiterated its "deep regret" that, despite the actions taken by the Lithuanian authorities to seek diplomatic assurances from the United States' authorities, the latter had refused to confirm that the applicant would not be subject to the treatment criticised by the Court. Therefore, it encouraged the Lithuanian authorities to "continue actively their efforts at a higher political level and pursue all possible means to seek to put an end to the applicant's continued arbitrary detention and to seek guarantees" that he would not be subject to further inhuman treatment. Likewise in the two above-mentioned cases, the Committee of Ministers also encouraged the

59. DH-DD(2020)177, 21 February 2020; DH-DD(2020)140, 14 February 2020 and, for the forthcoming 1377th meeting (DH) of June 2020, DH-DD(2020)205rev, 12 March 2020.
60. Ibid, paragraph 8.
61. CM/Del/Dec(2020)1369/H46-19, 5 March 2020.
62. Application No. 33234/12, judgment of 31 May 2018. In line with the Court's indications, the Romanian authorities took a number of steps, which are summarised in the Notes on the Agenda of the Committee of Ministers' 1348th meeting (DH) (June 2019) (CM/Notes/1348/H46-19).
63. Application No. 46454/11, judgment of 31 May 2018. In line with the Court's indications, the Lithuanian authorities took a number of steps, which are summarised in the Notes on the Agenda of the Committee of Ministers' 1348th meeting (DH) (June 2019) (CM/Notes/1348/H46-14).
64. CM/Del/Dec(2020)1369/H46-22.

Lithuanian authorities to consider exploring other avenues such as intervening as *amicus curiae* in any relevant proceedings pending in the United States. As regards the domestic criminal investigation, which had been pending for over ten years, it noted with concern the lack of tangible progress, urged the authorities to intensify their efforts to complete it and to provide information on alternative measures to overcome the effects of the United States authorities' refusal to grant legal assistance.[65]

31. It is fortunate that the Committee of Ministers sent a clear message to the national authorities when examining the issue of general measures. In *Al Nashiri v. Romania*, it called on the authorities to ensure that any future legislative reforms would fully guarantee effectiveness of criminal investigations and to reflect on disapplying the statute limitations to the crime of torture. The Committee of Ministers also requested information on any changes in domestic law since the date of the facts which had reinforced the safeguards for human rights compliance and accountability in the conduct of covert operations by the intelligence services and reiterated its urgent call on them to deliver an "unequivocal message" at a high level as to the unacceptability of and zero tolerance towards arbitrary detention and torture and to provide information on the measures taken or envisaged to acknowledge the State's role in human rights violations in this case.[66] In *Abu Zubaydah v. Lithuania*, recalling the legislative and policy changes which had taken place since the facts at issue aimed at strengthening control over intelligence and security services, the Committee of Ministers welcomed the public message of the Minister of Justice (who had taken part in its 1348th meeting (DH)) underlining zero tolerance towards any violation of human rights. Underlining again the necessity to conduct an effective investigation rapidly to establish the truth about what happened and how so that it can never happen again, the Committee further noted with interest the authorities' commitment to ensure the right to truth in this context.[67]

4.5. OAO Neftyanaya Kompaniya YUKOS v. Russia: the increasing legal and political difficulties surrounding the implementation of the judgment on just satisfaction

32. This case reveals the increasing legal and political difficulties surrounding the implementation of the judgment on just satisfaction and deals also with the risk that the recently adopted amendments to the Constitution of the Russian Federation would add further obstacles to this process. At its 1302nd (5-7 December 2017), 1340th (12-14 March 2019) and 1369th (3-5 March 2020) (DH) meetings, the Committee of Ministers considered the *OAO Neftyanaya Kompaniya YUKOS v. Russia* case,[68] in which the Court held that there had been various violations of the Convention concerning tax and enforcement proceedings brought against the applicant oil company (mainly of Article 6 and Article 1 of Protocol No. 1). In its judgment on just satisfaction, the Court allocated a total amount of nearly 1.9 billion euros to the shareholders of the applicant company (as they stood at the time of the company's liquidation) by way of just satisfaction, within six months from the date on which that judgment became final.[69] The Committee of Ministers is still awaiting an action plan with an indicative timetable for the payment of the just satisfaction to the applicant company's shareholders. Following an application by the Russian Ministry of Justice, on 19 January 2017, the Russian Constitutional Court delivered a judgment concluding that it was impossible to implement the Court's judgment on just satisfaction in this case without contravening the Russian Constitution[70] (which was due to the amendments to the Federal Law on the Constitutional Court passed in December 2015)[71]. While the authorities continuously referred to this decision of the Constitutional Court, at its 1340th meeting (DH) in March 2019 the Committee of Ministers stressed the "unconditional obligation assumed by the Russian Federation under Article 46 of the Convention to abide by the judgments" of the Court, expressed "grave concern at the continued non-implementation of the remaining parts of the just satisfaction judgment" and encouraged the authorities and the secretariat to reinforce their co-operation with a view to finding solutions in this respect. It also welcomed the payment in December 2017 of the sum in respect of costs and expenses (that is 300 000 euros granted to the Yukos International Foundation). However, as the payment, which had been done with a delay, did not include default interest, the Committee of Ministers urged the Russian authorities to rapidly proceed with the payment of interest.[72] As regards the outstanding action plan, the Committee of Ministers invited the authorities to submit it for 1 December 2019, but no information was submitted by the authorities in time for the next DH meeting.

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65. CM/Del/Dec(2020)1369/H46-15, 5 March 2020, paragraph 3.
66. Ibid, paragraphs 11-15.
67. CM/Del/Dec(2020)1369/H46-22, see above, paragraphs 9 and 8. See also the authorities' revised action plan DH-DD(2020)6-rev, 24 January 2020.
68. Application No. 14902/04, judgment of 20 September 2011 (on the merits).
69. Application No. 14902/04, judgment of 31 July 2014 (just satisfaction, Article 41).
70. Case Description in HUDOC-EXEC, 15 April 2020.
71. See the Venice Commission Opinion CDL-AD(2016)016, op. cit. See also the most recent submission by the applicant, DH-DD(2020)117, 7 February 2020.

33. In the meantime, on 20 January 2020 the Russian President introduced a bill to the State Duma, proposing amendments to 22 provisions of the Constitution, including an amendment aimed at adding to Article 79 of the Constitution[73] the following sentence: "Decisions of interstate bodies adopted on the basis of the provisions of international treaties are not enforceable in the Russian Federation if they contradict the Constitution.[74] On 28 January 2020, the Committee on Legal Affairs and Human Rights requested an opinion of the Venice Commission on the impact of the above draft amendment on the execution of the Court's judgments.[75]

34. At its 1369th meeting (DH) in March 2020, the Committee of Ministers recalled the "unconditional obligation to abide by the Court's judgments" and that the Venice Commission would soon deliver its opinion.[76] It further invited the authorities to provide as soon as possible clarifications as to the possible implications of the adoption of the said amendment for this case. The Committee of Ministers encouraged the "speedy resumption of contacts between the authorities and the Secretariat with a view to finding solutions to the situation in the present case as it had emerged after the 2017 Constitutional Court judgment." Once again, it urged the authorities to present the "required action plan with an indicative timetable for the steps envisaged for the full execution of the just satisfaction judgment". If such an action plan is not provided, the Committee of Ministers will consider the appropriateness of adopting an interim resolution at the 1383rd meeting (DH) (September 2020).[77]

4.6. Catan and Others v. Moldova and Russia and Bobeico and Others v. the Republic of Moldova and Russia

35. The *Catan and Others v. Moldova and Russia*[78] case was examined at the 1294th (19-21 September 2017), 1310th (13-15 March 2018), 1324th (18-20 September 2018), 1340th (12-14 March 2019) and 1362nd (3-5 December 2019) (DH) meetings of the Committee of Ministers. This case concerns the violation of the right to education of 170 children or parents of children from Latin-script schools located in the Transdniestrian region of the Republic of Moldova ("MRT") (violation of Article 2 of Protocol No. 1). The Court found that there was no evidence of any direct participation by Russian agents in the measures taken against the applicants, nor of Russian involvement in or approval for the "MRT"'s language policy in general. However, in its opinion, the Russian Federation exercised effective control over the "MRT" during the period in question and that by virtue of its continued military, economic and political support for the "MRT", which could not otherwise survive, the Russian Federation incurred responsibility under the Convention for the violation in question. The Court recognises, therefore, a kind of interstate feature of the case.

36. The Committee of Ministers repeatedly pointed out that in this case, according to the Court, Russia incurred responsibility under the Convention. However, according to the Russian authorities, the Court "applied its own 'effective control' doctrine, having attributed to Russia the responsibility for violations occurred in the territory of another State, to which the Russian authorities had no relation whatsoever, which created serious problems of practical implementation of this judgment".[79] A series of roundtables and conferences was organised by them between 2015 and 2018, with the participation of national and foreign experts, to discuss "acceptable solutions for ways out of this situation".[80] In 2018, the Court issued another judgment – *Bobeico and Others v. the Republic of Moldova and Russia*[81] – finding the same kind of Convention violation for another group of children. The Russian authorities provided information on 7 November 2019,[82] reiterating their previously expressed views that the Court's attribution to Russia of responsibility for violations which had

72. Decision adopted at the 1340th meeting (DH), CM/Del/Dec(2019)1340/H46-20, 14 March 2019, paragraph 1.
73. According to this provision, "[t]he Russian Federation may participate in interstate organisations and transfer to them part of its powers according to international treaties and agreements, if this does not involve the limitation of the rights and freedoms of man and citizen and does not contradict the principles of the constitutional system of the Russian Federation".
74. Case Description in HUDOC-EXEC, 15 April 2020.
75. The amendments were passed in parliament on 10-11 March, signed by the President on 14 March and approved by the Russian Constitutional Court on 16 March 2020, but still need to be approved in a national vote, which has been postponed due to the COVID-19 crisis.
76. See the Opinion on the draft amendments to the Constitution related to the execution in the Russian Federation of decisions by the European Court of Human Rights, adopted by the Venice Commission on 18 June 2020 (Opinion No. 981/2020 - CDL-AD(2020)009).
77. CM/Del/Dec(2020)1369/H46-28, 5 March 2020, paragraph 1.
78. Application No. 43370/04, judgment of 19 October 2012.
79. See the communication by the Russian authorities, DH-DD(2019)123 of 4 February 2019.
80. For more details, see the notes prepared for the 1324th meeting (DH) (18-20 September 2018), CM/Notes/1324/H46-17.
81. Application No. 30003/04, judgment of 23 October 2018.
82. DH-DD(2019)1299, 7 November 2019.

taken place on the territory of another State created serious problems of practical implementation. They indicated that they had applied significant efforts to find acceptable solutions and referred to the work of the Committee of Experts on the System of the European Convention on Human Rights (DH-SYSC II) under the auspices of the Steering Committee for Human Rights (CDDH). In October 2019, the DH-SYSC preliminarily adopted a draft report on the place of the European Convention on Human Rights in the European and international legal order, which was adopted at the CDDH meeting on 26-29 November 2019.[83] At the end of October 2019, the NGO Promo Lex highlighted the lack of progress in the execution of the case, including the non-payment by the Russian authorities of the non-pecuniary damages and legal costs and expenses awarded by the Court.[84]

37. During the most recent examination of this case, at its 1362nd meetings (DH), the Committee of Ministers again "firmly insisted" on "the unconditional obligation of every State" under Article 46.1 of the Convention to abide by the final judgments of the Court. It recalled the Russian authorities' commitment to "arrive at an acceptable response as to the execution of this judgment", noted the explanations provided by the Russian authorities and expressed regret that an action plan with concrete proposals was not submitted some seven years after the judgment had become final. It "firmly urged" the authorities to provide an action plan by 31 March 2020 and, in case of its absence by that date, instructed its secretariat to prepare a draft interim resolution (which would be the fourth in this case) for its 1377th meeting (DH) in June 2020.[85] No information in this respect has been provided so far.

4.7. Inter-State cases: Cyprus v. Turkey and Georgia v. Russia (I)

38. The Committee of Ministers is examining two inter-States cases: *Cyprus v. Turkey*,[86] and *Georgia v. Russia (I)*.[87] Both are under enhanced supervision. The main issues concerning the implementation of the judgments delivered in the case of *Cyprus v. Turkey* have already been presented in an information document (AS/Jur(2019)02 declassified) of 22 January 2019. In the 2001 judgment, the Court found multiple violations of the Convention in connection with the situation in the "northern part of Cyprus" (that is where Turkey exercises effective control according to the Court's findings) since Turkey's 1974 military intervention in Cyprus. The Turkish authorities have remedied a number of violations[88] but the Committee of Ministers supervision focuses mainly on issues concerning Greek-Cypriot missing persons, and the property rights of displaced Greek Cypriots and of those enclaved in the "northern part of Cyprus", which have been on its agenda since 2001.[89]

39. As regards Greek-Cypriot missing persons and their relatives (violations of Articles 2, 3 and 5 of the Convention),[90] the Committee of Ministers examined this aspect twice since January 2019, at its 1340th (12-14 March 2019)[91] and 1362nd (3-5 December 2019)[92] meetings (DH). The Turkish authorities refer to the work of the Committee on Missing Persons in Cyprus ("CMP") and have indicated that they assisted that body in its activities by facilitating its exhumation activities, contributing financially to its work and submitting information on possible burial sites. According to the CMP's statistics, as of 29 February 2020, it had found the remains of 1 208 persons and identified 974 persons belonging to both communities (out of 2 002 missing persons from both communities). Amongst the identified persons, 700 were Greek Cypriots (out of 1 510 missing Greek Cypriots).[93] In June 2019, the Turkish authorities gave the CMP access to 30 additional sites in military areas in the northern part of Cyprus which could contain burial sites, and, according to the CMP, there is no time constraint attached to this decision. According to the Turkish authorities, a total of 1 050

83. CDDH(2019)R92 Addendum 1, 29 November 2019.
84. DH-DD(2019)1365, 20 November 2019.
85. Decision adopted at the 1340th meeting (DH), CM/Del/Dec(2019)1340/H46-17, 14 March 2019, paragraph 3, and decision adopted at the 1362nd meeting (DH), CM/Del/Dec(2019)1362/H46-22, 5 December 2019, item 3.
86. Application No. 25781/94, Grand Chamber judgments of 10 May 2001 (on the merits) and 12 May 2014 (just satisfaction).
87. Application No. 13255/07, Grand Chamber judgments of 3 July 2014 (on the merits) and 31 January 2019 (just satisfaction).
88. Concerning the rights of Greek Cypriots in northern Cyprus to education and freedom of religion as well as the competences of military courts, see Interim Resolutions ResDH(2005)44 and CM/Res(2007)25.
89. For further information, see H/Exec (2014)8 of 25 November 2014, by the Department for the Execution of Judgments. Between September 2010 and December 2011, the Committee of Ministers interrupted the examination of this issue.
90. See also the judgment in the case of *Varnava and Others v. Turkey* (which is examined together with this case), judgment of 18 September 2009 (Grand Chamber), application No. 16064/90.
91. CM/Del/Dec(2019)1340/H46-23, 14 March 2019.
92. CM/Del/Dec(2019)1362/H46-30, 5 March 2020.
93. See Case Description in HUDOC-EXEC (as of 20 April 2020).

exhumations have been carried out by the CMP in the northern part of Cyprus.[94] At its 1362nd meeting (DH), the Committee of Ministers once again underlined that, due to the passage of time, the Turkish authorities should "advance their proactive approach" to providing the CMP with all necessary assistance, welcomed the information concerning the access to 30 additional burial sites and encouraged the authorities to provide the CMP unhindered access to all areas that could contain the remains of missing persons, including in military areas. It also called on them to "advance their efforts" to provide the CMP *proprio motu* and without delay with all information relating to burial sites and other places were remains might be found, noted with interest the information provided on the progress of investigations by the Missing Persons Unit and invited again the authorities to ensure the effectiveness of its investigations.[95]

40. Concerning the issue of homes and other immovable property of displaced Greek Cypriots (violation of Articles 8 and 13 of the Convention and Article 1 of Protocol No. 1), an "immovable property commission" (IPC) was set up in the northern part of Cyprus under Law No. 67/2005 "on the compensation, exchange or restitution of immovable property", following the pilot judgment in the *Xenides-Arestis v. Turkey* case.[96] However, the creation of this body has not solved the problem.[97] While the Cypriot authorities maintain that Turkey must introduce measures to cease all transfers of immovable property belonging to displaced Greek Cypriots, the Turkish authorities considered that they had taken all the necessary measures.[98] At its 1324th meeting (DH) (September 2018), the Committee of Ministers expressed regret that the Turkish authorities had not participated in the discussions and that they had not provided new information on the effectiveness of the measures adopted and decided to resume consideration of this item in June 2019.[99] In response to this decision, in May 2019, the Turkish authorities submitted a memorandum in response to the Committee of Ministers' last decision on these issues.[100] However, no decision was adopted at the latest examination of these issues in June 2019 (DH).

41. With regard to the property rights of Greek Cypriots still residing in the northern part of Cyprus (violations of Article 1 of Protocol No. 1 and of Article 13 of the Convention), the Court criticised the impossibility for Greek Cypriots to retain their property rights if they had left the north permanently and the failure to recognise the inheritance rights of persons living in South Cyprus to property in the north belonging to their deceased relatives. The Turkish authorities considered that all the necessary measures had been taken.[101] At its 1236th meeting (DH), the Committee of Ministers welcomed those measures, but wished to further examine the possible consequences on this issue of the judgment *Cyprus v. Turkey* of 12 May 2014 concerning just satisfaction. At its 1355th meeting (DH) in September 2019, it noted that the latter judgment did not concern the issue of the property rights of enclaved persons. It also took note of the possibility for the Greek Cypriots who had left the north to bring certain proceedings, including before the IPC, and requested information concerning applications lodged before the said body. It also decided to consider this aspect of the case at its DH meeting in June 2020 in order to possibly close its supervision.[102]

42. In its judgment of 12 May 2014 on just satisfaction, the Court ordered Turkey to pay to Cyprus €30 000 000 for non-pecuniary damage suffered by the relatives of the missing persons and €60 000 000 for non-pecuniary damage suffered by the enclaved Greek-Cypriot residents of the Karpas peninsula. The Court indicated that those sums had to be transferred individually to the victims by the Cypriot Government, under the Committee of Ministers supervision, within 18 months from the date on which they had been paid or within any other deadline that the Committee of Ministers would deem appropriate. To date, no information has been provided regarding the payment of these sums by the Turkish authorities, although the Committee of Ministers has issued reminders in this respect at almost each of its DH meetings[103] since June 2015. The last decision in this respect was adopted at the 1362nd meeting in December 2019.[104]

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94. Ibidem.
95. CM/Del/Dec(2019)1362/H46-30, op. cit.
96. Which is also examined jointly with this aspect of the case; application No. 46347/99, judgments of 22 December 2005 (pilot judgment) and 7 December 2006 (just satisfaction). See also *Demopoulos v. Turkey,* application No. 46113/99, decision (on inadmissibility) of 1 March 2010 (Grand Chamber), paragraph 127.
97. See the Court's judgment of 12 May 2014 on just satisfaction in the *Cyprus v. Turkey* case, paragraph 63.
98. See the respective memoranda submitted by the two parties: DH-DD(2016)688 and DH-DD(2016) 707.
99. CM/Del/Dec(2018)1324/H46-20, paragraph 2.
100. See the submission by the Turkish authorities, DH-DD(2019)552, 16 May 2019. The Cypriot authorities also submitted a memorandum on these issues, see DH-DD(2019)602, 27 May 2019.
101. See the analysis of these issues made by the Committee of Ministers Secretariat (CM/Inf/DH(2013)23) and the observations of the Turkish authorities (DH-DD(2014)722).
102. CM/Del/Dec(2019)1355/H46-25, 25 September 2019.
103. With the exception of the 1348th meeting (DH) in June 2019, when no decision was taken.
104. CM/Del/Dec(2019)1362/H46-30, see above, paragraph 5.

43. The *Georgia v. Russia (I)*[105] case originates in the political tensions between both countries in the summer of 2006 and concerns the arrest, detention and expulsion from the Russian Federation of large numbers of Georgian nationals from the end of September 2006 until the end of January 2007 (violations of Article 4 of the Protocol No. 4 and of Articles 3, 5 paragraphs 1 and 4, 13 and 38 of the Convention).[106] In its just satisfaction judgment, the Court held that, within three months, the Russian Federation was to pay the Government of Georgia 10 000 000 euros in respect of non-pecuniary damage suffered by the group of at least 1 500 Georgian nationals, who were victims of the violations of the Convention. The Court indicated that these amounts should be distributed by the Government of Georgia to the individual victims under the supervision of the Committee of Ministers within 18 months of the date of the payment or within any other period considered appropriate by the Committee of Ministers. The deadline for payment expired on 30 April 2019.

44. The Committee of Ministers examined the execution of the judgment on the merits (general measures) during its 1250th meeting (DH) in March 2016, when it requested the Russian authorities to provide information on the implementation of their action plan.[107] After the judgment on just satisfaction had been delivered, the Committee of Ministers focused on the issue of its payment at its 1355th (23-25 September 2019), 1362nd (3-5 December 2019) and 1369th (3-5 March 2020) meetings (DH).

45. Shortly before the 1355th meeting (DH), the Russian authorities submitted an action plan,[108] arguing that there was no legal basis in the Convention for just satisfaction awards in inter-State cases. They further questioned the validity of the list of individual victims submitted to the Court and proposed that the Committee of Ministers adopt a decision requesting the Georgian authorities to draw up a final list of victims, to be examined and approved by the Committee of Ministers before the payment by the Russian Federation of the just satisfaction. They reiterated their position in action plans submitted on 30 October 2019 and 7 February 2020.[109] The Georgian authorities consequently refuted those arguments and proposals.[110] At its 1369th meeting, the Committee of Ministers expressed its serious concern that the Russian authorities continued to insist on the provision by the Georgian Government of the precise list of individual victims before making the payment, which "called into question the above sequence decided on by the Court". It also deeply regretted that no payment had yet been made and underlined the unconditional obligation under Article 46.1 of the Convention to pay the just satisfaction awarded by the Court. It also welcomed the initiative of its secretariat to offer their good offices to find a "pragmatic solution" compliant with the Court's judgment and urged the Russian authorities to enter without delay into detailed consultations with the Secretariat on the modalities for the payment of the sums awarded together with the default interest accrued.[111]

4.8. Cases relating to the situation in Nagorno-Karabakh

46. Since June 2015, the Committee of Ministers is examining the implementation of two judgments relating to the military conflict between Armenia and Azerbaijan in Nagorno-Karabakh between 1988-1994: *Chiragov and Others v. Armenia*[112] and *Sargsyan v. Azerbaijan*.[113] The *Chiragov and Others* judgment concerns Azerbaijani nationals who were forced to flee from their homes in Lachin at the beginning of the conflict, and were consequently denied access to their property and homes as well as any redress remedy (continuing violations of Article 1 Protocol No. 1, Article 8 and Article 13 of the Convention). The Court found that Armenia exercises effective control over Nagorno-Karabakh and the surrounding territories, including the district of Lachin, and that the matters complained of fell within the jurisdiction of that State.[114] The *Sargsyan* judgment concerns an Armenian refugee who, because of the conflict, was forced to leave his home in Gulistan, over which, according to the Court, Azerbaijan has the internationally recognised jurisdiction. The Court accepted the Azerbaijani authorities' refusal to grant civilian access to the village because of safety considerations, but

105. Application No. 13255/07, Grand Chamber judgments of 3 July 2014 (on the merits) and 31 January 2019 (just satisfaction).
106. The Committee of Ministers examined it for the last time at its 1369th meeting (DH), see CM/Del/Dec(2020)1369/H46-26, 5 March 2020.
107. For further details of the measures taken, see the Notes (CM/Notes/1250/H46-22) and decisions CM/Del/Dec(2016)1250/H46-22 of that meeting.
108. DH-DD(2019)1017, 17 September 2019.
109. DH-DD(2019)1259, 31 October 2019, and DH-DD(2020)116, 7 February 2020.
110. DH-DD(2019)1031), 19 September 2019, and DH-DD(2019)1298, 7 November 2019.
111. CM/Del/Dec(2020)1369/H46-26, 5 March 2020.
112. Application No. 13216/05, Grand Chamber judgments of 16 June 2015 (on the merits) and of 12 December 2017 (on just satisfaction).
113. Application No. 40167/06, Grand Chamber judgments of 16 June 2015 (on the merits) and of 12 December 2017 (on just satisfaction).
114. Paragraph 186 of the *Chiragov and Others* judgment.

criticised the lack of measures aimed at restoring the applicant's rights in respect of his property and home and that of any compensation mechanism (also continuing violations of Article 1 Protocol No. 1, Article 8 and Article 13 of the Convention). In both judgments, the Court held that "pending a comprehensive peace agreement it would appear particularly important to establish a property claims mechanism, which should be easily accessible and provide procedures operating with flexible evidentiary standards, allowing the applicants and others in their situation to have their property rights restored and to obtain compensation for the loss of their enjoyment".[115] In the just satisfaction judgments in both cases, it awarded each applicant a just satisfaction of 5 000 euros for pecuniary (loss of income and increased living expenses) and non-pecuniary damage.

47. Several communications from the Armenian and Azerbaijani authorities, NGOs and the representative of Mr Sargsyan were submitted to the Committee of Ministers. As regards the *Chiragov and Others* judgment, in December 2019, the Armenian authorities pointed out that due to the ongoing conflict situation, the lack of a peace agreement and the security situation, the execution of this judgment, and in particular the setting up of a compensation mechanism, was hindered. However, they stressed their openness and readiness to reach a durable solution and pursue consultations with the secretariat.[116] The Azerbaijani authorities provided a reply to this submission,[117] but, as regards the *Sargsyan* case, they have not provided new information since March 2017, when they informed the Committee of Ministers about the establishment of a Working Group on Evaluation of Loss and Damages.[118] The Committee of Ministers examined these two cases at the 1280th (7-10 March 2017), 1362nd (3-5 December 2019) and 1369th (3-5 March 2020) meetings (DH).[119] At the latter meeting, it decided to resume consideration of these cases at one of its forthcoming meetings in 2020, as detailed consultations between its secretariat and the authorities of both States are expected to take place.

5. Cases concerning the States examined in the 2017 report by Mr Le Borgn'

48. The main judgments examined under the enhanced supervision of the Committee of Ministers and concerning the nine member States mentioned above in Section 3 (excluding Azerbaijan, which did not appear in the previous "top ten") and in the 2017 report by Mr Le Borgn's are listed in Appendix 1 of the addendum to the present report. A brief analysis of the main cases concerning the nine States in question yields the observations presented in this chapter.[120] Other cases concerning these nine countries, which are currently under the enhanced procedure of the Committee of Ministers are listed in the table of cases and group of cases prepared by the Committee of Ministers for its 1362nd meeting in December 2019 (DH-DD(2019)636-rev2E of 21 November 2019). Cases concerning Azerbaijan (under the enhanced procedure) are presented in Appendix 2 of the addendum to this report; most of these cases concern complex or structural problems and have been pending for over five years.

49. The implementation of the main cases or groups of cases concerning the **Russian Federation** (under enhanced supervision) has been presented in an information document (AS/Jur(2020)05 declassified) of 23 January 2020. This shows that since May 2017, the Russian authorities have taken a number of individual and general measures to implement the Court's judgments, in particular those concerning poor conditions of detention in remand centres (*Kalashnikov* group of cases and the pilot judgment in the case of *Ananyev and others),*[121] excessive length of remand detention and other violations of Article 5 of the Convention (*Klyakhin* group of cases), acts of torture and ill-treatment during custody (*Mikheyev* group of cases) and secret, extrajudicial extraditions and expulsions (*Garabayev* group of cases). Nevertheless, some major long-standing problems remain unresolved, in particular for the above-mentioned *Klyakhin*[122] and *Mikheyev*

115. Paragraph 199 of the *Chiragov and Others* judgment and paragraph 238 of the *Sargsyan* judgment.
116. DH-DD(2019)1437, 2 December 2019.
117. DH-DD(2019)1452, 5 December 2019.
118. For more information, see the "Case Description" in HUDOC-EXEC for the two cases.
119. For *Chiragov and Others*, see the decisions: CM/Del/Dec(2017)1280/H46-1, 10 March 2017; CM/Del/Dec(2019)1362/H46-1, 5 December 2019 and CM/Del/Dec(2020)1369/H46-1**,** 5 March 2020. For *Sargsyan*, see: CM/Del/Dec(2017)1280/H46-5, 10 March 2017; CM/Del/Dec(2019)1362/H46-4, 5 December 2019 and CM/Del/Dec(2020)1369/H46-5**,** 5 March 2020.
120. The information on the state of execution of the Court's judgments can be found using the search engine of the Department for the Execution of Judgments, HUDOC-EXEC.
121. As regards the issue of a compensatory remedy for poor detention conditions, the Federal Law No. 494-FZ was adopted in December 2019 and entered into force on 27 January 2020. In its decision of 9 April 2020 in the case of *Shmelev and Others v. Russia,* application No. 41743/17+, the Court found that the mechanism introduced by this law was an "effective remedy" in certain circumstances.

groups of cases, the case concerning repeated bans on gay prides (the *Alekseyev* case) and those relating to the actions of security forces in the North Caucasus (*Khashiyev and Akayeva* group of cases), an issue which has been examined in more detail by different Assembly rapporteurs.[123]

50. As for **Turkey** and **Ukraine**, the implementation of the most problematic judgments concerning these countries has been described in an information document (AS/Jur(2010)02 declassified) of 22 January 2019. Concerning **Turkey,** as regards violations of freedom of expression (former *Inçal* group), notably due to disproportionate use of the criminal law to punish persons who express critical or unpopular opinions and detention of journalists in the absence of relevant and sufficient reasons, in March 2020, the Committee of Ministers considered that no concrete progress on general measures had been achieved for a long time, although it took note of the newest information provided by the Turkish authorities.[124] It invited the authorities to send a high-level political message to underline that freedom of expression is valued in Turkish society and that the criminal law should not be used in such a way as to restrict it. The Committee of Ministers further instructed the Secretariat to prepare a draft interim resolution in the absence of signs of concrete progress by the next examination of the cases concerning these problems. Moreover, the Committee of Ministers is still waiting for additional information on individual or general measures taken or envisaged in the groups of cases concerning repeated imprisonment for conscientious objection (*Ülke* group), the ineffectiveness of investigations into the actions of security forces in violation of Articles 2 and 3 of the Convention (*Bati* group)[125], the excessive use of force to disperse peaceful protests (*Oya Ataman* group)[126] and the authorities' failure to provide protection from domestic violence (*Opuz* group). Following the adoption of execution measures by the Turkish authorities, the examination of the *Söyler* judgment, concerning the withdrawal of the convicts' right to vote, was closed in June 2019[127] and that of three cases from the group *Hulki Gűneş,* concerning unfair convictions – in December 2019.[128]

51. In the case of **Ukraine**, the major long-standing problem of the failure to execute domestic judicial decisions or delaying their execution (*Zhovner*/*Yuriy Nikolayevich Ivanov/Burmych* group) has persisted for over eighteen years. At its 1369th meeting (DH) in March 2020, the Committee of Ministers noted the progress made in the payment of compensation to the applicants in the *Burmych* case, but deeply regretted the significant delays in ensuring payment and called upon the authorities to speed up their payment process to all the applicants in this case. As regards general measures, it took note of the recent legislative amendments and other measures taken, but reiterated its "utmost concern at the lack of further tangible action in adopting the relevant institutional, legislative and other practical measures" and deplored the lack of information on the adoption of the National Strategy, the mandate of the Legal Reforms Commission and the body, at the highest political level, which should be responsible for taking the lead in this matter.[129] It underlined that the Ukrainian authorities should demonstrate "sustained political commitment at the highest political level" and called upon them to achieve rapid progress and introduce all necessary measures until this problem is fully resolved.[130] As for the other judgments mentioned in the report of my predecessor, the Committee of Ministers noted some progress made in implementing judgments concerning ill-treatment inflicted by police officials (*Afanasiyev* and *Kaverzin* groups)[131], shortcomings in the legislation governing the use of detention on remand and its application (*Ignatov* group)[132] and the lack of impartiality and

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122. In particular, the issue of individual measures in the cases in *Pichugin v. Russia (No. 1),* application No. 38623/03, judgment of 23 October 2012, and *Pichugin v. Russia (No. 2),* application No. 38958/07, judgment of 6 June 2017 (release of the applicant) and in *Khodorkovskiy and Lebedev v. Russia,* application No. 11082/06, judgment of 25 July 2013 (the lifting of an unlawful damage award).

123. See, in particular, the report by Mr Michael McNamara (Ireland, SOC), Doc. 14083 of 8 June 2016, and Resolution 2157 (2017) and Recommendation 2099 (2017) on "Human rights in the North Caucasus: what follow-up to Resolution 1738 (2010)?", of 25 April 2017. Another report is being prepared by Mr Frank Schwabe (Germany, SOC) on "The continuing need to restore human rights and the rule of law in the North Caucasus region".

124. CM/Del/Dec(2020)1369/H46-33, decision adopted at the 1369th meeting (DH) on 5 March 2020 in the groups of cases *Öner and Türk, Nedim Şener* group and *Altuğ Taner Akçam v. Turkey*.

125. For the latest examination of this group of cases since January 2019, see CM/Del/Dec(2019)1355/H46-24**,** decision adopted at the 1355th meeting (DH) on 25 September 2019.

126. For the latest examination of this group of cases since January 2019, see CM/Del/Dec(2019)1340/H46-24, decision adopted at the 1340th meeting (DH) on 14 March 2019.

127. Resolution CM/ResDH(2019)147, adopted at the 1348th meeting (DH), 6 June 2019, in the cases *Murat Vural* and *Söyler v. Turkey.*

128. Resolution CM/ResDH(2019)359, adopted at the 1363rd meeting of the Committee of Ministers, 11 December 2019.

129. CM/Del/Dec(2020)1369/H46-36**,** 5 March 2020, paragraphs 4 and 5. Seven cases in which no further individual measures were required were closed by Final Resolution CM/ResDH(2020)46, 5 March 2020.

130. Ibid, paragraph 9.

131. For the most recent examination of these cases, see the decision taken at the 1355th meeting (DH), CM/Del/Dec(2019)1355/H46-26, 25 September 2019.

independence of judges (*Oleksandr Volkov* group of cases)[133]. However, little progress has been achieved on long-standing problems such as poor detention conditions (*Nevmerzhitsky* and *Kuznetsov* groups of cases), excessive length of judicial proceedings (*Svetlana Naumenko* and *Merit* groups of cases)[134], violations of freedom of assembly *(Vyerentsov* group of cases*)* and the domestic investigation in the *Gongadze* case (examined by the Assembly in 2009).[135] By a decision of 1 April 2020 (No. 258), the Cabinet of Ministers established a special commission on the implementation of the Court's judgments, composed of members of the executive and of the parliament[136].

52. The implementation of judgments against **Romania** has been presented in an information document (AS/Jur(2019)52 declassified) of 12 December 2019. As regards the judgments concerning the authorities' failure to provide restitution or compensation for nationalised property (*Strain* and *Maria Atanasiu*), the Committee of Ministers is still awaiting information on outstanding issues related to the compensation mechanism introduced in response to these judgments. Progress has been observed regarding problems of excessive length of proceedings and the lack of an effective remedy in that regard (*Vlad and Others* group of cases) as well as some of those raised by the judgments *Association '21 December 1989' and others,Ţicu, Centre for Legal Resources on behalf of Valentin Câmpeanu* and *Bucur and Toma.* As regards non-implementation of domestic court decisions, although the Committee of Ministers decided to close the cases from the groups *Ruianu* and *Strungariu*, it still deplores the lack of relevant measures concerning non-implementation of domestic decisions delivered against the State or its entities (*Săcăleanu* group of cases). Finally, as regards the longstanding structural problems of overcrowding and inhuman and degrading conditions of detention in prisons and police arrest and detention centres as well as the lack of an effective remedy in this respect (*Rezmiveș and others* and *Bragadireanu* group), a "significant progress" has already been achieved, in particular in reducing overcrowding. However, additional measures "underpinned by a strong and enduring commitment at high political level" are required to resolve these problems.[137] At its 1369th meeting (DH) in March 2020, the Committee of Ministers expressed regret that the recent political developments, namely the parliament's vote on withdrawing confidence from the government, had prevented it from presenting a new action plan, in line with the assurances given by the authorities at the previous DH meeting.[138] Concerning the issue of effective remedy, in December 2019 and March 2020, the Committee of Ministers regretted the abolition of the compensatory mechanism in the form of reduction of sentences without providing alternative Convention-compliant remedies, which had resulted from a decision of the parliament of 4 December 2019; it stressed that this measure would imply a risk of a new massive influx of repetitive applications before the Court, which would pose threat to the effectiveness of the Convention system. In view of the seriousness of the situation, it called on all relevant authorities to use all existing legal avenues and the developing case-law of the courts, notably as regards the State's extra-contractual liability, to ensure the existence of effective domestic remedies with compensatory effect pending the adoption of the necessary reforms.[139]

53. A detailed analysis of the state of implementation of the main judgments concerning **Hungary** and **Italy** has been presented in an information document (AS/Jur (2019)19 declassified) of 10 April 2019. As regards **Hungary**, no concrete progress has been achieved concerning the structural problem of excessive length of judicial proceedings and the lack of an effective remedy in this respect, which has been examined since 2003. More than three years after the deadline set in the *Gazsó* pilot judgment on 16 July 2015,[140] no legislation providing for an effective remedy has been adopted, which the Committee of Ministers criticised at its 1369th meeting in March 2020.[141] It therefore instructed the Secretariat to prepare a third draft interim resolution for

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132. For the most recent examination of these cases, see the decision taken at the 1348th meeting (DH), CM/Del/Dec(2019)1348/H46-33, 6 June 2019.
133. For the most recent examination of this group of cases, see the decision taken at the 1369th meeting (DH), CM/Del/Dec(2020)1369/H46-38, 5 March 2020.
134. For the most recent examination of these cases, see the decision taken at the 1362nd meeting (DH), CM/Del/Dec(2019)1362/H46-34, 5 December 2019. However, although 13 cases in which individual measures were taken had been closed, see final Resolution CM/ResDH(2019)370 adopted at that meeting.
135. Doc. 11686 of 11 July 2008; Committee on Legal Affairs and Human Rights (rapporteur: Sabine Leutheusser-Schnarrenberger, Germany, ALDE); see Resolution 1645 (2009) and Recommendation 1856 (2009) of 27 January 2009.
136. https://zakon.rada.gov.ua/rada/show/258-2020-%D0%BF (in Ukrainian)
137. See the latest decision adopted in this group of cases at the 1369th meeting, CM/Del/Dec(2020)1369/H46-23**,** 5 March 2020, paragraph 3.
138. Ibid, paragraph 4.
139. Ibid, paragraph 5. See also the decision adopted at the 1362nd meeting, CM/Del/Dec(2019)1362/H46-19, 5 December 2019, paragraphs 3 and 8.
140. Application No. 48322/12, judgment of 16 July 2015.
141. Decision adopted at the 1369th meeting (DH), CM/Del/Dec(2020)1369/H46-12**,** 5 March 2020, paragraphs 1, 2 and 5.

consideration at its 1377th meeting (DH) in June 2020, should no tangible progress be achieved by then. With regard to poor detention conditions due to overcrowding in detention facilities, the authorities had taken a number of measures to solve this problem and preventive and compensatory remedies were introduced in 2017, which led to the rejection of thousands of similar cases pending before the Court. Following the government's announcement in January 2020 to review the remedies, the Council of Europe's Director of Human Rights wrote a letter to the Minister of Justice. In February 2020, the authorities informed the Committee of Ministers that they would continue to provide domestic preventive and compensatory remedies in conformity with the relevant domestic laws in force pending the review of the current regime.[142] As regards the implementation of the *Horváth and Kiss* judgment concerning the discriminatory placement of children of Roma origin in schools for mentally disabled children during their primary school education, although the authorities provided information on numerous general measures taken and planned, in the last five years they have failed to provide relevant statistics on the evolution of the number of Roma children in special schools, which the Committee of Ministers criticised during the latest examination of this case at its 1348th meeting (DH) in June 2019.[143]

54. As regards **Italy**, significant progress has been noted as regards the implementation of judgments concerning the chronic problem of excessive length of judicial proceedings (see the *Trapani*, *Leddone No. 1*, *Abenavoli* and *Collarille and Others* groups), which has allowed for the closure of many cases in which individual measures were no longer required. Regarding the lack of an effective remedy in this respect, the Committee of Ministers still examines the issue of shortcomings of the 2001 "Pinto" remedy (*Olivieri and Others* group) and during its 1355th meeting (DH) in September 2019, took note of the latest information provided concerning outstanding questions.[144] As regards the judgment *Sharifi and Others v. Italy and Greece* concerning collective expulsion of migrants in the port of Ancona, at its 1369th meeting (DH) in March 2020, the Committee of Ministers took note of the information provided on the individual and general measures taken, noted with concern information coming from NGOs about new incidents of collective expulsion and requested the Italian authorities to provide a consolidated action plan/report.[145] In December 2019, the Committee of Ministers closed the examination of the cases from the *Cirillo* and *Scoppola* groups concerning the lack of appropriate medical care in prisons.[146] Since the end of 2013, the Italian authorities have made efforts to implement the judgment in the case of *M.C. and others,* concerning the retrospective invalidation of an annual adjustment of an allowance for families of victims of accidental contaminations by viruses.

55. As regards **Greece**, some progress has been achieved with regard to cases concerning the absence of an adequate legislative and administrative framework governing the use of force, including firearms and ill-treatment by members of law enforcement agencies (*Makaratzis* group of cases), pending before the Committee of Ministers since 2004. The Committee of Ministers has requested more information on some individual measures (disciplinary and criminal proceedings or their reopening) and general measures, including changes to torture-related legislation and case-law.[147] As regards the group of cases concerning conditions of detention of migrants and asylum procedures (*M.S.S. v. Belgium and Greece* group), during its latest examination at its 1348th meeting (DH) in June 2019, the Committee of Ministers decided to close 17 cases in which no further individual measures were required.[148] With regard to general measures, it welcomed the Greek authorities' efforts to improve the national asylum system, to improve asylum seekers' living conditions and the reception and protection of unaccompanied minors, but also expressed some concerns in this respect. As regards conditions of detention, although immigration detention facilities visited by the Committee for the Prevention of Torture or Degrading or Inhuman Treatment (CPT) in 2018 provided decent conditions, the Committee of Ministers expressed serious concern at the fact that a number of other immigration facilities and police stations seemed to be below Convention standards, and that the detention of unaccompanied minors persisted. However, it closed the examination of the issue of an effective remedy to complain about conditions of detention, following the development of domestic case law.[149] The Committee of Ministers has also been examining since 2011 a group of cases concerning poor detention conditions in

142. DH-DD(2020)107, 6 February 2020.
143. Decision adopted at the 1348th meeting (DH), CM/Del/Dec(2019)1348/H46-11, 6 June 2019, paragraphs 3 and 4.
144. Decision adopted at the 1355th meeting (DH), CM/Del/Dec(2019)1355/H46-12, 25 September 2019. The Committee of Ministers also adopted Final Resolution CM/ResDH(2019)238 to close the examination of nine cases in which all the individual measures had been taken.
145. Decision taken at the 1369th meeting (DH), CM/Del/Dec(2019)1369/H46-14, 5 March 2020.
146. Resolution CM/ResDH(2019)327 adopted at the 1362nd meeting (DH), 5 December 2019.
147. This group of cases was examined for the last time at the 1331th meeting (DH) (4-6 December 2018); see decision CM/Del/Dec(2018)1331/H46-13, 6 December 2018.
148. Final Resolution CM/ResDH(2019)154, 6 June 2019.
149. Decision adopted at the 1348th meeting (DH), CM/Del/Dec(2019)1348/H46-9, 6 June 2019.

prisons and the lack of an effective remedy in this respect (*Nisiotis* group), for the implementation of which the authorities announced the 'Strategic Plan for Prisons for 2018-2020'. At its 1324th meeting (DH) in September 2018, the Committee of Ministers expressed concern about a high number of applications pending before the Court concerning this problem and invited the authorities to provide information about the content of the 'Strategic Plan for Prisons for 2018-2020' as well as its implementation.[150] On 9 April 2020, the CPT published its newest report on its seventh periodic visit to Greece, in which it raised criticism concerning the issues covered by the three above-mentioned groups of cases.[151] Besides that, the judgments concerning violations of the right to freedom of association resulting from the Greek authorities' refusal to register associations promoting the idea of the existence of an ethnic minority as distinct from the religious minorities recognised by the 1923 Treaty of Lausanne (*Bekir-Ousta* group) remains unimplemented for more than eleven years. In September 2019, the Committee of Ministers deplored the fact that the applicants' applications have still not been re-examined by domestic courts on their merits in light of the Court's case law; two of the present associations remain unregistered and one was dissolved. It was also concerned about the 2018 judgment of the Thrace Court of Appeal rejecting, on procedural grounds, the request for re-examination of the order dissolving the applicant association in *Tourkiki Enosi Xanthis and Others*. Therefore, the Committee of Ministers urged the authorities to rapidly take all the necessary individual and general measures.[152] Similar questions have been under the Committee of Ministers' supervision since 2015 in *House of Macedonian Civilization and Others*[153]. It is noted that this is the second judgment, following that of *Sidiropoulos and Others*[154] of 1998, concerning the same association in which the Court found a violation by Greece of Article 11 of the Convention. Nevertheless, progress has been achieved with regard to the individual and general measures in the *Beka-Koulocheri* group of cases concerning the failure to execute domestic judicial decisions concerning expropriation orders, which the Committee of Ministers noted at its 1369th meeting (DH) in March 2020.[155]

56. As regards the implementation of judgments against the **Republic of Moldova,** several cases mentioned in Mr Le Borgn's report have been closed following the adoption of execution measures: the *Genderdoc-M* judgment concerning unjustified ban on a demonstration promoting the rights of LGBTI persons,[156] the group of cases *Taraburca* concerning ill-treatment by police in response to post-election demonstrations,[157] the groups of cases concerning arbitrary arrest and detention in the context of criminal and administrative proceedings (*Muşuc, Gutu* and *Brega*)[158] and the group of cases concerning non-enforcement of domestic judgments (*Luntre).*[159] Significant progress has been achieved with regard to the cases concerning failure to provide protection from domestic violence (formerly *Eremia* group of cases,[160] now *T.M. and M.C.* case)[161] and ill-treatment inflicted by the police during detention and lack of an effective remedy in this respect (formerly the *Corsacov* group, now examined as the *Levinta* group).[162] Some positive developments have been noted with regard to cases concerning poor conditions of detention in remand facilities and prisons and the lack of an effective remedy in this respect (formerly the *Ciorap* group,[163] general measures now being examined in the context of the *I.D.* judgment).[164] As regards the case concerning various violations of Article 5 of the Convention, arising notably from the lack of sufficient reasoning of the grounds for applying or prolonging detention on remand (*Sarban* group), at its 1348th meeting (DH) in June

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150. Decision adopted at the 1324th meeting (DH), CM/Del/Dec(2018)1324/8, 20 September 2018.
151. CPT/Inf(2020)15, 9 April 2020.
152. See the most recent decision adopted in this group of cases at the 1335th meeting (DH), CM/Del/Dec(2019)1355/H46-9, 25 September 2019.
153. Application No. 1295/10, judgment of 9 July 2015, examined for the last time at the 1362nd meeting (DH), see CM/Del/Dec(2019)1362/H46-9, 5 December 2019.
154. Application No. 26695/95, judgment of 10 July 1998.
155. See the decision adopted at that meeting, CM/Del/Dec(2020)1369/H46-11**,** 5 March 2020.
156. Final resolution CM/ResDH(2019)239, adopted at the 1355th meeting (DH), 15 September 2019.
157. Final resolution CM/ResDH(2018)464, adopted at the 1331st meeting (DH), 6 December 2018.
158. Final resolutions CM/ResDH(2018)227, adopted at the 1318th meeting (DH), 7 June 2018, and CM/ResDH(2019)144, adopted at the 1348th meeting (DH) on 4 June 2019.
159. CM/ResDH(2018)226, adopted at the 1318th meeting (DH), 7 June 2018.
160. Three cases were closed by final resolution CM/ResDH(2017)425, adopted at the 1302nd meeting (DH), 7 December 2017.
161. For its last examination, see the decision adopted the 1369th meeting (DH), CM/Del/Dec(2020)1369/H46-17**,** 5 March 2020.
162. Examined for the last time at the 1331st meeting (DH), see decision CM/Del/Dec(2018)1331/H46-16, 6 December 2018. The cases from the *Corsacov* group were closed by Resolution CM/ResDH(2018)463 following the adoption of individual measures.
163. Closed by final resolution CM/ResDH(2018)107, adopted at the 1310th meeting (DH), 15 March 2018.
164. Examined for the last time at the 1348th meeting (DH), see decision CM/Del/Dec(2019)1348/H46-16, 6 June 2019. Four cases were then closed by final Resolution CM/ResDH(2019)143.

2019**,** the Committee of Ministers decided to close the examination of 23 cases in which no more individual measures were required,[165] but remained concerned about the fact that the general measures adopted so far had not yet resulted "in any clear and tangible improvements in judicial practice as concerns the giving of reasons for detention on remand".[166]

57. For **Bulgaria**, the examination of most of the cases concerning excessive length of civil and criminal proceedings and the lack of an effective remedy in that regard (groups of cases *Djangozov* and *Kitov*) was finally closed in December 2017.[167] However, the situation of the most overburdened courts is still examined by the Committee of Ministers under standard supervision.[168] Regarding the other problems raised in Mr. Le Borgn's report, significant progress has been made in implementing the groups of cases relating to poor conditions of detention, in particular as concerns the problem of overcrowding (*Kehayov* group of cases and *Neshkov and others* pilot judgment)[169] and in the cases relating to expulsions of foreigners in violation of their rights to respect for family life (*C.G. and Others* group).[170] At the 1369th meeting (DH) in March 2020, the Committee of Ministers assessed the implementation of the *Yordanova and Others* group of cases concerning eviction of persons of Roma and other origins, took note of the individual and general measures taken in this group of cases, but stressed that there was still no clear legal framework for proportionality assessment of demolition orders.[171] Concerning ill-treatment by law enforcement officials (*Velikova* group), some progress has been achieved, but in September 2019, the Committee of Ministers stressed that persons detained by the police were still under a considerable risk of ill-treatment, that these cases were pending before it for over 19 years and urged the authorities to adopt the necessary general measures.[172] The lack of significant progress was also pointed out in the cases *S.Z. and Kolevi*, concerning the existence of a systemic problem of ineffectiveness of criminal investigations and lack of guarantees for the independence of an investigation concerning a Chief Prosecutor; at its 1362nd meeting (DH), on 5 December 2019, the Committee of Ministers adopted Interim Resolution CM/ResDH(2019)367, in which it urged the authorities to adopt reforms, and, if necessary, constitutional amendments. As regards the cases from the group *UMO Illinden and Others* (concerning unjustified refusals to register an association the aim of which is to achieve "the recognition of the Macedonian minority in Bulgaria"), the Committee of Ministers did not consider as sufficient the execution measures taken by the authorities.[173] The *Stanev* group of cases concerning placement in social care homes of persons with mental health disorders has not been examined by the Committee of Ministers since the 1288th DH meeting in June 2017.[174]

6. General data on the implementation of the Court's judgments between 2017 and 2020 and new developments

58. According to the 2019 Annual report[175], as of 31 December 2019, a total of 5 231 judgments and decisions were pending before the Committee of Ministers at different stages of execution. This shows a decrease in the number of pending cases in comparison with the end of 2018 (6 151) and 2017 (7 584) and with the peak that had been reached in 2012-2013 with 11 099 cases. Out the 5 231 judgments there are 1 245 leading cases,[176] down from 1 292 in 2018 and 1 379 in 2017 (a peak of 1 555 leading cases pending was reached in 2015). At the end of 2019, there were 306 leading cases under enhanced supervision of the Committee of Ministers in comparison with 309 in 2018 and 317 in 2017.

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165. Final Resolution CM/ResDH(2019)144, 6 June 2019.
166. CM/Del/Dec(2019)1348/H46-17, 6 June 2019, paragraph 4.
167. Final Resolution CM/ResDH(2017)420, 5 December 2017.
168. See *Stoine Hristov No. 2,* application No. 36244/02, judgment of 16 October 2008, and *Svetlozar Petrov,* application No. 23236/04, judgment of 7 June 2011.
169. For the latest examination of these cases, see the decision adopted at the 1310th meeting (DH), CM/Del/Dec(2018)1310/H46-4, 15 March 2018. 19 cases in which individual measures were no longer required were closed by Final Resolution CM/ResDH(2018)104.
170. These cases were examined for the last time at the 1369th meeting, see decision adopted at that meeting**,** CM/Del/Dec(2020)1369/H46-8**,** 5 March 2020.
171. See decision adopted at the 1369th meeting, CM/Del/Dec(2020)1369/H46-9, 5 March 2020.
172. For the latest examination of these cases, see the decision adopted at the 1355th meeting (DH), CM/Del/Dec(2019)1355/H46-6, 25 September 2019.
173. For the latest examination of these cases, see the decision adopted at the 1355th meeting (DH), CM/Del/Dec(2019)1355/H46-5, 25 September 2019.
174. See Case Description in HUDOC EXEC (as of 23 April 2020).
175. 2019 Annual Report and press release of 1 April 2020.
176. A leading case is a case which has been identified as revealing a new structural problem.

59. At the end of 2019, the Committee of Ministers was examining 2 334 cases under enhanced supervision (leading and repetitive cases altogether), compared with 2 794 in 2018 and 3 849 in 2017. 635 leading cases (supervised under both standard and enhanced supervision) had been pending for more than 5 years, compared to 675 such cases in 2018, 718 in 2017 and the peak of 720 cases in 2016. As concerns leading cases pending for more than 5 years under enhanced supervision, the breakdown by countries is as follows: the Russian Federation (38), Ukraine (38), Turkey (21), Romania (15), Bulgaria (13), Azerbaijan (11), Italy (9), Greece (6), the Republic of Moldova (6) and Poland (6).

60. The 2019 Annual Report report shows that, between 2010 and 2019, there were 2 120 new judgments in leading cases whilst 2 287 such cases were closed, representing a closure rate of 108% (in relation to the new cases in the same period). Between 2000 and 2010, by comparison, there were 1 470 new leading cases and only 602 such cases were closed – a closure rate of 41%.

61. The number of cases closed in 2019 (2 080, including 214 leading cases) was slightly lower than in 2018 (2 705, including 289 leading cases) and 2017 (a record number of 3 691, including 311 leading cases). The cases closed in 2019 (the majority of which are repetitive ones) concerned mainly Turkey (732), Ukraine (443), the Russian Federation (162), Romania (113), Italy (85), Greece (84), Hungary (77), Bulgaria (56), the Republic of Moldova (41), Poland (41) and Serbia (35).

62. With regard to the main themes under enhanced supervision, at the end of 2019, over half the cases related to five major problems: actions of security forces (17%), the lawfulness of detention on remand and related issues (10%), specific situations linked to violations of the right to life and ill-treatment (9%) conditions of detention and lack of medical care (8%), and excessive length of judicial proceedings (8%). These are followed by other interferences with property rights (7%), non-execution of domestic judicial decisions (5%), lawfulness of expulsion or extradition (4%), violations of freedom of assembly and association (4%) and of freedom of expression (4%). As stressed in the 2019 Annual Report, by the end of 2019 the share of cases concerning excessive length of judicial proceedings had decreased to 8% (in comparison with 22% in 2011), which may be due to the introduction of effective remedies at national level. Together, these themes cover 76% of the cases pending before the Committee of Ministers under enhanced supervision. For 81% of these cases, the breakdown by country is as follows: Russian Federation (19%), Ukraine (17%), Turkey (11%), Romania (8%), Italy (6%), Bulgaria (6%), Azerbaijan (5%), Poland (3%), Greece (3%) and Hungary (3%).

63. The 2019 Annual Report also shows a significant increase in the involvement of civil society in the process of implementation of the Court's judgments, in particular through the increased number of submissions presented to the Committee of Ministers under Rule 9.2. of its Rules for the supervision of the execution of judgments and the terms of friendly settlements (133 in 2019, compared to 64 in 2018 and 79 in 2017).

64. The 2019 Annual Report also shows that the notion of "shared responsibility" for the implementation of the Convention norms works well with an increased involvement in the process before the Committee of Ministers of national actors, including ombudsman institutions and civil society, and at the Council of Europe, of other bodies, including the Commissioner for Human Rights, the CPT, the Venice Commission, the European Commission against Racism and Intolerance (ECRI), the Council of Europe Development Bank (which was one of the founders of the HRTF) and, last but not least, the Assembly itself. The case of *Zorica Jovanović v. Serbia*,[177] concerning the disappearance of new-born babies from maternity wards, is a good example in this context: following good cooperation between the Serbian authorities and the Council of Europe, legislation setting up an investigatory mechanism to establish the fate of those babies was adopted at the beginning of 2020.[178]

65. As stressed in the 2019 Annual Report, the progress achieved in the second decade of this century is particularly apparent when compared to the previous decade which followed the ministerial conference in Rome in November 2000 marking the 50th anniversary of the Convention. This shows the efficiency of the Interlaken process started in 2010 and the impact of Protocol No. 14 to the Convention, which entered into force in June 2010, in response to the extremely critical situation of the Court and over 10 000 judgments pending before the Committee of Ministers.[179]

177. Application No 21794/08, judgment of 26 March 2013. For the last examination of this case, see the decision adopted at the 1369th meeting (DH), CM/Del/Dec(2020)1369/H46-30, 5 March 2020.
178. 2019 Annual Report, p. 9.
179. Ibid, pp. 4, 10 and 7.

66. The reforms of the Committee of Ministers' working methods introduced in 2011 were presented in the reports of my predecessors. Since 2017, other developments have taken place, some of which have been described above (see section 2). At the political level, the Copenhagen Declaration, adopted at a high-level conference in April 2018 and subsequently endorsed by the Committee of Ministers at the Copenhagen Ministerial Conference on 11-12 May 2018, stressed again the "extraordinary contribution" of the Convention system to the protection and promotion of human rights and the importance of a "strong political commitment" of the States Parties to the Convention to implement the Court's judgments and called on them to strengthen their capacity for effective and rapid execution at the national level and that of Council of Europe for offering technical assistance to States facing challenges in this process.[180] It also encouraged the organisation of thematic debates, which was subsequently continued[181] – the Committee of Ministers held a second thematic debate on effective investigations into actions of security forces on 12 March 2019. Moreover, the Copenhagen Declaration called on the States Parties to the Convention to ensure parliaments' involvement in ensuring that policies and legislation are fully compliant with the Convention.[182]

67. On 16 October 2019, the Committee of Ministers updated its Recommendation CM/Rec(2004)4 to the member States on the European Convention in university education and professional training by adopting a new Recommendation CM/Rec(2019)5. It also asked the Steering Committee for Human Rights (CDDH) to consider updating other relevant recommendations before the end of 2021. In November 2019, the CDDH presented its contribution to the evaluation of the Interlaken process.[183] It concluded that the process allowed the Convention system's capacity to meet new challenges and considered that no major revision of it was needed. It also stressed the need to increase the necessary resources both at the national and the international (the Court and the Department for the Execution of Judgments) level and to enhance the contribution of national parliaments to the execution of the Court's judgments. The Committee of Ministers' evaluation of the Interlaken process is still underway.

68. As regards parliamentary involvement, more information can be found in the appendix to my information document AS/Jur(2019)45 of 8 November 2019, which summarises information received from 27 national delegations to the Assembly. It follows that many national parliaments still lack permanent structures to monitor the implementation of the Court's judgments and the Convention's implementation in general. As regards the Assembly Secretariat's activities, the Parliamentary Project Support Division (PPSD) has organised a number of seminars for members of parliaments and their staff on the role of national parliaments in implementing the standards of the Convention.[184] A handbook on "National Parliaments as Guarantors of Human Rights in Europe" for parliamentarians was published in 2018 and is now available in 11 languages. The Assembly's role in monitoring the implementation of the Court's judgments has been emphasised in its recent Resolution 2277 (2019) "The role and mission of the Parliamentary Assembly: main challenges for the future" of 10 April 2019.

7. Conclusions

69. As stressed in the 2019 Annual Report recent reforms have enabled the Committee of Ministers to successfully close pending cases more quickly. Their number is falling steadily. However, a considerable number of leading cases have still not been executed, which is due to deeply rooted problems such as continuing political interest, persistent prejudice against certain groups in society, inadequate national organisation or lack of necessary resources.[185] The above overview of the long-standing problems in the nine countries analysed in the 2017 and 2015 reports of my predecessors shows that the majority of "old" cases, that is non-implemented for at least five years, have still not been fully implemented. Since the adoption of the report by Mr Le Borgn' in May 2017, only a few of these cases concerning mainly Turkey, Italy and the Republic of Moldova, have been closed. Many of the cases mentioned in that report have now been pending for over ten years or even more (for example, *Cyprus v. Turkey* since 2001). It is also worrying that in the case of some long-standing structural problems revealed by the Court's judgments some States have moved backward (for example, Romania as regards poor conditions of detention, due to unexpected political developments).

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180. Paragraphs 2 and 19-25 of the Copenhagen Declaration. See also Assembly's Recommendation 2129 (2018) "Copenhagen Declaration, appreciation and follow-up", adopted on 26 April 2018, and the Committee of Ministers' reply to it, Doc. 14616 of 14 September 2018.
181. Paragraph 37 d) of the Copenhagen Declaration.
182. Paragraph 16 b) of the Copenhagen Declaration.
183. CDDH(2019)R92Addendum2, 29 November 2019.
184. For a list of such seminars, see PPSD(2020)08, 19 March 2020.
185. Some of these problems have been mentioned in the 2019 Annual Report, p. 9.

70. As shown in Section 4 of this report, there are still persistent difficulties in the execution of certain judgments linked to the absence of political will or even an open disagreement with a judgment of the Court, especially when it comes to inter-State cases or cases having inter-State features. However, as regards the cases described in Mr Le Borgn's report as "pockets of resistance", since 2017, progress has been achieved in some of them (*Sejdić and Finci v. Bosnia and Herzegovina*, *Paksas v. Lithuania*, *Al-Nashiri* and *Husayn v. Poland,* the implementation of which depends also on the political will of a non-Council of Europe member State, and, finally, *Ilgar Mammadov (No. 1) v. Azerbaijan).* In the Inter-States cases or cases related to territorial disputes between Council of Europe member States (*Catan v. Moldova and Russia, Sargsyan v. Azerbaijan* and *Chiragov and Others v. Armenia*), progress has been slow or non-existent. This situation reveals the persistence of the involvement of the political or national interests in the execution of the judgments of the Court.

71. The main "pocket of resistance" case is certainly the *OAO Neftyanaya Kompaniya YUKOS v. Russia* case not only because of the considerable amount of money which has to be paid but also because of the political feature and issues involved. The authorities' systematic resistance to the payment of just satisfaction awarded by the Court brought about changes at highest normative level (the Constitution). Thus, the implementation of this judgment has become even more difficult. A strong resistance was also observed as regards the implementation of the judgment *Ilgar Mammadov v. Azerbaijan (No. 1),* but it looks like the first ever use of the infringement procedure under Article 46, paragraphs 3 to 5, of the Convention, coupled with political pressure from different international actors, made the Azerbaijani authorities, including the judiciary, reconsider their previous position. I hope that following the recent acquittal of MM. Mammadov and Jafarov, the negative consequences of the violations of the Convention for the other six applicants from this group of cases will be erased as soon as possible. I also encourage the Committee of Ministers to make use of the procedure from Article 46, paragraphs 3 to 5, of the Convention for other important cases, in which a defendant State obstinately resists taking required execution measures; however, this should be done only sparingly and in very exceptional situations. In general, the Committee of Ministers should continue to make use of its usual instruments of peer pressure such as interim resolutions or repeated examination of cases at the DH meetings, not only to express its political disagreement with the State's insufficient action, but also to give more visibility to the issues at stake. Civil society and national institutions for the promotion and protection of human rights should be encouraged to take part in the process of the Committee of Ministers' supervision of the implementation of judgments, by submitting communications on individual and general measures. More systematic co-operation with them is strongly encouraged.

72. States Parties to the Convention have achieved a certain progress in ensuring compliance with the Convention by undertaking important reforms following the Courts' judgments. However, despite the optimistic data presented in the 2019 Annual Report, many new and old challenges lie ahead. States should continue to be engaged and proactive, at all levels of power, in the process of implementation of the Court's judgments and should fully co-operate with the Committee of Ministers, the Department for the Execution of Judgments and other relevant bodies of the Council of Europe. If the execution measures are not adopted or if they do not provide redress in practice, this will lead to new applications being lodged with the Court, followed by new judgments finding more violations of the Convention, leading to a more rigorous supervision of the Committee of Ministers. Parliaments have a special role in this respect, as the above overview of cases shows – many judgments concerning complex or structural problems have not been implemented because of a lack of legislative measures. Many parliaments still have not established special structures to examine the compatibility of draft legislation with the Convention and to systematically monitor the implementation of the Court's judgments concerning their countries, neither have they organised regular parliamentary debates on this subject. It is important that we, as parliamentarians, have the possibility to question governments on their actions related to execution measures, including the elaboration of action plans/reports, if need be. The Assembly should continue to promote the idea of establishing parliamentary structures devoted to ensuring compatibility of draft legislation with the Convention and the Court's case law, in line with its previous resolutions such as Resolution 2178 (2017) "The implementation of the Court's judgments" and Resolution 1823 (2011) "National parliaments: guarantors of human rights in Europe". Moreover, we, as individual members of the Assembly, have a special role in promoting these measures and in raising awareness of the Convention standards' in our national parliaments.

73. This year marks the 70th anniversary of the signing of the European Convention on Human Rights, "the first post-war treaty to provide for supranational decision-making" and a "living instrument to be read in light of present-day conditions".[186] States have incorporated the Convention into national law and the direct effect of the Court's judgments in the concerned States Parties to the Convention as well as of its case law in general

186. 2019 Annual report, remarks by the Director General of Human Rights and Rule of Law, p. 5.

has been increasingly recognised. However, it is regrettable that, seven years after its adoption, Protocol No. 15 to the Convention, which reinforces the principle of subsidiarity, has still not been ratified by all States Parties to the Convention.[187] As regards Protocol No. 16, reinforcing the possibility for dialogue between the highest national courts and the Court through a new possibility of seeking advisory opinions, only 15 States Parties to the Convention have ratified it.[188] Therefore, the Assembly should also call on member States to ratify these two protocols as soon as possible.

74. The rule of law must be coupled with accountability if it is to have any real effect and States must assume responsibility. What has become evident in the drafting of this report is that national and political priorities often render the judgments of the Court ineffective. In many cases, the timid reaction of the Committee of Ministers in the non-execution of the Court's judgments, perplexes the situation even more and renders the enforcement of the process of Article 46 of the Convention imperative, as a response to the persisting reluctance to implement the Court's judgments.

187. As of 27 April 2020, Bosnia and Herzegovina and Italy had still not ratified it; see www.coe.int/en/web/conventions/search-on-treaties/-/conventions/treaty/213/signatures?p_auth=VdvrwlqJ

188. It entered into force following 10 ratifications on 1 August 2018. See www.coe.int/en/web/conventions/full-list/-/conventions/treaty/214/signatures?p_auth=AXwoa4BI. Following a request from the French Court of Cassation, on 10 April 2019, the Court (Grand Chamber) delivered its advisory opinion concerning the recognition in domestic law of a legal parent-child relationship between a child born through a gestational surrogacy arrangement abroad and the intended mother (Request No. P16-2018-001). On 29 May 2020, it issued another advisory opinion following a request of opinion from the Constitutional Court of Armenia concerning a provision of the Criminal Code on the reversal of constitutional order; see press release ECHR 150 (2020) of 29 May 2020.