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## Implementation of judgments of the European Court of Human Rights

### Report<sup>1</sup>

Committee on Legal Affairs and Human Rights

Rapporteur: Mr Pierre-Yves LE BORGNI, France, Socialist Group

### Summary

In its ninth 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. Nevertheless, it has also pointed to serious structural problems experienced for over ten years now by the 10 member States (Italy, the Russian Federation, Turkey, Ukraine, Romania, Hungary, Greece, Bulgaria, the Republic of Moldova and Poland) which have the highest number of non-implemented judgments against them. The Committee of Ministers is still supervising the implementation of some 10 000 judgments, although they are not all at the same stage of implementation. The difficulties in implementing certain judgments reveal "pockets of resistance" rooted in political problems.

The committee recommends, *inter alia*, swift implementation of the Court's judgments, condemnation of any kind of political statement aimed at discrediting the Court and the institution of parliamentary procedures to monitor the implementation of the obligations stemming from the European Convention on Human Rights. Among other things, the Committee of Ministers should give renewed consideration to the use of Article 46 paragraphs 3, 4 and 5 of the Convention, co-operate more closely with civil society and ensure greater transparency of its supervision process.

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1. Reference to committee: [Resolution 1268 \(2002\)](#).



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## A. Draft resolution<sup>2</sup>

1. Since its [Resolution 1226 \(2000\)](#), the Parliamentary Assembly has been duty-bound to contribute to the supervision of the implementation of judgments of the European Court of Human Rights (“the Court”), on which the efficiency and authority of the human rights protection system based on the European Convention on Human Rights (ETS No. 5, “the Convention”) depend. Primary responsibility for supervision of the implementation of Court judgments lies with the Committee of Ministers, in accordance with Article 46.2 of the Convention. However, the Assembly considers that it has a key role in this process, as it can encourage proactive involvement on the part of national parliaments.
2. The Assembly recalls its previous work on this subject, in particular its Resolutions [2075 \(2015\)](#), [1787 \(2011\)](#) and [1516 \(2006\)](#) and Recommendations [2079 \(2015\)](#) and [1955 \(2011\)](#) on the implementation of judgments of the Court and its [Resolution 1823 \(2011\)](#) on national parliaments: guarantors of human rights in Europe.
3. Since last examining this question in 2015, it notes some progress in the implementation of Court judgments, notably the reduction in the number of judgments pending before the Committee of Ministers and the increased number of cases closed by final resolutions, including cases concerning structural problems such as excessive length of judicial proceedings, poor conditions in detention facilities and the lack of domestic remedies in this regard, non-enforcement of domestic judicial decisions and the unlawfulness or excessive length of detention on remand.
4. The Assembly welcomes the measures taken by the Committee of Ministers to make its supervision of the implementation of Court judgments more transparent as well as the synergies that have been developed within the Council of Europe to make this process more rapid and effective.
5. However, the Assembly remains deeply concerned about the number of judgments pending before the Committee of Ministers, even though all these judgements are not at the same stages of execution. It notes that there are nearly 10 000 such cases, and that the number of leading cases – revealing specific structural problems – awaiting execution for more than five years has increased. Nearly half of the cases under the “enhanced supervision” of the Committee of Ministers relate to violations of Articles 2 (right to life), 3 (prohibition of torture and inhuman treatment) and 5 (right to freedom and security) of the Convention.
6. The Assembly also notes that, even though considerable progress has been made since its Resolutions [1787 \(2011\)](#) and [2075 \(2015\)](#), Italy, the Russian Federation, Turkey, Ukraine, Romania, Hungary, Greece, Bulgaria, the Republic of Moldova and Poland have the highest number of non-implemented judgments and still face serious structural problems, some of which have not been resolved for over ten years.
7. The Assembly further notes that some cases involving other States Parties to the Convention also reveal “pockets of resistance”, in particular concerning deeply ingrained political issues. The difficulties in implementing these judgments relate to the adoption not only of general measures (aimed at preventing fresh violations) but also of individual measures (aimed at *restitutio in integrum* for applicants) or payment of just satisfaction. Moreover, the Assembly observes that in some States Parties the execution of the Court's judgments is enveloped in bitter political debate as certain political leaders seek to discredit the Court and undermine its authority.
8. The Assembly once again deplores 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 reiterates that Article 46.1 of the Convention sets out the legal obligation for the States Parties to implement the judgments of the Court and that this obligation is binding on all branches of State authority.
9. Thus, the Assembly once again calls on the States Parties to fully and swiftly implement the judgments and the terms of friendly settlements handed down by the Court and to 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 Council of Europe organs and bodies where applicable. For this co-operation to be fruitful, the Assembly recommends that the States Parties, *inter alia*:
  - 9.1. submit to the Committee of Ministers in a timely manner action plans, action reports and information on the payment of just satisfaction;

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2. Draft resolution adopted unanimously by the committee on 18 May 2017.

- 9.2. pay particular attention to cases raising structural problems, especially those lasting over ten years;
  - 9.3. provide sufficient resources to national stakeholders responsible for implementing Court judgments and encourage those stakeholders to co-ordinate their work in this area;
  - 9.4. provide more funding to Council of Europe projects potentially contributing to improved implementation of Court judgments;
  - 9.5. raise public awareness of issues arising under the Convention;
  - 9.6. condemn any kind of political statement aimed at discrediting the Court's authority;
  - 9.7. strengthen the role of civil society and national human rights institutions in the process of implementing the Court's judgments.
10. Referring to its [Resolution 1823 \(2011\)](#), the Assembly calls on the national parliaments of Council of Europe member States to:
- 10.1. establish parliamentary structures guaranteeing follow-up to and monitoring of international obligations in the human rights field, and in particular of the obligations stemming from the Convention;
  - 10.2. devote parliamentary debates to the implementation of the Court's judgments;
  - 10.3. question governments on progress in implementing Court judgments and demand that they present annual reports on the subject;
  - 10.4. encourage all the political groups to concert their efforts to ensure that the Court's judgments are implemented.
11. The Assembly calls on the European Parliament to engage with the Assembly on issues related to the implementation of the Court's judgments.
12. 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<sup>3</sup>**

1. Referring to its Resolution ... (2017) on the implementation of the judgments of the European Court of Human Rights, the Parliamentary Assembly welcomes the measures taken by the Committee of Ministers to improve the process of its supervision of the implementation of judgments of the Court.
2. The Assembly once again urges the Committee of Ministers to use all available means to fulfil its tasks arising under Article 46.2 of the European Convention on Human Rights (ETS No. 5). Accordingly, it recommends that the Committee of Ministers:
  - 2.1. give renewed consideration to the use of 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;
  - 2.2. make more frequent use of interim resolutions with a view to pinpointing the difficulties in implementing certain judgments;
  - 2.3. work more towards greater transparency of the process of supervision of the implementation of judgments;
  - 2.4. give applicants, civil society, national human rights protection bodies and international organisations a greater role in this process;
  - 2.5. continue to step up synergies, within the Council of Europe, between all the stakeholders concerned, in particular the European Court of Human Rights and its Registry, the 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) and the European Committee for the Prevention of Torture (CPT);
  - 2.6. increase the resources of the Department for the Execution of Judgments of the European Court of Human Rights;
  - 2.7. encourage the Department for the Execution of Judgments to step up exchanges with the Court and its Registry and also to consult more with national authorities in cases where particular difficulties arise over the definition of implementation measures.

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3. Draft recommendation adopted unanimously by the committee on 18 May 2017.

## C. Explanatory memorandum by Mr Pierre-Yves Le Borgn', rapporteur

### 1. Introduction

#### 1.1. Procedure

1. The Parliamentary Assembly has taken a keen interest in the issue of implementation of judgments of the European Court of Human Rights ("the Court") since 2000.<sup>4</sup> In its last resolution on the topic – [Resolution 2075 \(2015\)](#), it resolved to "remain seized of this matter and to continue to give it priority".<sup>5</sup> Consequently, on 2 November 2015, the Committee on Legal Affairs and Human Rights appointed me as the fourth successive rapporteur on this subject after Messrs Erik Jurgens (Netherlands, SOC), Christos Pourgourides (Cyprus, EPP/CD) and Klaas de Vries (Netherlands, SOC). My report is the ninth one on the subject. At its meeting in Strasbourg on 23 June 2016, the committee held a hearing with the participation of Mr Giorgio Malinverni, former judge of the Court and honorary professor at the University of Geneva, Mr Guido Bellatti Ceccoli, Ambassador, Permanent Representative of San Marino to the Council of Europe, rapporteur of the Human rights rapporteur group of the Committee of Ministers, and Ms Betsy Apple, Advocacy Director, Open Society Justice Initiative, New York. In addition, at its meeting in Paris on 13 December 2016, the committee authorised me to carry out fact-finding visits to Bosnia and Herzegovina, Hungary and Ukraine, and, at its meeting in Strasbourg on 24 January 2017, it also authorised me to visit Poland. Owing to time constraints, I was unfortunately unable to carry out all these visits. I did however visit Warsaw (Poland) on 20 and 21 March 2017 and Budapest (Hungary) on 22 and 23 March.<sup>6</sup>

#### 1.2. Recent work by the Parliamentary Assembly

2. In its [Resolution 2075 \(2015\)](#), the Assembly expressed its concern over the considerable number of non-implemented judgments pending before the Committee of Ministers: nearly 11 000 cases at 31 December 2014, many of which related to structural problems. It pointed out that between States Parties to the European Convention on Human Rights (ETS No. 5, "the Convention") nine States had the highest number of non-implemented judgments, including certain particularly important judgments awaiting implementation for over five years – Bulgaria, Greece, Hungary, Italy, Poland, Romania, the Russian Federation, Turkey and Ukraine. The Assembly also noted that, in a number of other States (including Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Georgia, Republic of Moldova, Serbia and the United Kingdom), judgments revealing structural and other complex problems had not been implemented since the adoption of [Resolution 1787 \(2011\)](#) in January 2011.

3. In [Resolution 2075 \(2015\)](#), the Assembly made a number of recommendations to the member States of the Council of Europe, and specifically to national parliaments. Furthermore, in its [Recommendation 2079 \(2015\)](#), it proposed a number of measures to be taken by the Committee of Ministers to improve the effectiveness of the process of supervision of implementation of the Court's judgments. In its recent reply to [Recommendation 2079 \(2015\)](#), the Committee of Ministers reiterated the importance of full and prompt execution of Court judgments. In this connection, it invited its Deputies to explore possibilities to further increase the efficiency of the supervision process, including the Human Rights (DH) meetings; this work would be based on the contributions of the Steering Committee for Human Rights (CDDH). The Committee of Ministers also decided to reinforce the resources of the Department for the execution of judgments, as advocated in [Recommendation 2079 \(2015\)](#). Unfortunately, no reply was forthcoming to the Assembly's proposals regarding the application of paragraphs 3 to 5 of Article 46 of the European Convention on Human Rights (and in particular the "infringement proceedings"), greater transparency of the process of supervision of implementation of the Court's judgments and greater involvement of civil society in that process.

#### 1.3. Pending issues

4. The political context in which we are considering the issue of implementation of the Court's judgments is more complex than at the time of my predecessors and I have taken this into account. Regarding the parameters of the previous reports, my predecessors, Messrs Jurgens and Pourgourides, emphasised different criteria such as "judgments (and decisions) raising important implementation issues", "judgments and

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4. The first report was approved by our committee on 27 June 2000 ([Doc. 8808](#) and [Resolution 1226 \(2000\)](#)). Since 2000, the Assembly has adopted eight resolutions and seven recommendations concerning the implementation of judgments of the Court.

5. See [Doc. 13864](#) and [addendum](#) (rapporteur: Mr Klaas de Vries).

6. See [press release](#) of 24 March 2017 following that visit.

decisions which have not been fully implemented more than five years after their delivery” and/or “judgments concerning violations of a particularly serious nature”.<sup>7</sup> My immediate predecessor, Mr Klaas de Vries, focused on the nine States Parties to the Convention having the most judgments pending before the Committee of Ministers. In this report, I will take those criteria into consideration but I would also like to highlight a few examples of judgments whose implementation raises complex problems and is not moving forward for political reasons. That said, I wish to underline that there is more good news than bad news of States reluctant to fully and promptly execute judgments of the European Court of Human Rights. As pointed out in the document entitled “[Impact of the European Convention on Human Rights in States Parties: selected examples](#)”, prepared by the Secretariat in 2015 at my request (with the collaboration of the Human Rights Centre of the University of Essex, United Kingdom) and published this year by Council of Europe Publishing, a great many member States do implement the judgments of the European Court of Human Rights fully and without major delays.

5. In this report, I would like to dwell more on the following questions: What are the challenges currently facing the Committee of Ministers and the States Parties in the process of implementing the Court's judgments? What are the good and bad practices of States in this sphere? What initiatives are under way within the Council of Europe in this field? How can we strengthen the interaction between the Court and the Committee of Ministers and the Council of Europe's other organs/bodies as well as the role of civil society and national parliaments? Obviously, I will be referring to the work carried out by my predecessor, Mr Klaas de Vries, and in particular to the countries with the highest number of judgments which have not been implemented for over five years and raise major (structural) issues such as excessive length of judicial proceedings, the unlawful nature and/or excessive length of remand detention, non-enforcement of domestic judicial decisions, deaths and ill-treatment caused by law-enforcement officials and lack of effective investigation in this connection and poor conditions of detention. I will begin by looking at the progress achieved in this area but without going into all the details of the cases in question, since the document produced by my predecessor (in particular Appendix 1 to his report) already contains exhaustive data on the subject. I will then look more closely at a selection of cases where there has been no progress in implementation, for political or other reasons. I will go on to take stock of the reforms/measures adopted within the Council of Europe and in some of its member States to speed up and improve the process of supervision of the Court's judgments since the adoption of Mr de Vries' report to the present day, after which I will present my conclusions and proposals.

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

6. Following the publication in April 2017 of the (tenth) [2016 Report of the Committee of Ministers on supervision of the execution of judgments and decisions of the European Court of Human Rights](#), (“2016 Annual Report”), I would like to update some of the data contained in the report prepared by my predecessor Mr de Vries. According to the former report, at 31 December 2016, 9 941 cases were pending before the Committee of Ministers, compared to 10 652 at 31 December 2015. The following 10 countries had the most cases pending (in descending order): Italy (2 350), Russian Federation (1 573), Turkey (1 430), Ukraine (1 147), Romania (588), Hungary (440), Greece (311), Bulgaria (290), Republic of Moldova (286)<sup>8</sup> and Poland (225); they were followed by Croatia (180), Serbia (162) and Azerbaijan (168), while the number of cases concerning the other Council of Europe member States did not exceed the 100 mark. In 2014, as emphasised by Mr de Vries, the following countries had the most cases pending before the Committee of Ministers: Italy (2 622 cases), Turkey (1 500 cases), Russian Federation (1 474 cases), Ukraine (1 009 cases), Romania (639 cases), Greece (558 cases), Poland (503 cases), Hungary (331 cases), Bulgaria (325 cases) and Slovenia (302 cases). So there have been a few variations in these rankings: the number of cases against Italy, Turkey, Ukraine, Romania, Greece and Bulgaria fell, while the number of cases against the Russian Federation, Hungary and the Republic of Moldova increased. In 2016, there were only 49 cases against Slovenia pending before the Committee of Ministers, following the closure of 264 cases of the *Lukenda* group, relating to the excessive length of civil, criminal or administrative proceedings or the excessive length of implementation, and the lack of an effective remedy in that regard (violations of Articles 6.1 and 13 of the Convention).<sup>9</sup> It should also be noted that those cases are at different stages of implementation but have not been closed by a final resolution of the Committee of Ministers, meaning that not all the implementation measures – individual and/or general – have been adopted.

7. See paragraph 6 of the 6th report ([Doc. 11020](#)) and paragraph 5 of the 7th report ([Doc. 12455](#)).

8. 256 cases in 2014, placing this country eleventh in the table at that time.

9. *Lukenda v. Slovenia*, judgment of 6 October 2005, Application No. 23032/02, and final resolution of the Committee of Ministers CM/ResDH(2016)354 of 8 December 2016 concerning this judgment and 263 similar judgments.

7. Like Mr de Vries, I would also like to refer to the number of applications pending before the Court, for which the statistics slightly differ in terms of proportion from those of the Committee of Ministers. Of the 10 aforementioned States, seven also appear in the Court's "top ten": Ukraine, Turkey, Hungary, Russian Federation, Romania, Italy and Poland. At 31 December 2016, of the 79 750 applications pending before the Court, nearly half came from the following three member States: Ukraine (22.8%), Turkey (15.8%) and Hungary (11.2%). They were followed by the Russian Federation (9.8%), Romania (9.3%), Italy (7.8%), Georgia (2.6%), Poland (2.3%), Azerbaijan (2.1%) and Armenia (2.0%).<sup>10</sup> At the end of 2014, this ranking looked slightly different (of 69 900 pending applications): Ukraine (19.5%), Italy (14.4%), Russian Federation (14.3%), Turkey (13.6%), Romania (4.9%), Serbia (3.6%), Georgia (3.3%), Hungary (2.6%), Poland (2.6%) and Slovenia (2.4%).<sup>11</sup> This shows that since the end of 2014 the percentage of pending applications against Hungary has increased from 2.6% to 11.2% and that Serbia and Slovenia have disappeared from this list, with Azerbaijan and Armenia now appearing on it. While the number of applications pending before the Court has increased by over 10 000, the percentage of applications against Ukraine, the Russian Federation and Italy has fallen whereas that of applications against Turkey and Romania has increased. The percentage of applications against Poland remains more or less the same. Even though these statistics represent a different "reality" than those of the Committee of Ministers, they often illustrate the scale of structural problems at domestic level, and therefore of problems that should have been resolved within the framework of the process of implementation of Court judgments.

8. The main judgments and problems concerning the 10 member States mentioned above and having the highest number of judgments pending before the Committee of Ministers are listed in Appendix 1 to the present report. This appendix also takes account of the progress made in the meantime, i.e. in the form of final resolutions of the Committee of Ministers closing the examination of certain cases, as well as new problems (already raised in my predecessor's report) which the Committee of Ministers is currently examining. A brief analysis of the main cases mentioned yields the following observations.<sup>12</sup>

9. In **Italy**, there is still a chronic problem of excessive length of judicial proceedings (see the *Ceteroni, Leddone No. 1, Abenavoli* and *Luordo* groups) but significant progress has been noted by the Committee of Ministers, which has allowed for the closure of a certain number of cases involving this problem.<sup>13</sup> There have been real steps forward with regard to the issue of overcrowding in prisons and the lack of an effective remedy against poor conditions of detention (*Torreggiani and others v. Italy*), enabling the Committee of Ministers to close this group of cases.<sup>14</sup> Furthermore, the Committee of Ministers considered that Italy had taken all necessary steps to execute the judgments concerning expulsions of foreigners in violation of Article 3 of the Convention (see, *inter alia*, *Ben Khemais v. Italy*).<sup>15</sup> While no progress has been observed by the Committee of Ministers since Mr de Vries' report in the cases of the *Belvedere Alberghiera S.R.L.* group concerning "indirect expropriations" or the *Cirillo* judgment concerning the lack of appropriate medical care in prisons, the Italian authorities are making concrete 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 contamination by viruses.

10. The **Russian Federation** has taken all the necessary steps to enable the Committee of Ministers to close the group of cases concerning the non-enforcement of domestic judicial decisions (*Timofeyev v. Russian Federation*)<sup>16</sup> as well as the cases concerning the "supervisory review procedure" (*nadzor*) violating the principle of legal certainty (*Ryabykh v. Russian Federation*).<sup>17</sup> Nevertheless, the other problems remain unresolved and the Committee of Ministers still awaits implementation measures in the cases concerning poor

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10. European Court of Human Rights, [Applications pending before a judicial formation](#) at 31 December 2016.

11. "2014 Annual report of the European Court of Human Rights, Council of Europe", p. 173.

12. The information on the state of execution of the Court's judgments can be found using the new search engine of the Department for the execution of judgments of the European Court of Human Rights, [HUDOC-EXEC](#).

13. [CM/ResDH \(2015\)247](#) and [CM/ResDH \(2015\)246](#), final resolutions on the execution of the judgments of the European Court of Human Rights in 28 of 149 cases against Italy, adopted on 9 December 2015 and concerning civil proceedings; [CM/ResDH\(2016\)358](#), final resolution on the execution of 75 judgments against Italy, adopted on 8 December 2016 and concerning administrative proceedings; and [CM/ResDH\(2015\)155](#), final resolution on 34 judgments against Italy, adopted on 24 September 2015 and concerning the effectiveness of the remedy based on the "Pinto" law.

14. [CM/ResDH \(2016\)28](#), final resolution adopted on 8 March 2016.

15. [CM/ResDH \(2015\)204](#), final resolution adopted on 17 November 2015.

16. [CM/ResDH \(2016\)268](#), final resolution on the execution of 235 judgments, adopted on 21 September 2016. Nevertheless, the Committee of Ministers is still examining the implementation of the pilot judgment in the case of *Gerasimov and others v. Russia* (judgment of 1 July 2014, Application No. 29920/05), concerning the failure or considerable delay on the part of the State authorities and municipalities in complying with final domestic judicial decisions pertaining to obligations in kind.

17. [CM/ResDH \(2017\)83](#), final resolution on the execution of 113 judgments, adopted on 10 March 2017.

conditions of remand detention, particularly in remand prisons (*Kalashnikov* group of cases and the pilot judgment in the case of *Ananyev and others*),<sup>18</sup> excessive length of remand detention and violations of Article 5 of the European Convention on Human Rights (*Klyakhin* group of cases),<sup>19</sup> acts of torture and ill-treatment during custody (*Mikheyev* group of cases)<sup>20</sup> and secret extraditions to the former soviet republics of Central Asia (*Garabayev* group of cases).<sup>21</sup> At the same time, there has been insufficient progress in implementing the judgment in the *Alekseyev* case regarding the banning of parades by lesbian, gay, bisexual and transgender (LGBT) people<sup>22</sup> and in the group of cases concerning various human rights violations resulting from the actions of security forces in the North Caucasus (*Khashiyev and Akayeva* group of cases);<sup>23</sup> this latter problem was also raised by the Assembly in its [Resolution 2157 \(2017\)](#) and [Recommendation 2099 \(2017\)](#) “Human rights in the North Caucasus: what follow-up to [Resolution 1738 \(2010\)](#)?”, adopted on 25 April 2017.<sup>24</sup> In that resolution, the Assembly noted that the implementation of the 247 judgments in that group of cases “remains highly unsatisfactory” and that “the situation in the North Caucasus region with regard to safeguarding human rights and upholding the rule of law still remains one of the most serious in the entire geographical area covered by the Council of Europe”. In its [Recommendation 2099 \(2017\)](#), the Assembly urged the Committee of Ministers to “continue paying the utmost attention to the development of the human rights situation” in the region and, where the execution of the aforementioned judgments was concerned, encouraged it to “continue insisting on individual and general measures to end the climate of impunity, and in particular to continue resisting the Russian authorities’ attempts to make use of statutes of limitation and amnesty laws to cement the impunity of the perpetrators of even the most egregious human rights violations”.

11. As for **Turkey**, in November 2016, the Committee of Ministers decided to close the examination of 196 cases concerning in particular the excessive duration of remand detention (see *Halise Demirel* group).<sup>25</sup> Since my predecessor’s last report, in the Committee of Ministers has not examined the *Hulki Güneş* groups of cases (concerning the unfairness of criminal law procedures and the impossibility of reopening them) and the *Ülke* case (concerning repeated imprisonment of conscientious objectors). Despite a degree of progress, the Committee of Ministers is still waiting for additional information on the measures taken or envisaged in the groups of cases concerning violations of freedom of expression following criminal convictions (*Inçal* group), the ineffectiveness of investigations into the actions of security forces in violation of Articles 2 and 3 of the European Convention on Human Rights (*Bati* group) and the excessive use of force to disperse peaceful protests (*Oya Ataman* group). In addition, regarding the judgments relating to various human rights violations in the northern part of Cyprus in the wake of Turkey’s military intervention in Cyprus in 1974, the Committee of Ministers took note in December 2016 of the progress made as regards investigations into the disappearance of Greek Cypriots and members of their families.<sup>26</sup> Nevertheless, the Turkish authorities continue to refuse to pay the just satisfaction awarded to the applicants by the Court in *Varnava and others* judgment and the 33 cases in the *Xenides-Arestis* group, despite several calls by the Committee of Ministers (see in particular Committee of Ministers Interim Resolution [CM/ResDH\(2014\)185](#), in which the Committee of Ministers stated that this continuing refusal was “in flagrant conflict” with Turkey’s international obligations). The situation is the same for the case of *Cyprus v. Turkey*. At their meeting from 7 to 10 March 2017, the Committee of Ministers “strongly reiterated their repeated calls on Turkey to abide by its unconditional obligation to pay the just satisfaction awarded by the European Court in these cases without further delay”.<sup>27</sup> Besides this, there are two other structural and/or complex problems, already mentioned in my predecessor’s report, which are under examination by the Committee of Ministers (*Söyler* and *Opuz* judgments).

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18. See decision taken by the Committee of Ministers at its 1201st meeting (DH) on 3-5 June 2014.

19. A number of cases concerning violations of Articles 5.1 and 5.4 of the European Convention on Human Rights have been closed by the Committee of Ministers; see [CM/ResDH\(2015\)249](#), final resolution on the execution of 13 judgments against the Russian Federation, adopted on 9 December 2015. In the context of this group of cases, the Committee of Ministers also examined cases raising complex problems of individual measures (reopening of criminal proceedings following violations of Article 6 of the Convention) and of payment of just satisfaction; see *Khodorkovskiy and Lebedev*, Applications Nos. 11082/06 and 13772/05, judgment of 25 October 2013, and *Pichugin*, Application No. [38623/03](#), judgment of 23 October 2012.

20. See decision taken by the Committee of Ministers at its 1222nd meeting (DH) on 11-12 March 2015.

21. See decision taken by the Committee of Ministers at its 1280th meeting (DH) on 7-10 March 2017.

22. See decision taken by the Committee of Ministers at its 1273rd meeting (DH) on 6-8 December 2016.

23. See decision taken by the Committee of Ministers at its 1280th meeting (DH) on 7-10 March 2017.

24. See the report by Mr Michael McNamara (Ireland, SOC), [Doc. 14083](#).

25. [CM/ResDH\(2016\)332](#), final resolution on 196 judgments, adopted on 9 November 2016.

26. See decision taken by the Committee of Ministers at its 1273rd meeting (DH) on 6-8 December 2016.

27. See the decisions taken by the Committee of Ministers in these three cases at its 1280th meeting (DH) on 7-10 March 2017.

12. In the case of **Ukraine**, the problem of the failure to execute domestic judicial decisions or delaying their execution (*Zhovner* group) has persisted for over ten years and, according to the Committee of Ministers, “no tangible progress has been achieved so far”,<sup>28</sup> despite the readiness of the Ukrainian authorities to cooperate with the Council of Europe. The Committee of Ministers is concerned that, notwithstanding its previous decisions, the Ukrainian authorities have neither started to implement the “three-step strategy” (already approved by the authorities) nor formulated a global approach or strategy for the settlement of cases pending before the Court (the number of which is constantly growing). According to an expert report, in order to implement the “three-step strategy”, the authorities should focus on the following questions: methods of calculating the total amount of the existing debt; removal of the legal and institutional obstacles to the execution of domestic judicial decisions, options for settling the debts arising from those decisions, legislative measures for resolving the existing problem and the question of how the amendments recently made to the Constitution regarding courts' powers of supervision of the executions process could help to resolve the problem. As for the other judgments of the Court, the Committee of Ministers noted some progress made in implementing judgments concerning ill-treatment inflicted by police officials (*Afanasiyev* and *Kaverzin* groups), the regulations governing the use of detention on remand (*Kharchenko* judgment), the lack of impartiality and independence of judges (*Salov* group of cases and *Volkov* judgment) as well as violations of freedom of assembly (*Vyarentsov* group of cases).<sup>29</sup> Since Mr de Vries' report, cases concerning excessive length of judicial proceedings (*Svetlana Naumenko* and *Merit* groups of cases), poor detention conditions (*Nevmerzhijsky* and *Kuznetsov* groups of cases) and the internal investigation in the *Gongadze* case (examined by the Assembly in 2009) have not been examined by the Committee of Ministers.<sup>30</sup>

13. As regards **Romania**, progress has been observed regarding problems of excessive length of proceedings and the lack of an effective remedy in that regard (which has allowed the closure of a certain number of cases concerning this problem, in particular *Nicolau* and *Stoianova and Nedelcu* groups of cases)<sup>31</sup> as well as ill-treatment inflicted by police officials (*Barbu Anghelescu* group, which has also been closed by the Committee of Ministers).<sup>32</sup> Nevertheless, there has been very little progress in the other groups of cases mentioned in Mr de Vries' report (concerning the overcrowding and poor detention conditions<sup>33</sup> or non-implementation of domestic court decisions). Other structural and/or complex problems already mentioned in my predecessor's report which are currently being examined by the Committee of Ministers (*Strain and Maria Atanasiu*, *Association '21 December 1989'* and *Țicu* groups and *Centre for Legal Resources on behalf of Valentin Câmpeanu*, *Bucur* and *Toma* judgments).

14. The number of cases against **Hungary** pending before the Committee of Ministers has increased since my predecessor's report. The main judgments against this country relate to excessive length of judicial proceedings – civil and criminal – (*Timár* group of cases) and poor conditions in prison establishments, in particular caused by overcrowding (*Istvan Gabor Kovacs* group of cases and *Varga and Others* pilot judgment). I discussed these issues at length with the Hungarian authorities when visiting Budapest. Concerning the first problem, the Court handed down a pilot judgment in the case of *Gazsó* on 16 July 2015,<sup>34</sup> concluding that this was a structural problem and asking the authorities to introduce an effective domestic remedy without delay and by 16 October 2016 at the latest or a combination of such remedies making it possible to adequately resolve the question of excessive length of judicial proceedings. In December 2016, the Committee of Ministers noted with regret that this deadline had not been met and asked the authorities to provide information, by 1 February 2017, on the content of the draft legislation introducing a remedy for claiming compensation for excessively lengthy proceedings before civil, criminal and administrative courts. The Hungarian authorities submitted an action plan to the Committee of Ministers on 1 February 2017.<sup>35</sup> During my visit to Budapest, the authorities confirmed that the government was reflecting on improvements to remedies against excessively lengthy proceedings. With regard to poor detention conditions, the authorities confirmed that a new remedy intended to compensate prisoners for violations of their rights had been introduced on 1 January 2017 and specified that they had drawn up an action plan for building new prisons as well as, in parallel, a system of non-custodial measures. I also raised the question of the implementation of the *Horváth and Kiss* judgment concerning the discriminatory placement of children of

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28. Ibid.

29. For details of the Committee of Ministers meetings where these cases were examined, see Appendix 1.

30. Doc. 11686 (rapporteur: Sabine Leutheusser-Schnarrenberger, Germany, ALDE); Resolution 1645 (2009) and Recommendation 1856 (2009).

31. CM/ResDH(2016)151, final resolution on the execution of 80 judgments, adopted on 8 June 2016.

32. CM/ResDH(2016)150, final resolution on the execution of 36 judgments, adopted on 8 June 2016.

33. See the *Bragadireanu* group. The Court delivered a pilot judgment concerning this problem in the case of *Rezmives and others v. Romania*, Application No. 61467/12, judgment of 25 April 2017 (not yet final).

34. Application No. 48322/12, judgment of 16 July 2015.

35. DH-DD(2017)220.

Roma origin in schools for mentally disabled children during their primary school education, and the authorities told me that they were actively working on the issue of integration of these children into Hungarian society on the basis of a long-term strategy and had sufficient resources to that end.

15. Having had a problem of excessive length of proceedings for at least a decade, **Greece** has achieved some progress since Mr de Vries' report, making it possible to close 206 cases relating to the length of proceedings before administrative courts,<sup>36</sup> over 80 cases relating to criminal proceedings and over 50 cases relating to civil proceedings.<sup>37</sup> With regard to cases concerning the use of lethal force and ill-treatment by members of law-enforcement agencies (*Makaratzis* group of cases), an action report is being examined by the Committee of Ministers.<sup>38</sup> However, progress is still awaited in the groups of cases concerning conditions of retention of foreigners and asylum procedures (*M.S.S. v. Belgium and Greece* group)<sup>39</sup> as well as 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); in respect of the latter group of judgments dating from 2008, the Committee of Ministers envisages adopting an interim resolution at its 1294th meeting in September 2017 if no tangible results are achieved in the meantime. The Committee of Ministers is also examining two other groups of cases mentioned in my predecessor's report – *Nisiotis* (concerning the poor conditions in prisons) and *Beka-Koulocheri* (concerning the failure to execute domestic judicial decisions).

16. For **Bulgaria**, progress has been observed in connection with the problem of excessive length of judicial proceedings and the lack of an effective remedy in that regard and, in September 2015 and in February 2017, the Committee of Ministers closed respectively 56 and 34 cases relating to this problem, following the introduction of effective compensatory remedies and steps taken to speed up procedures, and in particular to eliminate the main causes of certain types of delay.<sup>40</sup> The questions yet to be resolved – namely the excessive length of proceedings before overburdened courts and the lack of an effective acceleratory remedy in criminal proceedings – are still under examination by the Committee of Ministers in the framework of the *Kitov* and *Djangozov* group of cases. Regarding the other problems raised in Mr de Vries' report, some progress has been made in implementing the groups of cases relating to poor conditions of detention (*Kehayov* group of cases and *Neshkov and others* pilot judgment) and ill-treatment by law-enforcement officials (*Velikova* group)<sup>41</sup> but more general measures are still awaited in these cases as well as in the cases relating to expulsions of foreigners in violation of their rights to respect for family life (*C.G. and others* group). Moreover, the Committee of Ministers is examining execution in other complex problem areas – in the *Stanev*, *UMO Illinden and others* and *Yordanova and others* cases – raised by my predecessor. Finally, the Committee of Ministers is examining the measures taken to remedy the existence of a systemic problem of ineffectiveness of criminal investigations in the context of the *S.Z.* group.

17. The **Republic of Moldova** was not one of the nine countries analysed in Mr de Vries' report. Nevertheless, Mr Pourgourides' previous report already detailed the issues faced by that State in implementing judgments: non-enforcement of domestic judicial decisions (*Luntre* group), unlawful remand detention (*Sarban* group) as well as ill-treatment inflicted by the police (*Corsacov* group) and poor conditions of detention in remand facilities and prisons (*Sarban* group).<sup>42</sup> According to the last annual report of the Committee of Ministers (2016), these problems are still topical<sup>43</sup> despite some progress. That annual report also mentions other complex problems linked to the execution of certain other judgments (see Appendix 1).

36. [CM/ResDH\(2015\)230](#), final resolution on the execution of the *Vassilios Athanasiou* judgment and 205 other cases, adopted on 9 December 2015.

37. [CM/ResDH \(2015\) 231](#), final resolution on the execution of the *Michelioudakis* judgment and 82 other cases concerning the length of criminal cases as well as the *Glykantzi* judgment and 57 other cases concerning the length of civil cases, adopted on 9 December 2015.

38. [DH-DD \(2015\) 757](#).

39. In particular, in its recent communication to the Committee of Ministers, Amnesty International expressed concern over the execution of these judgments in the light of a European Commission recommendation of 8 December 2016 inviting European Union member States to send back to Greece those asylum seekers who had entered EU territory via that country from 15 March 2017 onwards. See [DD-DH \(2017\)307](#).

40. [CM/ResDH\(2015\)154](#), final resolution on the execution of the *Finger and Dimitrov and Hamanov* pilot judgments and 54 cases against Bulgaria concerning length of proceedings, adopted on 24 September 2015, as well as [CM/ResDH\(2017\)57](#), final resolution on 34 cases of excessive length of proceedings, adopted on 22 February 2017.

41. Examination of the judgment in the case of *Nachova and others*, concerning the excessive use of firearms by law-enforcement officials, has been closed by the Committee of Ministers; see [CM/ResDH\(2017\)97](#), final resolution adopted on 5 April 2017.

42. See section 2.2.4 of that report ([Doc. 12455](#)) and paragraph 7.4 of [Resolution 1787 \(2011\)](#).

43. Annual report of the Committee of Ministers, 2016, pp. 93-94.

18. In cases involving **Poland**, progress has been made in several areas since my predecessor's report and there are considerably fewer cases pending before the Committee of Ministers, which has closed its supervision of cases concerning poor conditions of detention,<sup>44</sup> lack of appropriate medical care in detention centres,<sup>45</sup> the dangerous prisoner regime<sup>46</sup> and ill-treatment by law-enforcement officials,<sup>47</sup> the *Bączkowski* case concerning discriminatory refusal to grant permission for a protest march<sup>48</sup> as well as a number of old cases concerning length of judicial proceedings (criminal and civil)<sup>49</sup> and administrative proceedings.<sup>50</sup> The problem raised in these old cases remains a major issue; the Committee of Ministers is still examining cases of this type (within the framework of the *Majewski*, *Bąk* and *Beller* groups) as well as the implementation of the pilot judgment in the case of *Rutkowski and others* (of 7 July 2015), in which the Court stressed that it was a structural problem and that the domestic remedy introduced in 2004 was not effective. During my visit to Warsaw, the authorities informed me that a new law had been passed on 30 November 2016 with a view to bringing the existing remedy into line with the requirements stemming from the Court's case law. A number of my talking partners, including at the Supreme Court and the Ministry of Justice, confirmed that the excessive length of judicial proceedings (particularly in civil and criminal cases) remained a structural problem; with some 15 million new cases lodged each year, Poland's courts struggle to eliminate the backlog and, every year since 2013, the number of new cases has constantly exceeded the number of cases completed in the year. The judges of the Supreme Court believe that certain judicial procedures should be simplified.

### 3. General data on the implementation of the Court's judgments between 2015 and 2017

19. Generally speaking, the Committee of Ministers' report is optimistic about the implementation of judgments of the Court and welcomes certain progress made in this area. The first of these relates to the "record" number of cases closed in 2016 – totalling 2 066 (including 282 leading cases) compared to 1 537 (including 153 leading cases) in 2015 and 1 502 in 2014 (including 208 leading cases); several of these closed cases relate to structural problems and were pending before the Committee of Ministers for more than five years (including 30 leading cases under "enhanced supervision"). The second area of progress is linked to a fresh reduction in the number of pending cases: 9 944 compared to 10 652 at the end of 2015 and 10 904 at the end of 2014; this figure remains below the 2011 level of 10 689 and that of the years 2012-2013 when the workload of the Committee of Ministers peaked above 11 000 cases. Also noteworthy is a reduction in leading cases: 1 493 at the end of 2016 compared to 1 555 at the end of 2015 and, in cases under "enhanced supervision": down to 5 950 at the end of 2016 from 6 390 at the end of 2015 and 6 718 at the end of 2014; this figure also remains below those of the years 2011-2013. As noted in the [2015 annual report of the Committee of Ministers](#), these promising trends may be due to more efficient domestic execution processes and better management of new cases within the Committee of Ministers thanks to new working methods.<sup>51</sup> The 2016 report welcomes the reality of the political commitment to the Convention and respect for the judgments of the Court, confirmed by the [Brussels Declaration](#) adopted at the high-level conference on 26 and 27 March 2015 on the "Implementation of the European Convention on Human Rights, our shared responsibility".

20. It should be noted that the number of new cases in 2016 stood at 1 352 (compared to 1 285 in 2015), which means that it has been substantially overtaken by the number of cases closed that year (2 066) and confirms recent positive trends (since 2012). In 2016, the number of new leading cases was 206 (compared to 186 in 2015).

21. Nevertheless, the 2016 annual report of the Committee of Ministers highlights a number of problems. Firstly, there was continued growth in leading cases pending for more than five years: 549 at the end of 2016 compared to 514 at the end of 2015. This trend relates above all to cases under "standard supervision" (237

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44. [CM/ResDH\(2016\)234](#), final resolution on the execution of 7 judgments against Poland (*Orchowski* group), adopted on 21 September 2016.

45. [CM/ResDH\(2016\)278](#), final resolution on the execution of 8 judgments against Poland (*Kaprykowski* group), adopted on 21 September 2016.

46. [CM/ResDH\(2016\)128](#), final resolution on the execution of 5 judgments against Poland (*Horych* group), adopted on 7 June 2016.

47. [CM/ResDH\(2016\)148](#), final resolution on the execution of 8 judgments against Poland (*Dzwonkowski* group), adopted on 8 June 2016.

48. [CM/ResDH\(2015\)234](#), final resolution adopted on 9 December 2015.

49. [CM/ResDH\(2015\)248](#), final resolution on the execution of 205 judgments against Poland (*Kudła* and *Podbielski* groups), adopted on 9 December 2015.

50. [CM/ResDH\(2016\)359](#), final resolution on the execution of 34 judgments against Poland (*Fuchs* group), adopted on 8 December 2016.

51. 2016 Annual report of the Committee of Ministers, pp. 9-10.

at the end of 2016 compared to 135 at the end of 2015), but the number of leading cases under “enhanced supervision” (therefore the most complex and politically “sensitive”) for more than five years has also increased in recent years: from 128 in 2013, to 158 in 2014 and to 171 in 2015 and 2016. The same applies for all leading cases (under “standard” or “enhanced” supervision): 453 in 2013, 593 in 2014, 685 in 2015 and 720 in 2016.<sup>52</sup> Secondly, the report also notes a number of problems in the payment of just satisfaction to applicants, with a rise in payments outside deadline in 2016 and payments awaiting confirmation for more than six months (after the payment deadline).<sup>53</sup> Furthermore, the Court’s increased use of the procedure before committees of three judges for repetitive cases covered by well-established case law (WECL) is proving problematic for the Committee of Ministers, as the very limited description of the facts in some cases may make it difficult to identify individual and general measures.

22. With regard to the main themes under “enhanced supervision” by the Committee of Ministers (on the basis of the number of leading cases), at the end of 2016, over half the cases related to five major problems: actions of security forces (16%), poor conditions of detention and lack of medical care in penitentiary establishments (11%), the lawfulness of detention on remand and related issues (10%), specific situations linked to violations of the right to life and ill-treatment (9%) and excessive lengths of judicial proceedings (9%). These are followed by the non-execution of domestic judicial decisions (6%), other interferences with property rights (5%), violations of the right to respect for home/private and family life (5%), lawfulness of expulsion or extradition (4%) and violations of freedom of assembly and association (3%). Together, these themes cover 78% of the cases pending before the Committee of Ministers. For 80% of the cases under “enhanced supervision”, the breakdown by country is as follows: Russian Federation (17%), Ukraine (16%), Turkey (11%), Bulgaria (7%), Republic of Moldova (7%), Italy (6%), Romania (5%), Azerbaijan (4%), Greece (4%) and Hungary (3%).<sup>54</sup>

23. As for the statistics on the average length of execution of leading cases closed, there has been no improvement. In 2014, the overall average was 4.1 years (4.1 years for cases under standard supervision and 4.8 years for cases under enhanced supervision), compared to 4.5 years in 2015 (4.1 years for cases under standard supervision and 7.2 years for cases under enhanced supervision) and in 2016 it was 4.7 (4.2 years for cases under standard supervision and 7.2 years for cases under enhanced supervision).<sup>55</sup>

#### 4. Specific challenges for the execution of Court judgments: selected examples

##### 4.1. General comments

24. Recent Committee of Ministers statistics show that, despite some progress, there are still problems in securing the full and rapid implementation of certain judgments of the European Court of Human Rights. According to its 2015 annual report, the Committee of Ministers is increasingly confronted with difficulties related to “pockets of resistance” linked to deeply-rooted problems of a social nature (for example toward Roma or certain minorities) or related to political or national security considerations or to the situation in areas/regions of “frozen conflict”.<sup>56</sup> The 2016 report refers explicitly to four major types of difficulty facing the execution of Court judgments:<sup>57</sup> 1) important and complex structural problems; 2) the absence of a common understanding of the scope of the execution measures required following developments of the Court’s case law (in particular concerning interpretation of the concept of “jurisdiction”); 3) slow or blocked execution as a result of disagreement between national institutions, or amongst political parties, as regards the substance of the reforms required and/or the procedure to be followed; 4) refusal either to adopt, notwithstanding strong insistence from the Committee of Ministers, the individual measures required or to pay just satisfaction. Concerning the first type, several structural problems have been discussed above and appear in Appendix 1, but a good example of the problems involved, particularly with regard to financial resources, in the execution of such judgments is provided by the lack of progress in the execution of the *Zhovner v. Ukraine* group. The *Catan and Others v. Russian Federation* judgment offers a very good illustration of the second type of problem. The *Sejdić and Finci v. Bosnia and Herzegovina* and *Paksas v. Lithuania* judgments (and to a certain extent those of the *Hirst v. United Kingdom No. 2* group) are representative of the third group of problems, while the *Ilgar Mammadov v. Azerbaijan* and *OAO Neftyanaya Kompaniya YUKOS v. Russian*

52. Ibid., p.10.

53. Ibid., p. 76.

54. Ibid., pp. 67-68.

55. Ibid., p. 75.

56. Op cit., p. 10.

57. Op cit., p. 13.

*Federation* judgments, as well as those against Turkey concerning the northern part of Cyprus (see above), are examples of the fourth group, that of outright refusal to execute. The *Al Nashiri* and *Husayn v. Poland* judgments are quite distinct from these four groups and also merit close attention.

25. Aside from that, I wish to draw attention to another important issue, namely certain member States' reluctance to accept the European Court of Human Rights jurisdiction. Good examples of this problem are supplied by the failure to execute some of the judgments considered below. However, the criticisms levelled by certain political leaders are also worthy of note. Particular examples are provided by Hungary, in connection with the recent *Ilias and Ahmed v. Hungary* judgment,<sup>58</sup> concerning the illegal detention of asylum seekers;<sup>59</sup> the United Kingdom, where the Prime Minister, Theresa May, has made several statements about certain Court judgments, in particular in the case of *Othman (Abu Qatada)*<sup>60</sup> concerning the deportation of a Jordanian imam suspected of terrorist acts, or threatening to withdraw from the Convention; and Switzerland where the UDC (the Swiss People's Party or Democratic Union of the Centre) has launched a popular initiative entitled "Swiss law instead of foreign judges",<sup>61</sup> following the *Tarakhel v. Switzerland* judgment concerning the expulsion of an immigrant family.<sup>62</sup> I am particularly saddened by the fact that such attacks on the Court's authority often take place in my country, France, as was recently the case during the election campaign. It was the subject of a brainstorming session that I organised in the French National Assembly on 23 May 2016. French politicians regularly accuse the Court of impeding effective counter-terrorism measures by preventing the expulsion of persons suspected of terrorist acts. Another target of attacks has been the *Menesson* and *Labassé* judgments<sup>63</sup> concerning gestational surrogacy, for whose execution France has still not introduced the required general measures. The criticisms levelled by politicians often confuse the European Court of Human Rights with the Court of Justice of the European Union, a confusion that is not always fortuitous and forms an integral part of the anti-European rhetoric. Those concerned are deceiving the public and draw the media, which should be informing the public about the European Court of Human Rights judgments, into this misleading process.

## **4.2. Judgments whose execution raises complex political issues**

### **4.2.1. *Ilgar Mammadov v. Azerbaijan***

26. The Committee of Ministers is very concerned about Azerbaijan's persistent refusal to take the individual measures it has required in the *Ilgar Mammadov v. Azerbaijan* case.<sup>64</sup> In its judgment, the Court concluded that the detention of the applicant, a member of the political opposition, had been politically motivated and was incompatible with Articles 5.1.c and 18 of the Convention. The applicant had been arrested and remanded in custody on 4 February 2013 and sentenced to seven years' imprisonment by the court of first instance on 17 March 2014. When the Court's judgment became final his criminal conviction was not yet final. Mr Mammadov lodged various appeals as a result of which the case was re-examined by the Azerbaijani courts. On 18 November 2016, the Supreme Court, acting as final court of appeal, confirmed his conviction.

27. Since its first examination of the case in December 2014, the Committee of Ministers has consistently maintained that the violations found by the Court cast doubts on the well-foundedness of the criminal proceedings against the applicant and that the authorities should order his immediate release. Nevertheless, despite three interim resolutions and several decisions of the Committee of Ministers calling for Mr Mammadov's immediate release, the latter, whom Amnesty International deems to be a "prisoner of conscience", is still detained and has served more than four years of his sentence, two and a half of them after the Court's final judgment. Since June 2016, the case has been considered at each ordinary and DH meeting of the Committee of Ministers. At their 1273rd meeting (DH) in December 2016, the Committee of Ministers deeply deplored the fact that the Azerbaijani Supreme Court had not drawn the consequences of the violations found by the Court and affirmed their determination to ensure the implementation of the judgment by actively considering using all the means at the disposal of the Organisation, including under Article 46.4 of the Convention.<sup>65</sup> In January 2017, a representative of the Council of Europe's Secretary General visited

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58. Judgment of 14 March 2017, Application No. 47287/15.

59. See, for example, the press article: [Orban attacks the European Court of Human Rights](#), EurActiv/International, 31 March 2017.

60. Judgment of 17 January 2012, Application No. 8139/09.

61. See the Human Rights Commissioner's Human Rights Comment of 23 August 2016, [Non-implementation of the Court's judgments: our shared responsibility](#).

62. Judgment of 4 November 2011, Application No. 29217/12.

63. Judgments of 24 June 2014, Applications Nos. 65192/11 and 65941/11.

64. Application No.15172/13, judgment of 22 May 2014, which became final on 13 October 2014.

65. Paragraphs 3 and 5 of the Committee of Ministers [decision](#) in this case.

Baku as part of an inquiry into human rights compliance in Azerbaijan initiated by the Secretary General in December 2015, based on Article 52 of the Convention. Following this visit, the Azerbaijani authorities submitted a new action plan in February 2017,<sup>66</sup> which states that on 10 February 2017 the President of Azerbaijan signed an executive order on the liberalisation of penal policy. At their 1280th meeting (DH) in March 2017, the Committee of Ministers “took note with interest of the Azerbaijani authorities’ commitment to examine all avenues discussed during the mission of the representative of the Secretary General to execute the Ilgar Mammadov judgment, as well as of the recent Presidential Executive Order which foresees promising measures for the execution of this judgment”, and invited the Azerbaijani authorities to inform the Committee of Ministers “of the concrete measures adopted on the basis of this Executive Order and in particular of those enabling the release of Ilgar Mammadov without further delay”.<sup>67</sup>

28. It should also be noted that the implementation of this judgment was also considered recently by our Committee at its meeting of 7 March 2017. The context was a discussion on the report of the committee’s chair and rapporteur, Mr Alain Destexhe (Belgium, ALDE), on “Azerbaijan’s Chairmanship of the Council of Europe: What follow-up on respect for human rights?”.<sup>68</sup> Mr Destexhe had undertaken a fact-finding visit to Baku on 9 and 10 February 2017. Moreover, in its [Resolution 2062 \(2015\)](#) on the functioning of democratic institutions in Azerbaijan, in which it referred specifically to this judgment, the Assembly expressed concern “about the use of pretrial detention as a means of punishing individuals for criticising the government” and called on the Azerbaijani authorities to fully implement the judgments of the European Court of Human Rights, in conformity with the resolutions of the Committee of Ministers.

#### 4.2.2. *The Sejdić and Finci v. Bosnia and Herzegovina group of cases*

29. In *Sejdić and Finci v. Bosnia and Herzegovina*,<sup>69</sup> the Court ruled, amongst others, that the country’s presidential election procedure was discriminatory, since it prevented the applicants from standing in these elections due to their refusal to declare affiliation with a “constituent people” (namely the Bosniaks, Croats or Serbs) or due to their failure to satisfy a combination of requirements relating to ethnic origin and place of residence (violations of Article 1 of Protocol No.12). The Constitution of Bosnia and Herzegovina made such a declaration of affiliation a condition of eligibility to stand for election. In 2014 and 2016, the Court found similar violations in three other cases.<sup>70</sup> In the *Zornić and Šlaku* judgments, it stated, with reference to Article 46 of the Convention, that the violations were the direct result of failure to introduce measures to ensure compliance with the judgment in *Sejdić and Finci*. The Court also noted in the *Zornić* judgment that the time had come for every citizen to be entitled to stand for election to the presidency without discrimination. The special provisions on the “constituent peoples” had been necessary to maintain the peace when the constitutional provisions were put in place, namely at the time of the 1995 Dayton peace agreement, but were now no longer justified.<sup>71</sup>

30. The Committee of Ministers has been monitoring the case closely since the Court’s judgment became final, in December 2009, and has adopted three interim resolutions calling on the country’s authorities and political leaders to ensure that the Constitution and legislation meet the requirements of the Convention. Despite the elections of 2010 and 2014, the legislation remains unaltered. The Committee of Ministers has stated on a number of occasions that implementation of the judgment is a legal obligation for Bosnia and Herzegovina. In 2015, the authorities informed the Committee of Ministers of a written undertaking to devote particular attention to execution of this group of cases, which had been adopted by the State presidency, signed by the main political parties and endorsed by parliament, and which was welcomed by the Committee of Ministers at its 1230th meeting (DH) in June 2015. In October 2016, the authorities told the Committee of Ministers that the country’s Council of Ministers had approved an action plan for the execution of these judgments, prepared by the Minister of Justice, and that a high-level working group would be established.<sup>72</sup> However, no such group has been formed, because the two remaining caucuses of the House of Peoples have not yet appointed their representatives. At its 1273rd meeting (DH) in December 2016, the Committee of Ministers noted with deep concern that no tangible progress had been made in this case since June 2015, that the Court continued to deliver judgments finding similar violations and that the constitutional amendment process had been blocked as a consequence of the lack of consensus between the leaders of the political

66. [DH-DD\(2017\)172](#).

67. Paragraphs 3 and 4 of the Committee of Ministers [decision](#) in this case.

68. [Doc. 13484](#), Reference 4050 of 23 June 2014.

69. Application No. 27996/06, judgment of 22 December 2009 (Grand Chamber).

70. *Zornić*, Application No. 3681/06, judgment of 15 July 2014; *Šlaku*, Application No. 56666/12, judgment of 26 May 2016 and *Pilav*, Application No. 41939/07, judgment of 9 June 2016.

71. See *Zornić*, paragraphs 40, 42-43, and *Šlaku*, paragraph 37.

72. [DH-DD\(2016\)1154](#).

parties. Since the problem of failure to implement judgments was also being taken into account in the negotiations on Bosnia and Herzegovina's accession to the European Union,<sup>73</sup> the Committee of Ministers invited the member States and the European Union to raise the issue of the execution of judgments in their contacts with Bosnia and Herzegovina. It decided to resume consideration of the matter in June 2017.

31. The subject is also being considered by the Assembly, particularly under the monitoring procedure. The Assembly has stated on a number of occasions that implementation of the *Sejdić and Finci* judgment is a legal obligation and has urged Bosnia and Herzegovina to amend its Constitution (see, in particular, its [Resolutions 1701 \(2010\)](#), [1725 \(2010\)](#) and [1855 \(2012\)](#) and [Recommendation 2025 \(2013\)](#)).

#### 4.2.3. *Paksas v. Lithuania*

32. In the *Paksas v. Lithuania* case, the Court found that there had been 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; the applicant's removal followed impeachment proceedings against him in accordance with the Constitutional Court's ruling of 25 May 2004 and the Law on Elections to the Seimas of 15 July 2004 (violation of Article 3 of Protocol No. 1). In this judgment, the Court urged the authorities to take steps to put an end to the violation and make all feasible reparation for its consequences, in such a way as to restore as far as possible the situation existing before the breach.<sup>74</sup> The applicant, who is currently a member of the European Parliament, has been unable to stand in the Seimas elections since 2004, including those of October 2012 and October 2016. Despite two attempts to revise the Constitution, to bring the legal situation into line with the requirements of Article 3 of Protocol No. 1, the judgment has still not been executed. In September 2013, a first draft law was laid before parliament, but the latter did not act on it, on account of a judgment of the Constitutional Court. A second draft law was presented to the Seimas in March 2015; it was scheduled for approval in June 2015 but the vote was postponed at the request of members of the applicant's party. In December 2015, the Seimas rejected it on its second reading. At their 1273rd meeting (DH) in December 2016, the Committee of Ministers expressed its deep concern over this turn of events, emphasised that the authorities were under an unconditional obligation to take steps to comply with the judgment, took note of the authorities' continuing commitment to undertake all further efforts to ensure execution and decided to resume consideration of the matter in June 2017.

#### 4.2.4. *Al Nashiri and Husayn v. Poland*

33. When I visited Warsaw, I raised the issue of the execution of the *Al Nashiri and Husayn (Abu Zubaydah)* judgments<sup>75</sup> concerning the CIA's secret rendition and detention in Poland of the applicants, who were suspected of terrorist acts (multiple violations of the Convention, in particular Article 3, from both the procedural and substantive standpoints, Article 6.1 and, in the case of Mr Al Nashiri, Article 1 of Protocol No. 6). The Court found that the applicants' transfer from Poland had exposed them to a real risk of a flagrant denial of justice due to the possibility they would face trials before United States military commissions using evidence obtained under torture. It also found that Mr Al Nashiri, who had been charged with capital offences before the military commissions, faced a real risk of being subjected to the death penalty. The applicants are currently detained in the internment facility at the United States Guantánamo Bay Naval Base in Cuba. The Committee of Ministers has examined the issue of urgent individual measures at each of its human rights meetings since March 2015 and expressed its deep concern about the applicants' situation. The Committee of Ministers has called on the Polish authorities to seek, as a matter of urgency, assurances from the United States authorities that Mr Al Nashiri will not be subjected to the death penalty and that the applicants will not be exposed to flagrant denials of justice. In February 2016, the Polish authorities indicated that the United States authorities had informed them that their request for diplomatic assurances could not be supported, since the Court's decisions did not reflect the obligations of the United States under international law. Despite repeated requests from the Polish authorities, and repeated calls from the Committee of Ministers and Secretary General of the Council of Europe to the United States (which has observer status with the Council of Europe), the position of the American authorities remains unaltered. At their 1280th meeting (DH) in March 2017, the Committee of Ministers again expressed its concern about these refusals and stressed "the urgency for the Polish authorities to continue actively to use all possible means at the highest levels to seek to remove the risks faced by the applicants". They instructed the Secretariat to prepare a draft interim resolution, in the

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73. See, in particular, the [European Parliament resolution of 15 February 2017 on the 2016 Commission Report on Bosnia and Herzegovina](#) and the Council conclusions on the application of Bosnia and Herzegovina for membership of the European Union ([press release](#) of 20 September 2016).

74. Application No. 34932/04, judgment of 6 January 2011 (Grand Chamber), paragraph 119.

75. Applications Nos. 28761/11 and 7511/13, judgment of 24 July 2014.

event of the Polish authorities offering “no indication of measures taken by [them] at the highest levels in addition to the letters sent to the United States’ authorities”.<sup>76</sup> In the discussions I had with senior officials of the Ministry of Foreign Affairs and of the President’s office (which, following the request of the Minister of Foreign Affairs, also sent a letter to the United States authorities, in July 2016), the officials concerned expressed confusion as to how to secure execution of these judgments. They maintain that this depends on the goodwill of the United States authorities. The Polish authorities are unable to force them to provide the diplomatic assurances required by the Committee of Ministers, and the Council of Europe should give them more support in their requests to the United States. Regarding the excessive length of the investigation launched by the Cracow prosecutor’s office, the Polish authorities state that the proceedings are still pending and that a request for mutual judicial assistance has been rejected by the United States authorities.

#### 4.2.5. *Hirst v. United Kingdom (No. 2) group of cases*

34. In the *Hirst v. United Kingdom (No. 2) case*<sup>77</sup> (final since 6 October 2005) and the *Greens and M.T. v. United Kingdom* pilot judgment,<sup>78</sup> the Court found that the blanket ban on voting of imprisoned convicted offenders was in violation of the Convention (violation of Article 3 of Protocol No. 1). Between 2014 and 2016, following failure to implement the two judgments, the Court handed down three similar judgments<sup>79</sup> and numerous other applications concerning this problem are pending before it. In the *Greens and M.T.* case, the Court concluded that the authorities should introduce legislative proposals to amend the blanket ban on prisoner voting (provided for by section 3 of the Representation of the People Act 1983). On 22 November 2012, the United Kingdom authorities laid before parliament a draft bill to amend the electoral legislation setting out three options for consideration by a joint committee of the two houses of parliament.<sup>80</sup> The committee published its [report](#) on 18 December 2013, and its conclusions were welcomed by the Committee of Ministers at its 1193rd meeting (DH) in March 2014. However, despite the general election of May 2015 and the upcoming 2017 election there has been no progress on this matter.

35. At its 1243rd meeting (DH) in December 2015, the Committee of Ministers adopted interim resolution [CM/ResDH\(2015\)251](#), expressed its profound concern that the blanket ban on the right to vote of convicted prisoners in custody remained in place, reaffirmed the United Kingdom authorities’ legal obligations under Article 46 of the Convention and invited the Secretary General to raise the issue of implementation of these judgments in his contacts with the United Kingdom authorities and inviting the United Kingdom authorities to continue high-level dialogue on this issue. In 2016, the authorities provided the Committee of Ministers with updates on this issue.<sup>81</sup> As part of this dialogue, on 21 April 2016, the United Kingdom Parliament’s Joint Committee on Human Rights and the Justice Committee of the House of Commons held discussions with key stakeholders of the Council of Europe, including our committee. On 25 October 2016,<sup>82</sup> the United Kingdom authorities informed the Committee of Ministers that the purpose of the dialogue was to gather ideas and options on how to implement the relevant judgments without amending section 3 of the Representation of the People Act 1983, and that parliament continued to oppose the passage of new legislation. In light of the result of the referendum on Brexit and the government’s work on its consequences, the United Kingdom authorities were not yet in a position to fix a definitive timescale for developing the options for implementing the judgments, which required a further nine to twelve months. At its 1273rd meeting (DH) in December 2016, the Committee of Ministers discussed the subject with the Minister of State for Courts and Justice, noted the information provided on the enhanced dialogue, reiterated the authorities’ obligations under Article 46 of the Convention and emphasised that they should submit concrete proposals to comply with these judgments, together with an approximate timetable for their implementation, by 1 September 2017 at the latest, before the next examination of these judgments, which would be no later than December 2017.

#### 4.2.6. *OAO Neftyanaya Kompaniya YUKOS v. Russian Federation*

36. Another, more worrying, example, comes from Russia, whose authorities have shown themselves reluctant to implement the judgments handed down by the European Court of Human Rights in the case of *OAO Neftyanaya Kompaniya YUKOS v. Russian Federation*,<sup>83</sup> in which it held that there had been various

76. Decision taken at the 1280th meeting (DH), 7-10 March 2017, paragraphs 4 and 5.

77. Application No. 74025/01, judgment of 6 October 2005.

78. Applications Nos. 60041/08 and 60054/08, judgment of 23 November 2010.

79. *Firth and others*, Application No. 47784/09, judgment of 12 August 2014; *McHugh and others*, Application No. 51987/08, judgment of 10 February 2015, and *Millbank and others*, Application No. 44473/14, judgment of 30 June 2016.

80. See *Voting Eligibility (Prisoners) Draft Bill* of 22 November 2012 and [DH-DD\(2012\)1106](#).

81. See [DH-DD \(2016\)188](#), [DH-DD\(2016\)734](#) and [DH-DD\(2016\)1170](#).

82. See [DH-DD \(2016\)1201](#).

83. Application No. 14902/04, judgments of 20 September 2011 (on the merits) and 31 July 2014 (just satisfaction).

violations of the Convention (chiefly of Article 6 and Article 1 of Protocol No. 1). In its judgment on just satisfaction, the Court awarded a total of over 1.8 billion euros to the shareholders of the applicant company by way of just satisfaction for pecuniary damages and said that the authorities must produce, in co-operation with the Committee of Ministers, a comprehensive plan by 15 June 2015, including a binding timeframe, for distribution of this award of just satisfaction. At its 1222nd meeting (DH) in March 2015, the Committee of Ministers invited the Russian authorities to comply with this deadline and actively co-operate with the Secretariat. However, no steps have been taken in this respect.

37. On 14 July 2015, the Russian Constitutional Court published a statement pointing out that “the participation of the Russian Federation in any international treaty does not mean giving up national sovereignty. Neither the European Convention on Human Rights, nor the legal positions of the European Court of Human Rights based on it, can cancel the priority of the Constitution. Their practical implementation in the Russian legal system is only possible through recognition of the supremacy of the Constitution’s legal force”.<sup>84</sup> An amendment to the federal constitutional law was subsequently passed by the State Duma on 4 December 2015 and approved by the Federation Council on 9 December 2015;<sup>85</sup> according to that text, the Constitutional Court is empowered to declare decisions of international courts (including the European Court of Human Rights) as “non-enforceable” on grounds of their incompatibility with the “fundamentals of the constitutional order of the Russian Federation” and “with the system of human rights established by the Russian Federation Constitution”.

38. In an interim opinion adopted at its session on 11 and 12 March 2016 (and issued at the request of our committee), the European Commission for Democracy through Law (Venice Commission) strongly criticised that amendment as being contrary to international law, notably the [Vienna Convention on the Law of Treaties](#), and made a number of recommendations concerning changes to the federal constitutional law.<sup>86</sup> Notwithstanding this, on 19 April 2016, the Russian Constitutional Court applied this new law in the context of implementing the *Anchugov and Gladkov v. Russia* judgment<sup>87</sup> relating to the general prohibition on voting for prisoners; it ruled out any constitutional amendment seeking to remove that prohibition in the wake of the European Court of Human Rights’ judgment but, at the same time, accepted that a legislative change would be possible to relax existing restrictions on the right to vote for prisoners serving sentences for less serious crimes.<sup>88</sup> At its session on 10 and 11 June 2016, the Venice Commission adopted a [final opinion on the amendments to the federal constitutional law](#), confirming its earlier findings.

39. At its 1273rd meeting (DH) in December 2016, the Committee of Ministers noted with concern that the Minister of Justice had lodged an application with the Constitutional Court concerning the possibility of enforcing the judgment on just satisfaction. The Constitutional Court, in its decision handed down on 19 January 2017,<sup>89</sup> concluded that it was impossible to enforce the judgment in respect of the compensation for pecuniary damage but, at the same time, a compromise had to be sought, given the fundamental importance of the European system of human rights protection, and that the government should reflect on compensating the associates of YUKOS in the conditions set forth in paragraph 7 of its decision.

40. At its last – 1280th – meeting (DH) in March 2017, the Committee of Ministers expressed “serious concern at the non-implementation of the judgment of 31 July 2014 so far”, firmly reiterated “the unconditional obligation assumed by the Russian Federation” under Article 46 of the Convention to abide by the judgments of the European Court of Human Rights” and urged the authorities to inform the Committee of Ministers about “all relevant steps towards an appropriate solution” and also to co-operate with the Committee of Ministers and its Secretariat.<sup>90</sup> The Committee of Ministers decided to resume consideration of this case in September 2017 at the latest.

41. On 21 January 2017, in a [declaration](#) made jointly with the Monitoring Committee’s co-rapporteurs for the Russian Federation, I criticised the effects of the decision of the Constitutional Court on the implementation of the judgment *OAO Neftyanaya Kompaniya YUKOS* and of European Court of Human Rights judgments as a whole. In our opinion, this decision is an obstacle to the implementation of that

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84. M. Smirnova, [Russian Constitutional Court Affirms Russian Constitution’s Supremacy over ECtHR Decisions](#), 17 July 2015.

85. And then signed by the President on 14 December 2015. This amendment entered into force on 15 December 2015.

86. Interim Opinion on the amendments to the Federal Constitutional Law on the Constitutional Court of the Russian Federation, Opinion No. 832/2015, [CDL-AD\(2016\)005](#), paragraphs 97-98 and 102.

87. Application No. 11157/04, judgment of 4 July 2013.

88. [In Test Case, Top Russian Court Rejects European Rights Ruling](#), 20 April 2016, RFE/International.

89. The Russian authorities supplied an English translation of that judgment; see [DH-DD\(2017\)207](#).

90. Paragraphs 1 and 3-5 of the decision.

judgment, and the Russian authorities should consider amending the constitutional provisions blocking implementation of certain European Court of Human Rights judgments. Selective implementation of European Court of Human Rights judgments is unacceptable.

#### 4.2.7. *Catan and others v. Russian Federation*

42. Another judgment against the Russian Federation – *Catan and others* – raises complex problems of implementation. This case concerns the violation of the right to education (Article 2 of Protocol No. 1) of the applicants – 170 pupils or parents of pupils using the Latin alphabet and living in the Transnistrian region of the Republic of Moldova, following the forced closure of schools pursuant to a “law” of the “Moldavian Republic of Transnistria” (the “MRT”). Even though there was no evidence of any direct participation by Russian agents in the measures taken against the applicants nor any evidence of Russian involvement in the “MRT’s” language policy in general, the Court handed down this judgment against the Russian Federation, considering that it exercised effective control over the “MRT” at the time of the events. The Committee of Ministers has been examining this case since December 2013 and has already adopted three interim resolutions owing to the lack of progress in implementing this judgment. In June 2016, the Russian Federation expressed its intention to elaborate on the conclusions of high-level conferences and other events with a view to seeking an acceptable response to the Court’s judgment. Recalling that intention on the part of the Russian authorities, in March 2017, the Committee of Ministers urged them to complete their reflection as soon as possible, engage in constructive dialogue and fully co-operate with the Committee of Ministers and its Secretariat (at the 1280th meeting DH).

### 5. Assessment of recent reforms and other measures taken within the Council of Europe and in certain member States to improve the implementation of European Court of Human Rights judgments

43. The 2016 annual report of the Committee of Ministers reports a number of measures taken within the Council of Europe to improve the execution of judgments process and the procedure for its supervision by the Committee of Ministers.<sup>91</sup>

44. For a number of cases, progress in implementation has been made possible by targeted activities (round tables, analysis by legal experts, exchanges of views or training programmes) of the Committee of Ministers and the Department for the execution of judgments and also by the inclusion of issues relating to the implementation of judgments in the main general programmes of co-operation undertaken by the Council of Europe with a great many countries (Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Georgia, Republic of Moldova and Ukraine) thanks to funding from certain member States (notably via the Council's [Human Rights Trust Fund](#)), the European Union or other organisations.

45. In December 2015, the CDDH submitted its [“Report on the longer-term future of the system of the European Convention on Human Rights”](#), which concluded that the responses to the challenges faced by the Convention system in the long term could be found within the framework of the existing structures; in March 2016, the Court expressed agreement with this observation. I would like to stress in this connection that the CDDH listed the prolonged non-implementation of a number of judgments and direct threats to the Court's authority among those challenges. The CDDH has also set up a Committee of Experts on the System of the European Convention on Human Rights (DH-SYSC), which examines the application of [Recommendation CM/Res\(2008\)2](#) on efficient domestic capacity for rapid execution of judgments of the European Court of Human Rights. The DH-SYSC has prepared a compilation of good domestic practices in the execution of judgments and is currently working on a Guide to good practice with a view to its adoption by the Committee of Ministers; this group of experts believes it unnecessary to update Recommendation CM/Res(2008)2.<sup>92</sup>

46. The 2016 annual report of the Committee of Ministers also emphasises that it has improved the transparency of its supervision. Since June 2016, the list of cases to undergo detailed examination at a Committee of Ministers meeting is published as soon as the meeting is over. Following an amendment to the [Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements](#) (of 18 January 2017), other intergovernmental international organisations operating in the sphere of human rights may also submit communications on the execution of judgments (see Rule 9.3) but, as of yet, little use has been made of this option. The Secretariat of the Committee of Ministers and the Department for the Execution of Judgments have also improved their websites; the Department's site now features a new search engine, [HUDOC EXEC](#), as well as “country factsheets”. In addition, the number of

91. 2016 Annual report of the Committee of Ministers, pp. 9-26.

92. *Ibid.*, p. 23.

communications from NGOs and national human rights protection institutions has risen, reaching 90 in 2016, up from around the 80 mark in previous years.<sup>93</sup> Civil society is showing a growing interest in the issue, and a number of NGOs (including the Open Society Justice Initiative and Judgment Watch) have established an umbrella organisation in Strasbourg – the *European Implementation Network*. The question of the transparency of the activities of the Committee of Ministers was also raised by our expert, Ms Betsy Apple, at the hearing in June 2016. Ms Apple thought that the activities of the Committee of Ministers and the Department for the Execution of Judgments remained opaque and the language of Committee of Ministers decisions and other documents was incomprehensible to the general public, despite the steps forward taken with the publication of annual reports of the Committee of Ministers since 2007. Ms Apple observed that, since 2013, in order to make NGOs' voices heard and provide the Committee of Ministers with information from non-governmental sources, her organisation – Open Society Justice – had been organising briefings for the members of the Committee of Ministers prior to DH meetings and highlighted that this initiative had been highly successful. In the expert's view, the briefings had allowed, on the one hand, the Committee of Ministers texts to be more demanding and firmer in tone and, on the other hand, to better reflect the stance of civil society. Even so, this had not sustainably reinforced the role of NGOs in the process of supervision of the implementation of judgments, as they still came up against bureaucratic obstacles.

47. The 2016 annual report of the Committee of Ministers also notes a reinforcement of the structures set up to co-ordinate national action, as well as an increased interest on the part of national parliaments, including through new specific structures they have developed to follow the execution process (in Georgia in June 2016; a similar initiative has also been launched in the Republic of Moldova) and through annual reports from the governments (in Belgium in 2016, for example, the Minister of Justice published the first report on Belgian disputes before the European Court of Human Rights).<sup>94</sup> Unfortunately, such a structure is yet to see the light of day in France, despite three recent initiatives (one launched by the rapporteur and the other two – in 2011 and 2014 – by our colleagues Mr Jean-Claude Mignon and Ms Marietta Karamanli respectively). I also raised these questions during my visits to Poland and Hungary, where I praised the efforts of both governments, which present their work to implement judgments to parliament on an annual basis. In Warsaw, I further welcomed the work of the inter-ministerial group for the execution of the Court's judgments but also expressed disappointment that the Sub-committee on the execution of judgments, set up in February 2014 under the auspices of the Justice and Human Rights Committee and the Foreign Affairs Committee of the Sejm, had not been reconstituted after the parliamentary elections of October 2015, a fact that is all the more regrettable as the sub-committee had worked in close collaboration with civil society.

48. It should be remembered that, since September 2013, our Assembly's Parliamentary Projects Support Division has been running awareness-raising activities in this field, for example by organising seminars on the Convention for parliamentarians and parliamentary legal advisers.<sup>95</sup> Recently, in March and April 2017, seminars were run for Georgian and Ukrainian members of parliament.

49. Very useful recommendations and suggestions addressed to various Council of Europe organs are to be found in a report by the Directorate of Internal Oversight, published on 30 January 2017. The report, entitled "[Evaluation of the effectiveness of Council of Europe support to the implementation of the European Convention on Human Rights at national level](#)" recommends *inter alia* that the Secretariat of the Assembly strengthen its "support to national parliaments in setting up structures supervising the execution of judgments and ensuring compliance of draft legislation with the Convention" and strengthen awareness of the Convention at the level of parliamentarians and officials. According to its recommendations, it would also be desirable for the Assembly rapporteurs to include law faculties in the programmes of their fact-finding visits and participate in public debates on the topic, and hearings with government agents should be organised. The report also points out two major difficulties in implementing judgments: it is not always clear (to the State concerned) what measures are to be taken, and it is not always possible to provide the Committee of Ministers with proof of impact of legislative changes made and other documents required for the closure of cases. It was noted in this connection that the lack of secondary laws and the related budgetary allocations in the action plans were the most important factors blocking effective implementation of the laws required to fully enforce a European Court of Human Rights judgment.

50. There is one other important question, not examined in sufficient detail in the 2016 annual report of the Committee of Ministers, which is yet to be considered in this context: the role of the Court in the process of implementing judgments. As pointed out in my predecessor's report, since Protocol No. 14 to the Convention entered into force, the Court has taken on a more proactive role in this process, by handing down an

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93. *Ibid.*, pp. 11-12 and 66.

94. *Ibid.*, p. 271.

95. [PPSD\(2014\)22 rev.](#) of 8 September 2015.

increasing number of pilot judgments or “quasi-pilot judgments”; however, this practice has also been called into question by some of the Court's judges, the CDDH and certain legal experts.<sup>96</sup> These judgments give the Committee of Ministers more or less detailed indications as to the measures (individual and/or general) for implementing the judgments. According to the former Court judge Mr Giorgio Malinverni, they have enabled the national authorities to satisfy the requirements of the Court and the Committee of Ministers, and the pilot judgment procedure is considerably lightening the Court's workload by reducing the number of repetitive cases. However, this practice should not encroach on States' freedom to choose execution measures. It would be useful to have more frequent exchanges between the Department for the Execution of Judgments and the judges and/or lawyers of the Court to improve the quality and targeting of judgments.

51. Concerning the use of Article 46.4 of the Convention (never deployed by the Committee of Ministers to date) advocated by my predecessor, opinion remains starkly divided. Mr Malinverni believes that using this infringement procedure could actually make things worse. It should be borne in mind that the triggering of such a procedure would further delay the implementation of a judgment, as the case would be sent back from the Committee of Ministers to the Court, which would require at least several years to examine it. Using this procedure would mean that the Committee of Ministers had already failed in its role of “supervisor”, as the judgment had not been executed.<sup>97</sup> It might be more productive to first “test” the procedure provided for in Article 46.3 of the Convention, whereby the Committee of Ministers can refer a judgment to the Court for interpretation.

## 6. Conclusions

52. Looking at the cases examined in my predecessor's very comprehensive report and relating above all to structural problems requiring large-scale general measures, we can see that progress has been made in a number of areas since 2015, in all the countries concerned, allowing the closure of cases by the Committee of Ministers, particularly groups of cases concerning length of judicial proceedings (Bulgaria, Greece, Italy, Poland and Romania), poor conditions of detention and lack of an effective remedy in this regard (Italy and Poland), abuses by law-enforcement officials (Romania), excessive duration or unlawfulness of remand detention (Russian Federation and Turkey), as well as the non-enforcement of domestic judicial decisions and the supervisory review (*nadzor*) procedure in the Russian Federation. Substantial progress has been made in several other cases or groups of cases but not yet enough for those cases to be closed. As the 2016 annual report of the Committee of Ministers points out, this progress is more often than not in the shape of reforms focusing on questions linked to the rule of law. Some of these call for strong political will, such as in the *Kurić* or *Alisić v. Slovenia* cases (which unfortunately I have been unable to analyse in detail within the framework of the present report), and represent considerable political and economic challenges.<sup>98</sup> The 2016 report of the Committee of Ministers also stressed the considerable improvement of the effectiveness of domestic remedies.

53. Even so, a number of highly complex problems persist (particularly in the Russian Federation, Turkey and Ukraine) and the passage of time is a further indication of the lack of political will to implement certain judgments, such as the judgments against Turkey concerning the northern part of Cyprus, for which the Turkish authorities refuse to pay just satisfaction, the numerous judgments concerning grave violations of the Convention in Chechnya or the *Bekir-Ousta v. Greece* judgment concerning freedom of association of ethnic minorities in Greece. In this context, we should also point to the complex question of the (non-)implementation of over 400 judgments concerning the non-enforcement of domestic judicial decisions in Ukraine; since 2005, no reliable and tangible solution has been introduced to remedy this problem and stem the flow of new cases into the Court. It must also be observed that the reports by Mr Pourgourides and Mr de Vries focused on

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96. See also articles by Helen Keller and Cedric Marti, Reconceptualizing Implementation: the Judicialization of the Execution of the European Court of Human Rights' Judgments, in: *European Journal of International Law* (2015) vol. 26, No. 4, pp. 829-850, and Linos-Alexander Sicilianos, The Involvement of the European Court of Human Rights in the Implementation of its Judgments: Recent Developments under Article 46, in: *Netherlands Quarterly of Human Rights*, Vol. 32/3, 2014, pp. 235-262.

97. On this point, see, for example, the article by Fiona de Londras and Kanstantsin Dzehtsiarou, Mission Impossible? Addressing Non-Execution Through Infringement Proceedings in the European Court of Human Rights, in *International and Comparative Law Quarterly*, Vol. 66, No. 2, April 2017, pp. 467-490.

98. 2016 Annual report of the Committee of Ministers, p. 11. *Kurić and others v. Slovenia*, Application No. 26828/06, judgment of 26 June 2012 (Grand Chamber), concerning the automatic “erasure” of former citizens of the Socialist Federal Republic of Yugoslavia from Slovenia's register of permanent residents, and *Alisić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and “the former Yugoslav Republic of Macedonia”*, Application No. 60642/08, (pilot) judgment of 16 July 2014 (Grand Chamber), concerning the failure of the governments of the successor States of the SFRY to comply with their obligation to repay “old” foreign-currency saving deposits outside these countries.

judgments that had not been implemented for more than five years and several of these judgments – mentioned in the latter's report – had already been pending for more than ten years when the Assembly adopted [Resolution 2075 \(2015\)](#). Two years on from the adoption of that text, a number of judgments mentioned in the present report have yet to be implemented after more than 12 years (see *inter alia* *Hirst No. 2*). That said, the lack of political will to implement certain judgments is sometimes very clear at a far earlier stage, as in the cases of *Ilgar Mammadov*, *OAO Neftyanaya Kompaniya YUKOS* or *Catan and others*. The “pockets of resistance” examined above relate above all to the question of individual measures (*Ilgar Mammadov* or *Al-Nashiri*) or the payment of just satisfaction (*OAO Neftyanaya Kompaniya YUKOS*); the question of individual measures is often directly linked to a question of general measures which must be taken before individual measures can be implemented (*Hirst No. 2*, *Paksas*, *Sejdić and Finci* or *Catan*). Some cases also show that the implementation of judgments requires a full and clear commitment from national parliaments and/or political parties and leaders (*Hirst No. 2*, *Paksas* or *Sejdić and Finci*), while in cases such as *Ilgar Mammadov* or *OAO Neftyanaya Kompaniya YUKOS* the obstacles to implementing judgments also come from the judicial authorities. So the executive authorities are not always the only ones responsible for delays in enforcing judgments or for their non-enforcement. Hindrances to the smooth running of the process are not always easy to identify and may sometimes be caused by third States – as in the cases in the *Al Nashiri* group – or be due to a lack of clarity in the judgment itself (as in the *Catan and others* judgment, where the Court held that the Russian Federation was responsible for the violations of the Convention while admitting that there was no evidence of any direct involvement of Russian agents in the violations found).

54. Clearly, the implementation of the Court's judgments remains a complex process in certain cases and I call on all the authorities concerned to show strong political commitment in order to resolve all the problems arising in connection with that process and deploy all available means to arrive at constructive solutions. That commitment must be forthcoming not only from the executive authorities but also from the legislative branch. I reiterate my predecessors' calls for national parliaments to take a stronger interest in this matter, create structures to ensure that draft legislation is compatible with the Convention as interpreted by the Court and encourage the executive authorities to keep them regularly informed of the progress achieved in this area. I also urge all the organs of the Council of Europe – particularly the Committee of Ministers, the Commissioner for Human Rights, the Secretary General and our Assembly – to more strongly focus on these questions, apply a transversal approach that would make it possible to take the issue of implementing the Court's judgments into account in the projects carried out under the auspices of our Organisation, improve the transparency of activities in this sphere (particularly of the Committee of Ministers) and co-operate more with civil society. The Secretary General has the power to launch investigations on the basis of Article 52 of the Convention and he could use that power more often. He could also do more to raise the issue of implementing judgments when visiting individual countries and in high-level meetings. Where the Commissioner for Human Rights is concerned, I encourage him to do likewise in his activities (preparation of periodic or other reports and country visits). The resources of the Department for the Execution of Judgments should be further reinforced. In addition, the Committee of Ministers should continue improving the transparency of its activities and consider how civil society could be regularly involved in the process of supervising the execution of judgments.

55. Implementation of the Court's judgments is a legal obligation arising from Article 46.1 of the Convention, and constant refusal to fulfil that obligation raises questions from the viewpoint of Article 3 of the Statute of the Council of Europe (ETS No. 1) regarding respect for human rights, one of our Organisation's three key values. I call on the States that are most reluctant to fully and swiftly implement certain Court judgments to abide by that obligation and make every possible effort to that end, in co-operation with the competent organs of the Council of Europe and drawing on the good examples set by other member States. The implementation of judgments depends above all on the political will of States. Accordingly, I urge the States concerned to demonstrate that will and prevent or put an end to any undermining of the Court's authority.

**Appendix – Major problems encountered in the execution of judgments of the European Court of Human Rights identified in the 2015 report by Mr de Vries and the Committee of Ministers 2016 Annual Report in respect of 10 States Parties to the European Convention on Human Rights**

State party	Leading case	Case description	Status of execution*
Bulgaria	<i>Djangozov v. Bulgaria</i> (group) (application no. 45950/99, judgment of 8 October 2004) <i>Kitov v. Bulgaria</i> (group) (application No. 37104/97, judgment of 3 July 2003) <i>Dimitrov and Hamanov v. Bulgaria</i> (pilot judgment) (application no. 48059/06, judgment of 10 May 2011) <i>Finger v. Bulgaria</i> (pilot judgment) (application no. 37346/05, judgment of 10 May 2011)	Excessive length of judicial proceedings and lack of an effective remedy.	<i>Djangozov v. Bulgaria</i> (civil proceedings) and <i>Kitov v. Bulgaria</i> (criminal proceedings) cases under enhanced supervision procedure, last examined at <a href="#">1236th (DH) meeting</a> , 22-24 September 2015. <i>Dimitrov and Hamanov v. Bulgaria</i> (criminal proceedings), <i>Finger v. Bulgaria</i> (civil proceedings) and 54 cases from <i>Djangozov v. Bulgaria</i> and <i>Kitov v. Bulgaria</i> groups closed by final Resolution <a href="#">CM/ResDH(2015)154</a> . 34 cases concerning criminal proceedings closed by final Resolution <a href="#">CM/ResDH(2017)57</a> .
	<i>Velikova v. Bulgaria</i> (group of 35 similar cases) (application no. 41488/98, judgment of 18 May 2000) <i>Nachova and others v. Bulgaria</i> (application no. 43577/98, judgment of 6 July 2005) <i>S.Z. v Bulgaria</i> (group), judgment of 3 March 2015, application no.29263/12	Cases principally concerning ill-treatment or deaths which took place under the responsibility of the forces of order; ineffective investigations. Systemic problem of ineffective investigations (into crimes committed by private individuals).	<i>Velikova v. Bulgaria</i> cases under enhanced supervision procedure, last examined at <a href="#">1265th (DH) meeting</a> , 20-21 September 2016. <i>Nachova and others v. Bulgaria</i> case closed by final Resolution <a href="#">CM/ResDH(2017)97</a> . Under enhanced supervision procedure, last examined at <a href="#">1273rd (DH) meeting</a> , 6-8 December 2016.
	<i>C.G. and Others v. Bulgaria</i> (group of 7 similar cases) (application no. 1365/07, judgment of 24 April 2008)	Violations of the right to respect for family life due to deportation/ order to leave the territory.	Under enhanced supervision procedure, last examined at <a href="#">1280th (DH) meeting</a> , 7-10 March 2017.
	<i>Kehayov v. Bulgaria</i> (group of 27 similar cases) (application no. 41035/98, judgment of 18 January 2005) <i>Neshkov and Others v. Bulgaria</i> (pilot judgment) (application no. 36925/10+, judgment of 27 January 2015)	Inhuman and degrading treatment of the applicants due to poor conditions of detention in investigative detention facilities and prisons.	Under enhanced supervision procedure, last examined at <a href="#">1280th (DH) meeting</a> , 7-10 March 2017.
	<i>Stanev v. Bulgaria</i> (group of 2 similar cases) (application no. 36760/06, judgment of 17 January 2012)	Placement in social care homes of persons with mental disorders.	Under enhanced supervision procedure, last examined at <a href="#">1259th (DH) meeting</a> , 7-8 June 2016.
	<i>UMO Ilinden and Others v. Bulgaria</i> (group of 2 similar cases) (application no. 59491/00, judgment of 19 January 2006)	Unjustified refusals to register an association aiming at achieving "the recognition of the Macedonian minority in Bulgaria".	Under enhanced supervision procedure, last examined at <a href="#">1273rd (DH) meeting</a> 6-8 December 2016.
	<i>Yordanova and Others v. Bulgaria</i> (group of 2 similar cases) (application no. 25446/06, judgment of 24 April 2012)	Eviction of persons of Roma origin.	Under enhanced supervision procedure, last examined at <a href="#">1259th (DH) meeting</a> , 7-8 June 2016.

State party	Leading case	Case description	Status of execution*
Greece	<p><i>Manios v. Greece</i> (group) (application no. 70626/01, judgment of 11 March 2004)</p> <p><i>Diamantides v. Greece (No. 2)</i> (group) (application No. 71563/01, judgment of 19 May 2005)</p> <p><i>Konti-Arvaniti v. Greece</i> (group) (application no. 53401/99, judgment of 10 April 2003)</p> <p><i>Vassilios Anthanasiou and Others v. Greece</i> (pilot judgment) (application no. 50973/08, judgment of 21 December 2010)</p> <p><i>Michelioudakis v. Greece</i> (pilot judgment) (application no. 54447/10, judgment of 3 April 2012)</p> <p><i>Glykantzi v. Greece</i> (pilot judgment) (application no. 40150/09, judgment of 30 October 2012)</p>	Excessive length of judicial and administrative proceedings, and lack of an effective remedy in this respect.	All cases have been closed; see: <i>Manios v. Greece</i> and <i>Vassilios Anthanasiou and Others</i> (administrative proceedings) and 204 similar cases closed by final Resolution <a href="#">CM/ResDH(2015)230</a> ; <i>Diamantides v. Greece (No. 2)</i> and <i>Michelioudakis v. Greece</i> (criminal proceedings) and 81 similar cases; and <i>Konti-Arvaniti v. Greece</i> and <i>Glykantzi v. Greece</i> (civil proceedings) and 56 similar cases closed by final Resolution <a href="#">CM/ResDH(2015)231</a> .
	<i>Makaratzis v. Greece</i> (group of 11 similar cases) (application no. 50385/99, judgment of 20 December 2004)	Use of lethal force and ill-treatment by law-enforcement officials and lack of effective investigation into such abuses.	Under enhanced supervision procedure, last examined at <a href="#">1236th (DH) meeting</a> , 22-24 September 2015.
	<p><i>M.S.S v. Belgium and Greece</i> (group of 14 similar cases) (application no. 30696/09, judgment of 21 January 2011, Grand Chamber)</p> <p><i>S.D. v Greece</i> (group) (application no. 73554/2011, judgment of 11 June 2009)</p>	Conditions of detention of irregular migrants and shortcomings in asylum procedure; lack of effective remedy in this respect.	<i>M.S.S v. Belgium and Greece</i> cases under enhanced supervision procedure, last examined at <a href="#">1243rd (DH) meeting</a> , 8-9 December 2015. <i>S.D. v Greece</i> cases have been partially closed for issues under Article 5.1 and for the remaining issues - transferred under standard supervision procedure, last examined at <a href="#">1265th (DH) meeting</a> , 20-21 September 2016.
	<i>Bekir-Ousta and others v. Greece</i> (group of 3 similar cases) (application no. 35151/05, judgment of 11 October 2007)	Violations of the right to freedom of association due to the Greek authorities' refusal to register associations and to the dissolution of an association of promoting the idea of an ethnic minority.	Under enhanced supervision procedure, last examined at <a href="#">1280th (DH) meeting</a> , 7-10 March 2017.
	<i>Nisiotis v. Greece</i> (group of 22 similar cases) (application no. 34704/08, judgment of 10 February 2011)	Inhuman and degrading treatment on account of poor conditions in prisons.	Under enhanced supervision procedure, last examined at <a href="#">1230th (DH) meeting</a> , 9-11 June 2015.
	<i>Beka-Koulocheri v. Greece</i> (group of 25 similar cases) (application no. 38878/03, judgment of 6 July 2006)	Failure or considerable delay in the enforcement of final domestic judgments and absence of effective remedy.	Under enhanced supervision procedure, last examined at <a href="#">1250th (DH) meeting</a> , 8-10 March 2016.

State party	Leading case	Case description	Status of execution*
Hungary	<i>Timár v. Hungary</i> (group of 272 similar cases) (application no. 36186/97, judgment of 25 February 2003) <i>Gazsó v. Hungary</i> (pilot judgment) (application no. 48322/12, judgment of 16 July 2015)	Excessive length of civil and criminal proceedings and the lack of an effective remedy in this respect.	Under enhanced supervision procedure, last examined at <a href="#">1273rd (DH) meeting</a> , 6-8 December 2016.
	<i>Istvan Gabor Kovacs v. Hungary</i> (group of 18 similar cases) (application no. 15707/10, judgment of 17 January 2012) <i>Varga and Others v. Hungary</i> (pilot judgment) (application no. 14097/12+, judgment of 10 March 2015)	Ill-treatment, mainly due to overcrowded detention facilities.	Under enhanced supervision procedure, last examined at <a href="#">1250th (DH) meeting</a> , 8-10 March 2016.
	<i>Horváth and Kiss v. Hungary</i> (application no. 11146/11, judgment of 29 January 2013)	Discriminatory assignment of Roma children to special schools for mentally handicapped children.	Under enhanced supervision procedure, last examined at <a href="#">1243rd (DH) meeting</a> , 8-9 December 2015.

State party	Leading case	Case description	Status of execution*
Italy	<p><i>Saadi v. Italy</i> (group) (application no. 37201/06, judgment of 28 February 2008)</p> <p><i>Ben Khemais v. Italy</i> (group) (application no. 246/07, judgment of 6 July 2009)</p> <p><i>Hirsi Jamaa and Others v. Italy</i> (application no. 27765/09, judgment of 23 February 2012)</p> <p><i>Sharifi and Others v. Italy and Greece</i> (application no. 16643/09, judgment of 21 October 2014)</p>	<p>Non-respect of Rule 39 of the Rules of the Court and violations of the prohibition of torture and ill-treatment due to the expulsion of foreign nationals.</p> <p>Interception at sea and collective expulsion to Libya by the Italian military authorities of a group of Somalians and Eritreans.</p> <p>Collective expulsion of asylum seekers to Greece, lack of access to asylum procedure and risk of deportation to Afghanistan.</p>	<p><i>Saadi v. Italy</i> and 9 similar cases closed by final Resolution <a href="#">CM/ResDH(2014)215</a>, and</p> <p><i>Ben Khemais v. Italy</i> and 3 similar cases closed by final Resolution <a href="#">CM/ResDH(2015)204</a>.</p> <p><i>Hirsi Jamaa and Others v. Italy</i> case closed by final Resolution <a href="#">CM/ResDH(2016)221</a>.</p> <p>Under enhanced supervision procedure, last examined at <a href="#">1265th (DH) meeting</a>, 20-21 September 2016.</p>
	<p><i>Sulejmanovic v. Italy</i> (application no. 22635/03, judgment of 16 July 2009)</p> <p><i>Torreggiani and Others v. Italy</i> (pilot judgment) application no. 43517/09+, judgment of 8 January 2013)</p> <p><i>Cirillo v. Italy</i> (application no. 36276/10, judgment of 29 January 2013)</p>	<p>Poor detention conditions (mainly due to overcrowding in detention centres).</p> <p>Lack of adequate medical care in detention centres.</p>	<p><i>Sulejmanovic v. Italy</i> and <i>Torreggiani and Others v. Italy</i> cases closed by final Resolution <a href="#">CM/ResDH(2016)28</a>.</p> <p>Under enhanced supervision procedure, last examined at <a href="#">1179th (DH) meeting</a>, 24-26 September 2013.</p>
	<p><i>Ceteroni v. Italy</i> (group of 1275 similar cases concerning civil proceedings) (application no. 22461/93, judgment of 15 November 1996)</p> <p><i>Ledonne v. Italy (no.1)</i> (group of 163 similar cases concerning criminal proceedings) (application no. 35742/97, judgment of 12 May 1999)</p> <p><i>Abenavoli v. Italy</i> (group of 45 similar cases concerning administrative proceedings) (application no. 25587/94, judgment of 2 September 1997)</p> <p><i>Luordo v. Italy</i> (group of 25 similar cases concerning bankruptcy proceedings) (application no. 32190/96, judgment of 17 July 2003)</p>	<p>Four groups concerning excessive length of judicial and administrative proceedings.</p>	<p><i>Ceteroni v. Italy</i> (civil proceedings) cases under enhanced supervision procedure, last examined at <a href="#">1243rd (DH) meeting</a>, 8-9 December 2015.</p> <p>149 cases concerning civil proceedings under the jurisdiction of first instance courts and 28 cases concerning divorce and legal separation proceedings closed by final Resolutions <a href="#">CM/ResDH (2015)247</a> and <a href="#">CM/ResDH (2015)246</a>.</p> <p>Under enhanced supervision procedure, last examined at <a href="#">1273rd (DH) meeting</a>, 6-8 December 2016.</p> <p>Under enhanced supervision procedure, last examined at <a href="#">1273rd (DH) meeting</a>, 6-8 December 2016.</p> <p>75 cases closed by final Resolution <a href="#">CM/ResDH (2016)358</a>.</p> <p>Under enhanced supervision procedure, last examined at <a href="#">1172nd (DH) meeting</a>, 4-6 June 2013.</p>
	<p><i>Mostacciolo Giuseppe v. Italy (No. 1)</i> (group of 131 similar cases) (application no. 64705/01, judgment of 29 March 2006)</p> <p><i>Gaglione and Others v. Italy</i> (quasi-pilot judgment) (application no. 45867/07, judgment of 21 December 2010)</p>	<p>Delays in the payment of compensation awarded in the context of a compensatory remedy available since 2001 to victims of excessively lengthy proceedings and insufficient amounts of such compensation.</p>	<p>Under enhanced supervision procedure, last examined at <a href="#">1236th (DH) meeting</a>, 22-24 September 2015.</p> <p>34 cases closed by final Resolution <a href="#">CM/ResDH(2015)155</a>.</p>
	<p><i>Belvedere Alberghiera S.R.L v. Italy</i> (group) (application no. 31524/96, judgments of 30 May 2000 and of 30 October 2003)</p>	<p>Unlawful deprivation of land by local authorities because of a judge-made rule, the "constructive-expropriation rule", which precludes restitution if works commenced in the public interest have been completed.</p>	<p>Under standard supervision procedure.</p>

State party	Leading case	Case description	Status of execution*
Italy ( <i>cont'd</i> )	<i>M.C. and Others v. Italy</i> (pilot judgment) (application no. 5376/11, judgment of 3 September 2013)	Legislative intervention which cancelled retrospectively and in a discriminatory manner the benefit of an annual adjustment of a compensation allowance for having suffered accidental viral contamination.	Under enhanced supervision procedure, last examined at <a href="#">1243rd (DH) meeting</a> , 8-9 December 2015.
Poland	<i>Orchowski v. Poland</i> (application no. 17885/04, judgment of 22 October 2009), and <i>Sikorski Norbert v. Poland</i> (application no. 17599/05, judgment of 22 October 2009) <i>Kaprykowski v. Poland</i> (application No. 23052/05, judgment of 3 February 2009)	Poor conditions of detention (mainly due to overcrowding). Lack of adequate medical care in detention centres.	<i>Orchowski v. Poland</i> and <i>Sikorski Norbert v. Poland</i> and 5 similar cases closed by final Resolution <a href="#">CM/ResDH(2016)254</a> . <i>Kaprykowski v. Poland</i> and 7 similar cases closed by final Resolution <a href="#">CM/ResDH(2016)278</a> .
	<i>Dzwonkowski v. Poland</i> (group) (application no. 46702/99, judgment of 12 April 2007)	Ill-treatment inflicted by the police as well as in two cases unintentional killing by the police and lack of effective investigation in this respect.	<i>Dzwonkowski v. Poland</i> and 7 similar cases closed by final Resolution <a href="#">CM/ResDH(2016)148</a> .
	<i>Horych v. Poland</i> (group) (application no. 13621/08, judgment of 17 April 2014)	The “dangerous detainee” regime.	<i>Horych v. Poland</i> and 4 similar cases closed by final Resolution <a href="#">CM/ResDH(2016)128</a> .
	<i>Bączkowski and Others v. Poland</i> (application no. 1543/06, judgment of 3 May 2007)	Violation of the right to freedom of assembly and lack of effective remedy in this respect.	Closed by final Resolution <a href="#">CM/ResDH(2015)234</a> .
	<i>Podbielski v. Poland</i> (group) (application no. 27916/95, judgment of 30 October 98) <i>Kudła v. Poland</i> (group) (application no. 30210/96, judgment of 26/10/00, Grand Chamber) <i>Fuchs v. Poland</i> (group) (application no. 33870/96, judgment of 11 May 2003) <i>Majewski v. Poland</i> (group) (application no. 5269/99, judgment of 11 January 2006) <i>Bąk v. Poland</i> (group) (application no. 7870/04, judgment of 16 April 2007) <i>Rutkowski and Others</i> (pilot judgment), application no. 72287/10, judgment of 7 July 2015 <i>Beller v. Poland</i> (group) (application no. 51837/99, judgment of 6 June 2005)	Excessive length of civil, criminal and administrative proceedings and lack of an effective remedy in this respect.	<i>Podbielski v. Poland</i> (civil proceedings) and <i>Kudła v. Poland</i> (criminal proceedings) and 203 similar cases closed by final Resolution <a href="#">CM/ResDH(2015)248</a> . <i>Fuchs v. Poland</i> (administrative proceedings) and 33 similar cases closed by final Resolution <a href="#">CM/ResDH(2016)359</a> . <i>Majewski v. Poland</i> (civil proceedings) and <i>Bąk v. Poland</i> (criminal proceedings) cases under enhanced supervision procedure, last examined at <a href="#">1243rd (DH) meeting</a> , 8-9 December 2015. <i>Beller v. Poland</i> (administrative proceedings) cases under enhanced supervision procedure last examined at <a href="#">1273rd (DH) meeting</a> , 6-8 December 2016.
	<i>Al Nashiri v. Poland</i> (group of 2 similar cases) (application no. 28761/11, judgment of 24 July 2014)	Various violations related to secret detention and rendition operations.	Under enhanced supervision procedure, last examined at <a href="#">1280th (DH) meeting</a> , 7-10 March 2017.

State party	Leading case	Case description	Status of execution*
Republic of Moldova <sup>99</sup>	<i>Ciorap v. the Republic of Moldova</i> (group of 23 similar cases) (application no. 39806/05, judgment of 19 June 2007) <i>Becciev v. the Republic of Moldova</i> (group of 4 similar cases) (application no. 9190/03, judgment of 4 October 2005) <i>Paladi v. the Republic of Moldova</i> (group of 2 similar cases) (application no. 12066/02, judgment of 10 July 2007)	Poor conditions of detention in facilities under the authority of the Ministries of the Interior and Justice, including lack of access to adequate medical care; absence of an effective remedy.	Under enhanced supervision procedure, last examined at <a href="#">1265th (DH) meeting</a> , 20-21 September 2016.
	<i>Corsacov v. the Republic of Moldova</i> (group of 29 similar cases) (application no. 18944/02, judgment of 4 April 2006) <i>Levinta v. the Republic of Moldova</i> (application no. 17332/03, judgment of 16 December 2008)	Ill-treatment and torture during police detention; ineffective investigations; absence of an effective remedy.	Under enhanced supervision procedure, last examined at <a href="#">1273rd (DH) meeting</a> , 6-8 December 2016.
	<i>Eremia v. the Republic of Moldova</i> (group of 4 similar cases) (application no. 3564/11, judgment of 28 May 2013)	Failure to provide protection from domestic violence.	Under enhanced supervision procedure, last examined at <a href="#">1243rd (DH) meeting</a> , 8-9 December 2015.
	<i>Genderdoc-M v. the Republic of Moldova</i> (application no. 9106/06, judgment of 12 June 2012)	Unjustified bans on gay marches; lack of an effective remedy; discrimination on grounds of sexual orientation.	Under enhanced supervision procedure, last examined at <a href="#">1280th (DH) meeting</a> , 7-10 March 2017.
	<i>Luntre v. the Republic of Moldova</i> (group of 55 similar cases) (application no. 2916/02, judgment of 15 June 2004)	Non-enforcement or delayed enforcement of domestic judgments.	Under enhanced supervision procedure, last examined at <a href="#">1280th (DH) meeting</a> , 7-10 March 2017.
	<i>Muşuc v. the Republic of Moldova</i> (group of 6 similar cases) (application no. 42440/06, judgment of 6 November 2007) <i>Guţu v. the Republic of Moldova</i> (application no. 20289/02, judgment of 7 June 2007) <i>Brega v. the Republic of Moldova</i> (group of 2 cases) (application no. 52100/08, judgment of 20 April 2010)	Arbitrary arrest and detention in the context of criminal and administrative proceedings; unlawful entry by the police on private premises; absence of effective remedies.	Under enhanced supervision procedure, last examined at <a href="#">1259th (DH) meeting</a> , 7-8 June 2016.
	<i>Sarban v. the Republic of Moldova</i> (group of 17 similar cases) (application no. 3456/05, judgment of 4 October 2005)	Violations mainly related to unlawful detention on remand (lawfulness, duration, justification).	Under enhanced supervision procedure, last examined at <a href="#">1214th (DH) meeting</a> , 2-4 December 2014.
	<i>Taraburca v. the Republic of Moldova</i> (group of 3 similar cases) (application no. 18919/10, judgment of 6 December 2011)	Ill-treatment by the police in connection with violent post-election demonstrations and ineffective investigations.	Under enhanced supervision procedure, last examined at <a href="#">1259th (DH) meeting</a> , 7-8 June 2016.

99. Not included in the report by Mr de Vries. However, included here due to ranking within top 10 States, on the basis of the number of cases under enhanced supervision; see Committee of Ministers 2016 Annual Report, p. 64.

State party	Leading case	Case description	Status of execution*
Romania	<i>Vlad and Others</i> (group) (application No. 40756/06, judgment of 26 November 2013) (formerly <i>Nicolau v. Romania</i> (group) (application No. 1295/02, judgment of 3 July 2006) <i>Stoianova and Nedelcu v. Romania</i> (group) (application no. 77571/01, judgment of 4 November 2004))	Excessive length of civil and criminal proceedings and lack of an effective remedy.	Under enhanced supervision procedure, last examined at <a href="#">1259th (DH) meeting</a> , 7-8 June 2016. <i>Nicolau v. Romania</i> and <i>Stoianova and Nedelcu v. Romania</i> and 78 similar cases closed by final Resolution <a href="#">CM/ResDH(2016)151</a> .
	<i>Barbu Anghelescu v. Romania</i> (group) (application no. 46430/99, judgment of 5 October 2004)	Ill-treatment by police and lack of effective investigations.	<i>Barbu Anghelescu v. Romania</i> and 34 similar cases closed by final Resolution <a href="#">CM/ResDH(2016)150</a> .
	<i>Străin and Others v. Romania</i> (group) (application No. 57001/00, judgment of 30 November 2005) <i>Maria Atanasiu and Others v. Romania</i> (pilot judgment) (application no. 30767/05, judgment of 12 October 2010)	Failure to restore or compensate for nationalised property.	Under enhanced supervision procedure, last examined at <a href="#">1214th (DH) meeting</a> , 2-4 December 2014. 84 cases closed by final Resolution <a href="#">CM/ResDH(2014)274</a> .
	<i>Sacaleanu v. Romania</i> (group of 35 similar cases) (application no. 73970/01, judgment of 6 December 2005) <i>Ruianu v. Romania</i> (application 34647/97, judgment of 17 June 2003) <i>Strungariu v. Romania</i> (application no. 23878/02, judgment of 29 September 2005)	Non-enforcement or delays in the enforcement of domestic final judicial decisions.	<i>Sacaleanu v. Romania</i> group of cases under enhanced supervision procedure, last examined at <a href="#">1280th (DH) meeting</a> , 7-10 March 2017. <i>Ruianu v. Romania</i> ; and <i>Strungariu v. Romania</i> under standard supervision procedure.
	<i>Bragadireanu v. Romania</i> (group of 140 similar cases) (application no. 22088/04, judgment of 6 March 2008)	Overcrowding and poor conditions in detention centres.	Under enhanced supervision procedure, last examined at <a href="#">1222nd (DH) meeting</a> , 11-12 March 2015.
	<i>Association '21 Decembre 1989' and Maries v. Romania</i> (group of 11 similar cases) (application no. 33810/07, judgment of 24 May 2011)	Ineffectiveness of investigations into violent crackdowns in 1989 on anti-government demonstrations.	Under enhanced supervision procedure, last examined at <a href="#">1201st (DH) meeting</a> , 3-5 June 2014.
	<i>Centre for Legal resources on behalf of Valentin Câmpeanu v. Romania</i> (application no. 47848/08, judgment of 17 July 2014, Grand Chamber)	Lack of appropriate judicial protection and medical and social care of a vulnerable person with mental disabilities who died in a psychiatric hospital.	Under enhanced supervision procedure, last examined at <a href="#">1280th (DH) meeting</a> , 7-10 March 2017.
	<i>Țicu v. Romania</i> (group of 2 similar cases) (application no. 24575/10, judgment of 1 April 2014)	Inadequate management of psychiatric conditions of detainees in prison.	Under enhanced supervision procedure, last examined at <a href="#">1273rd (DH) meeting</a> , 6-8 December 2016.
	<i>Bucur and Toma v. Romania</i> (application no. 40238/02, judgment of 8 January 2013)	Conviction of a whistle-blower for having disclosed information on the illegal secret surveillance of citizens by the intelligence service; lack of safeguards in the statutory framework governing secret surveillance.	Under enhanced supervision procedure, last examined at <a href="#">1273rd (DH) meeting</a> , 6-8 December 2016.

State party	Leading case	Case description	Status of execution*
Russian Federation	<i>Burdov v. Russia (No. 2)</i> (pilot judgment) (application no. 33509/04, judgment of 15 January 2009) <i>Timofeyev v. Russia</i> (group) (application no. 58263/00, judgment of 23 October 2003) <i>Gerasimov and Others v. Russia</i> (application no. 29920/05, judgment of 1 July 2014)	Non-enforcement of domestic final judgments and lack of effective remedy in this respect.	<i>Burdov (No. 2) v. Russian Federation and Timofeyev v. Russia</i> and 233 similar cases closed by final Resolution <a href="#">CM/ResDH(2016)268</a> . <i>Gerasimov and Others v. Russia</i> case under enhanced supervision procedure, last examined at <a href="#">1243rd (DH) meeting</a> , 8-9 December 2015.
	<i>Ryabykh v. Russian Federation</i> (group of 113 similar cases) (application no. 52854/99, judgment of 24 July 2003)	Violation of the principle of legal certainty on account of the quashing of final domestic judgments through the supervisory review procedure.	<i>Ryabykh v. Russian Federation</i> and 112 similar cases closed by final Resolution <a href="#">CM/ResDH(2017)83</a> .
	<i>Kalashnikov v. Russian Federation</i> (group of 170 similar cases) (application no. 47095/99, judgment of 15 July 2002) <i>Ananyev and others v. Russia</i> (pilot judgment) (application no. 42525/07, judgment of 10 January 2012)	Poor conditions in detention centres and lack of an effective remedy in this respect.	Under enhanced supervision procedure, last examined at <a href="#">1201st (DH) meeting</a> , 3-5 June 2014.
	<i>Klyakhin v. Russia</i> (group of 160 similar cases) (application no. 46082/99, judgment of 30 November 2004)	Different violations of Article 5 mainly related to detention on remand (lawfulness, procedure and length).	<i>Klyakhin v. Russia</i> cases under enhanced supervision procedure, last examined at <a href="#">1280th (DH) meeting</a> , 7-10 March 2017. 13 cases closed by final Resolution <a href="#">CM/ResDH(2015)249</a> .
	<i>Mikheyev v. Russia</i> (group) (application no. 77617/01, judgment of 26 January 2006)	Ill-treatment in police custody and lack of an effective investigation in this respect.	Under enhanced supervision procedure, last examined at <a href="#">1222nd (DH) meeting</a> , 11-12 March 2015.
	<i>Khashiyev and Akayeva v. Russia</i> (group of 252 similar cases) (application no. 57942/00, judgment of 24/02/2005)	Various violations of the Convention resulting from and/or relating to the actions of the security forces in the Chechen Republic (mainly unjustified use of force by members of the security forces, disappearances, unacknowledged detentions, torture and ill-treatment, unlawful search and seizure and destruction of property).	Under enhanced supervision procedure, last examined at <a href="#">1280th (DH) meeting</a> , 7-10 March 2017.
	<i>Garabayev v. Russia</i> (group of 69 similar cases) (application no. 38411/02, judgment of 30 January 2008)	Various violations of the Convention related to extradition (Articles 3, 5, 13 and 34 of the Convention). Risk of ill-treatment in cases of extradition and disregard of interim measures indicated by the European Court of Human Rights under Rule 39 of the Rules of the Court.	Under enhanced supervision procedure, last examined at <a href="#">1280th (DH) meeting</a> , 7-10 March 2017.
	<i>Alekseyev v. Russia</i> (application no. 4916/07, judgment of 21 October 2010)	Violation of the freedom of assembly due to repeated bans of LGBT marches and discrimination on grounds of sexual orientation.	Under enhanced supervision procedure, last examined at <a href="#">1273rd (DH) meeting</a> , 6-8 December 2016.
	<i>Catan and Others v. Russia</i> (application no. 43370/04, judgment of 19 October 2012)	Violation of the right to education of children and parents from Latin script schools in the Transdniestrian region of the Republic of Moldova.	Under enhanced supervision procedure, last examined at <a href="#">1280th (DH) meeting</a> , 7-10 March 2017.

State party	Leading case	Case description	Status of execution*
Turkey	<i>Halise Demirel v. Turkey</i> (group) (application no. 39324/98, judgment of 28 January 2003)	Excessive length of detention on remand.	<i>Halise Demirel v. Turkey</i> and 195 similar cases closed by final Resolution <a href="#">CM/ResDH(2016)332</a> .
	<i>Hulki Güneş v. Turkey</i> (group of 4 cases) (application no. 28490/95, judgment of 19 June 2003)	Lack of judicial independence and impartiality, unfairness of judicial proceedings, ill-treatment inflicted in police custody.	Under standard supervision procedure, last examined at <a href="#">1172nd (DH) meeting</a> , 4-6 June 2013.
	<i>Ülke v. Turkey</i> (application no. 39437/98, judgment of 24 January 2006)	Degrading treatment of the applicant as a result of his repeated convictions and imprisonment for having refused to perform military service.	Under enhanced supervision procedure, last examined at <a href="#">1157th (DH) meeting</a> , 4-6 December 2012.
	<i>Inçal v. Turkey</i> (group of 102 similar cases) (application no. 22678/93, judgment of 9 June 1998) <i>Gözel and Özer v. Turkey</i> (group of 4 similar cases) (application no. 43453/04, judgment of 6 July 2010)	Unjustified interferences in the freedom of expression.	Under enhanced supervision procedure, last examined at <a href="#">1265th (DH) meeting</a> , 20-21 September 2016.
	<i>Bati and Others v. Turkey</i> (group of 130 similar cases) (application nos. 33097/96, and 57834/00, judgment of 3 June 2004) <i>Okkali v. Turkey</i> (group) (application no. 52067/99, judgment of 17 October 2006)	Ill-treatment by the police and the gendarmerie; ineffective investigations.	Under enhanced supervision procedure, last examined at <a href="#">1265th (DH) meeting</a> , 20-21 September 2016.
	<i>Cyprus v. Turkey</i> (inter-State case) (application no. 25781/94, judgments of 10 May 2001 and 12 May 2014, Grand Chamber) <i>Xenides-Arestis v. Turkey</i> (application no. 46347/99, judgments of 22 December 2005 and 7 December 2006) <i>Varnava and Others v. Turkey</i> (application no. 16064/90+, judgment of 18 September 2009, Grand Chamber)	Various violations of the Convention relating to the situation in the northern part of Cyprus following a Turkish military operation in 1974 (missing persons, living conditions of Greek Cypriots in the northern part of Cyprus, the rights of Turkish Cypriots living in the northern part of Cyprus, and homes and property of displaced persons).	Under enhanced supervision procedure, last examined at <a href="#">1280th (DH) meeting</a> , 7-10 March 2017.
	<i>Oya Ataman v. Turkey</i> (group of 55 similar cases) (application no. 74552/01, judgment of 5 December 2006)	Abusive use of force by security forces in dispersing peaceful demonstrations.	Under enhanced supervision procedure, last examined at <a href="#">1259th (DH) meeting</a> , 7-8 June 2016.
	<i>Söyler v. Turkey</i> (group of 2 similar cases) (application no. 29411/07, judgment of 17 September 2013)	Ban on convicted prisoners' voting rights.	Under enhanced supervision procedure.
	<i>Opuz v. Turkey</i> (group of 5 similar cases) (application no. 33401/02, judgment of 9 June 2009)	Failure to provide protection against domestic violence.	Under enhanced supervision procedure, last examined at <a href="#">1280th (DH) meeting</a> , 7-10 March 2017.

State party	Leading case	Case description	Status of execution*
Ukraine	<i>Zhovner v. Ukraine</i> (group of 418 similar cases) (application no. 56848/00, judgment of 29 June 2004) <i>Yuriy Nikolayevich Ivanov. v. Ukraine</i> (pilot judgment) (application no. 40450/04, judgment of 15 January 2010)	Non-enforcement of domestic final judgments and lack of an effective remedy in this respect.	Under enhanced supervision procedure, last examined at <a href="#">1280th (DH) meeting</a> , 7-10 March 2017.
	<i>Svetlana Naumenko v. Ukraine</i> (group of 191 cases) (application no. 41984/98, judgment of 9 November 2004) <i>Merit v. Ukraine</i> (group of 48 cases) (application no. 66561/01, judgment of 30 March 2004)	Excessive length of civil and criminal proceedings.	<i>Svetlana Naumenko v. Ukraine</i> (civil proceedings) and <i>Merit v. Ukraine</i> (criminal proceedings) cases under enhanced supervision procedure, last examined at <a href="#">1179th (DH) meeting</a> , 24-26 September 2013.
	<i>Nevmerzhitsky v. Ukraine</i> (group of 19 similar cases) (application no. 54835/00, judgment of 9 September 2004)	Poor conditions of detention on remand.	Under enhanced supervision procedure, last examined at <a href="#">1144th (DH) meeting</a> , 4-6 June 2012.
	<i>Afanasyev. v. Ukraine</i> (group of 39 similar cases) (application no. 387722/02, judgment of 5 April 2005) <i>Kaverzin v. Ukraine</i> (group of 16 cases) (application no. 23893/03, judgment of 15 May 2012) and 2 other similar cases	Ill-treatment by police and lack of procedural safeguards.	Under enhanced supervision procedure, last examined at <a href="#">1280th (DH) meeting</a> , 7-10 March 2017.
	<i>Kharchenko v. Ukraine</i> (group of 45 similar cases) (application no. 40107/02, judgment of 10 February 2011) <i>Chanyev v. Ukraine</i> (application no. 46193/13, judgment of 9 October 2014) and another similar case	Problems regarding the legal framework governing and the use of pretrial detention.	Under enhanced supervision procedure, last examined at <a href="#">1280th (DH) meeting</a> , 7-10 March 2017.
	<i>Salov v. Ukraine</i> (group of 4 similar cases) (application no. 65518/01, judgment of 6 November 2005) <i>Oleksandr Volkov v. Ukraine</i> (application no. 21722/11, judgment of 9 January 2013)	Lack of independence and impartiality of tribunals. Violations of the applicant's right to a fair hearing on account of his unlawful dismissal from his post as a judge at the Supreme Court of Ukraine.	Under enhanced supervision procedure, last examined at <a href="#">1280th (DH) meeting</a> , 7-10 March 2017.
	<i>Gongadze v. Ukraine</i> (application no. 34056/02, judgment of 8 November 2005)	Failure to protect life, failure to carry out an effective investigation into a death, lack of an effective remedy in this respect, attitude of the investigatory authorities towards the applicant and her family amounting to degrading treatment.	Under enhanced supervision procedure, last examined at <a href="#">1172nd (DH) meeting</a> , 4-6 June 2013.
	<i>Vyerentsov v. Ukraine</i> (group of 2 similar cases) (application no. 20372/11, judgment of 11 April 2013)	Violation of the right to freedom of peaceful assembly.	Under enhanced supervision procedure, last examined at <a href="#">1273rd (DH) meeting</a> , 6-8 December 2016.

\* For more information on the progress in the implementation of these judgments, see Committee of Ministers 9th (2015) and 10th (2016) Annual Reports on the supervision of the execution of judgments and decisions of the European Court of Human Rights (Appendix 5), the Committee of Ministers search engine [HUDOC-EXEC](#) and the [country factsheets](#) of the Department for the Execution of Judgments of the European Court of Human Rights.