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Committee on Legal Affairs and Human Rights

Implementation of judgments of the European Court of Human Rights: preparation of the 8th report

Addendum

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I. Introductory remarks

1. This Addendum contains updated information that was originally provided in background memoranda prepared for hearings which the Parliamentary Assembly's Committee on Legal Affairs and Human Rights ("the LAHR Committee" / "the Committee") held between April 2012 and January 2013.

2. The purpose of this Addendum is to provide insight into the main issues concerning implementation of Court judgments faced by the eight states which are likely to be the focus of the 8th report: Italy, Turkey, the Russian Federation, Ukraine, Poland, Romania, Greece, and Bulgaria. Among issues which will probably need to be assessed are: excessive length of judicial proceedings (endemic notably in Italy), chronic non-enforcement of domestic judicial decisions (widespread, in particular, in the Russian Federation and Ukraine), deaths and ill-treatment by law enforcement officials and lack of effective investigations into them (particularly apparent in the Russian Federation), and unlawful or over-long detention on remand (a problem notably in Poland, the Russian Federation and Ukraine).*

3. While not directly relevant in the context of a discussion of the most difficult human rights problems, a mention has also been added – at the end of the present document – to unresolved issues relating to the non-implementation of certain Court judgments by the United Kingdom.

II. State-by-state overview

1. Italy

4. Mr Pourgourides' report identified the main problems for Italy to be:

- excessive length of judicial proceedings;
- lack of an effective remedy in that regard;
- the expulsion of foreign nationals in violation of the Convention.¹

5. The report also dealt with an issue of "indirect expropriation".²

* Document declassified by the Committee on 28 May 2013.

* The eight states are not listed in alphabetical order. Instead, they are listed in an order which reflects the highest number of judgments, in descending order *per* state, pending execution before the Committee of Ministers: see § 8 of doc. AS/Jur (2013) 14.

¹ "Implementation of Judgments of the European Court of Human Rights" 7th Report by Mr Christos Pourgourides (Cyprus, Group of European People's Party), Doc. 12455 of 20 December 2010, paragraphs 46-59.

at: <http://www.assembly.coe.int/ASP/Doc/XrefViewPDF.asp?FileID=12589&Language=EN>.

² Supra note 1, paragraph 59.

1.1. Excessive length of judicial proceedings

6. This issue has plagued the Italian justice system for decades, the backlog of cases increasing steadily each year. Currently, the Committee of Ministers (CM) is examining more than 2,000 cases concerning this issue.

7. In its Interim Resolution (2010)224 of 2 December 2010³ the CM urged Italy to provide statistics on the situation of the backlog of cases and to adopt effective measures to solve this problem. According to the statistics provided by the Italian authorities, in its action plan of 25 October 2011⁴, an important development can be noted. By the end of 2010, the number of pending cases in the Italian courts had decreased by roughly 360,000 to 5,466,346 and the number of new cases had declined in comparison with previous years mainly due to a new procedure of compulsory preliminary mediation in certain civil law matters. Furthermore, the statistics indicate that the backlog of civil cases had decreased by 4%.

8. The said action plan involves a measure to limit new applications through simplifying certain specific procedures and introducing a minimal court fee in proceedings against administrative sanctions as a deterrent to manifestly ill-founded applications. On 6 October 2011, new legislation entered into force, which seeks to simplify civil proceedings, limiting the types of civil proceedings to three.⁵ Further measures adopted include the digitalisation of case files, allowing easier and faster access through information technology. A uniform method of managing civil case files in appeal courts and tribunals throughout Italy was put into operation at the end of March 2011. Finally, best practices have been disseminated widely and the number of judges had been increased.

9. At the 1136th meeting in March 2012, the CM welcomed the renewed commitment expressed by the Italian authorities concerning excessively lengthy proceedings, as well as the slight decrease in the length of bankruptcy proceedings and in the backlog of civil proceedings. However, it demanded that “*additional large-scale measures*” be adopted, as it considered that the situation was “*deeply worrying*”,⁶ constituted “*a serious danger for the respect of the rule of law, resulting in a denial of rights enshrined in the Convention*” and created “*a serious threat to the effectiveness of the system of the Convention*”. This evaluation was further underscored by a letter, of 14 December 2011, sent by the Registrar of the Court to the Chairperson of the CM, drawing the CM’s attention to the seriousness of the situation in view of the significant number of cases which continue to pour into the Court.⁷

10. At the LAHR Committee’s meeting in April 2012 dedicated to implementation of the Court’s judgments, the Italian delegation indicated the additional measures put in place since the Pourgourides report: 1) in March 2011, a law on mediation was adopted, which stipulated that parties had to refer to a mediator before applying to a court in certain types of cases. Now Italy should be granted time to experiment with these new provisions and to use mediation in other areas of law; 2) it was decided that the remedy against excessive length of proceedings based on the Pinto Law should be an administrative one, and not judicial. Funds for the payment of compensations had been increased but were not yet enough to cover all claims.⁸

11. Despite repeated calls from the Committee of Ministers (see the decision adopted at the 1144th meeting (DH) (June 2012),⁹ the authorities appear to still have not addressed the issues related to the monitoring of the impact of the measures already taken in relation to civil proceedings and to the calendar for the adoption of the other measures envisaged. As regards the administrative proceedings, the last

³ CM/ResDH(2010)224 adopted at 1100th DH meeting of the Minister’s Deputies on 2 December 2010, available at <https://wcd.coe.int/ViewDoc.jsp?id=1715973&Site=CM>.

⁴ Action report on Ceteroni group, DH-DD(2011)898F (available in French only), 25 October 2011, available at: [https://wcd.coe.int/ViewDoc.jsp?Ref=DH-DD\(2011\)898&Language=lanEnglish&Ver=original&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383](https://wcd.coe.int/ViewDoc.jsp?Ref=DH-DD(2011)898&Language=lanEnglish&Ver=original&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383).

⁵ Decree No. 50 entered into force, along with Law No. 69.

⁶ Decisions of the Committee of Ministers concerning the Ceteroni group of cases, 1136th (DH) meeting, 6-8 March 2012, [CM/Del/Dec\(2012\)1136/14 of 6 March 2012](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/Dec(2012)1136/14&Language=lanEnglish&Ver=original&Site=&BackColorInternet=B9BDEE&BackColorIntranet=FFCD4F&BackColorLogged=FFC679), Items 1 and 2, available at: [https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/Dec\(2012\)1136/14&Language=lanEnglish&Ver=original&Site=&BackColorInternet=B9BDEE&BackColorIntranet=FFCD4F&BackColorLogged=FFC679](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/Dec(2012)1136/14&Language=lanEnglish&Ver=original&Site=&BackColorInternet=B9BDEE&BackColorIntranet=FFCD4F&BackColorLogged=FFC679).

⁷ Supra note 6, item 3 of the decision.

⁸ See “Implementation of judgments of the European Court of Human Rights: extracts from the minutes”, AS/Jur (2013) 13, available at: http://www.assembly.coe.int/CommitteeDocs/2013/ajdoc13_2013.pdf.

⁹ Decisions of the Committee of Ministers concerning the Ceteroni group of cases, 1144th (DH) meeting, 4-6 June 2012, CM/Del/Dec(2012)1144/12 of 5 June 2012, [https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/Dec\(2012\)1144/12&Language=lanFrench&Ver=original&Site=&BackColorInternet=B9BDEE&BackColorIntranet=FFCD4F&BackColorLogged=FFC679](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/Dec(2012)1144/12&Language=lanFrench&Ver=original&Site=&BackColorInternet=B9BDEE&BackColorIntranet=FFCD4F&BackColorLogged=FFC679).

information was submitted on 30 July 2012.¹⁰ The authorities indicated that a legislative reform resulted in the adoption in 2010 of a new Code of Administrative Proceedings, which came into force on 26 September 2010. As a consequence of this reform, in 2011, the administrative courts (the Council of State and the regional administrative courts) registered an overall decrease of the backlog. According to the Italian authorities, although the results of this reform are “hampered” by the need to process the backlog, the length of administrative proceedings is presently in a better position when compared to that of the civil proceedings. However, the authorities have not measured the backlog of administrative proceedings and have not yet drawn up a timetable for anticipated medium-term results with a view to assessing the impact of this reform on the backlog and identifying additional measures, if need be¹¹, of which the CM took note in its decision taken at its 1157th (DH) meeting in December 2012.¹²

12. In a letter from the Registrar of the Court to the Chair of the Committee of Ministers dated 22 June 2012, Italy appeared as the first among the seven member States which have the highest number of repetitive applications pending before the Court with more than 8,000 applications concerning the length of proceedings and the implementation of decisions taken under the Pinto law.¹³ At its 1157th (DH) meeting (December 2012), the CM once again recalled that excessive delays in the administration of justice resulted “in a denial of the rights enshrined in the Convention” and were “a serious threat to the effectiveness of the system of the Convention”, “underlined again the urgency to stop the flow of further repetitive applications before the European Court and the urgency to find a sustainable solution” to this structural problem and urged the Italian authorities to provide a “consolidated action plan”.¹⁴

1.2. Lack of effective remedy

13. The *Mostacciolo Giuseppe (I)*¹⁵ group of cases deals with over 130 such cases. The 2010 quasi-pilot judgment *Gaglione and others*¹⁶ concerns 475 applicants, who claimed a delay in the payment of compensation. The Court found in the latter case that delays by the Italian authorities in enforcing “Pinto decisions”¹⁷ ranged from 9 to 49 months, and that in 65% or more of the cases there was a 19-month delay.¹⁸ The Court regarded this to be not only an aggravating factor with respect to Italy’s responsibility under the Convention, but also a threat to the future of the European human rights system.¹⁹ It also noted that almost 4,000 cases concerning, amongst others, delays in paying “Pinto compensation”, were pending before it.

14. In its Interim Resolutions (2009) 42 of 19 March 2009²⁰ and (2010) 224 of 2 December 2010²¹ the CM requested Italy to amend the “Pinto Law” providing compensation for victims of unreasonably long judicial proceedings²². While domestic case law developments show compliance with the criteria set by the Court as regards determination of compensatory amounts, the delays in paying out the compensation awarded by

¹⁰ Communication from the Italian authorities concerning the Ceteroni, Luordo and Mostacciolo cases, [DH-DD\(2012\)718F](https://wcd.coe.int/ViewDoc.jsp?id=1916565&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383), available at: <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2128216&SecMode=1&DocId=1914822&Usage=2>.

¹¹ See comments made by the secretariat of the Department of Execution in “Pending cases: status of execution” for the Ceteroni group, at: http://www.coe.int/t/dghl/monitoring/execution/Reports/pendingCases_en.asp?CaseTitleOrNumber=ceteroni&StateCode=&SectionCode=

¹² Decisions of the Committee of Ministers concerning the Ceteroni group of cases, 1157th (DH) meeting, 4-6 December 2012, CM/Del/Dec(2012)1136/14 of 6 March 2012, Item 4, available at: <https://wcd.coe.int/ViewDoc.jsp?id=1916565&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383>.

¹³ DD(2012)4add2E, available at: <https://wcd.coe.int/ViewDoc.jsp?id=1958057&Site=&BackColorInternet=B9BDEE&BackColorIntranet=FFCD4F&BackColorLogged=FFC679>.

¹⁴ Items 6-8 of the decision, supra note 12.

¹⁵ *Mostacciolo Giuseppe v. Italy*, application No. 64705/01, Judgment of 29 March 2006, for list of cases see: <https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/OJ/DH%282012%291136&Language=lanFrench&Ver=prel0028&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864>.

¹⁶ *Gaglione and others v. Italy*, application no. 45867/07, Judgment of 21 December 2010.

¹⁷ It means national courts’ decisions awarding, under the Pinto Act, compensation for protracted civil proceedings.

¹⁸ Supra note 16, paragraphs 38 and 8.

¹⁹ Supra note 15, paragraph 55.

²⁰ [https://wcd.coe.int/ViewDoc.jsp?Ref=CM/ResDH\(2009\)42&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/ResDH(2009)42&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75).

²¹ Supra note 3.

²² Act No. 89/2001.

national courts are still a serious problem²³. The CM included several proposals in its Interim Resolution CM/ResDH(2010) 224, including amendments of the Pinto Act. On 18 October 2011, Italy transmitted an action plan stating that the Court's and the CM's suggestions were not carried at national level due to the financial crisis. Instead, Italy considered it more effective to allocate additional funds to addressing the root problem, namely the excessive length of proceedings, and resolving the large number of complaints in the judicial system.²⁴ If these problems could be alleviated, the number of "Pinto applications" would decrease and compensations would be paid within the deadlines. According to the Italian authorities, the problem is aggravated by the misuse of the right of petition before the Strasbourg Court by certain Italian lawyers.

15. At its 1136th meeting in March 2012, the Ministers' Deputies welcomed the Italian authorities' commitment towards finding a solution to delays in payment of amounts awarded under the Pinto Act, including possible amendments to this law, and to further strengthening the co-operation with the CM and the Court. However, they also invited the authorities to submit concrete proposals in this respect, along with a calendar for the implementation of proposals.²⁵ In an updated action plan of 30 March 2012, the authorities specified that the following two proposals have been put forward and will be discussed further at the highest level in order to adopt a final strategy: the fiscal deduction of sums awarded in Pinto proceedings and a different system of allocating budgetary resources for payment of those sums. In accordance with the decision adopted at the 1144th meeting (DH) (June 2012), the Italian authorities had to provide the Committee with a detailed explanation on the announced plan for payment of arrears under the Pinto proceedings. No information was provided by the authorities on the outcome of the discussions aimed at defining the final strategy which would allow clearing the arrears in full and avoiding delays in the payment of these sums in the future. The authorities have only confirmed that on 30 October 2012, the Ministry of Justice had begun paying these arrears for the period 2005 – 2008.²⁶

16. Amendments had been made to the Pinto law by Legislative Decree No. 83 issued on 22 June 2012, which came into force on 26 June 2012. The new provisions introduced a written procedure for the examination of the compensation claims. Other provisions conditioned the access to the Pinto remedy upon termination of the main proceedings and excluded or limited the compensation in certain cases. The amendments occasioned an exchange between the CM Secretariat and the authorities as regards their compatibility with the Convention and the European Court's case law on the effectiveness of the remedies and compensation criteria.²⁷ Article 3 §7 of the Pinto law, which provides that the payment of the compensation is made within the limit of the available funds, has not been amended. Under the new legislation, the purely compensatory nature of the Pinto remedy is maintained. At its 1157th (DH) meeting, the CM encouraged the authorities to swiftly finalise the reform of the Pinto law, but it also noted with concern that the said amendments might raise issues as to their compatibility with the Convention.²⁸

1.3. *The expulsion of foreign nationals*

17. The *Saadi* group of cases concerns violations of Articles 3 due to the expulsion of foreign nationals to their country of origin (in these cases, Tunisia), where there is a real risk of the applicant being subjected to ill-treatment.²⁹ In the *Ben Khemais*³⁰ and *Trabelsi*³¹ judgments, Italy had also violated Article 34 of the

²³ According to Article 3, paragraph 7 of the Pinto Act domestic compensations are paid within the limits of the available funds.

²⁴ DD(2011)899F (available in French only) of 18 October 2011, available at: <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2209981&SecMo de=1&DocId=1808006&Usage=2>.

²⁵ Items 4-6 of the decision, *supra* note 6.

²⁶ Communication from the Italian authorities concerning the Ceteroni, Luordo and Mostacciolo cases, DH-DD(2012)1043add, available at:

<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2206825&SecMo de=1&DocId=1954256&Usage=2>.

²⁷ See DH-DD(2012)806 of 13 September 2012 "Observations of the Secretariat regarding the amendments to the Pinto Law, with a view to the examination of the cases of length of proceedings at the 1157th meeting", available at: <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2195956&SecMo de=1&DocId=1923920&Usage=2>; and DH-DD(2012)1001, available at:

<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2206804&SecMo de=1&DocId=1943462&Usage=2>.

²⁸ Items 2 and 3 of the decision, *supra* note 12.

²⁹ For a list of cases grouped with *Saadi v. Italy*, application no. 37201/06, Judgment of 28 February 2008, at: http://www.coe.int/t/dghl/monitoring/execution/Reports/pendingCases_en.asp?CaseTitleOrNumber=&StateCode=ITA&S actionCode=.

³⁰ *Ben Khemais v. Italy*, application no. 246/07, judgment of 6 July 2009.

³¹ *Trabelsi v. Italy*, application no. 50163/08, judgment of 13 April 2010.

Convention as it had disregarded the Court's interim measures ordering it to lift the expulsion orders of the applicants.

18. While at its 1108th DH meeting in March 2011, the CM noted a positive trend in recent case law developments of compliance with the ECtHR's interim measures, two applicants were nonetheless expelled to Tunisia (cases of *Toumi* and *Mannai*).³² In both of these cases, the Court subsequently found a violation of Article 34 of the Convention.³³ The CM is still awaiting information requested from the Italian authorities on issues of compliance with interim measures throughout the justice system as well as the adoption of effective communication channels facilitating compliance with interim measures.³⁴

1.4. Other issues

19. The issue of the practice known as "indirect expropriation" (violations of Article 1 of Protocol No. 1)³⁵ still needs to be tackled.³⁶ The CM is currently examining the *Belvedere Alberghiera SRL* group³⁷, which consists of more than 80 cases.³⁸ Although the Italian authorities have introduced several legislative measures, which the CM welcomed in its Interim Resolution CM/ResDH(2007)3, no reply has been provided so far to its call concerning further general measures. Information is still awaited on whether there is any reduction or suppression of the practice of indirect expropriation, as well as on the dissuasive effect of the Law No. 296/2006, according to which the damages for illegal occupation of land are covered by the budget of the responsible administration. Thus there has been no progress on this issue since Mr Pourgourides' report.

2. Turkey

20. According to the Pourgourides report, the most serious problems concerning Turkey include:

- failure to re-open proceedings;
- repeated imprisonment for conscientious objection;
- violations of the right to freedom of expression;
- excessive length of detention on remand;
- actions of security forces;
- issues concerning Cyprus.³⁹

21. The 2012 annual report of the Committee of Ministers on supervision of the execution of judgments of the European Court of Human Rights (further - "the CM 2012 Annual Report") also lists among the main issues excessive length of judicial proceedings and lack of an effective remedy in respect thereof.⁴⁰

³² Decisions of the Committee of Ministers concerning the Saadi group of cases, 1108th (DH) meeting, 8-10 March 2011, available at:

[https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/Dec\(2011\)1108&Language=lanEnglish&Ver=immediat&Site=DG4&BackColorInternet=B9BDEE&BackColorIntranet=FFCD4F&BackColorLogged=FFC679](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/Dec(2011)1108&Language=lanEnglish&Ver=immediat&Site=DG4&BackColorInternet=B9BDEE&BackColorIntranet=FFCD4F&BackColorLogged=FFC679).

³³ See *Toumi v. Italy* (no. 25716/09), judgment of 5 April 2011; and *Mannai v. Italy* (no. 9961/10), judgment of 27 March 2012.

³⁴ Decisions of the Committee of Ministers, 1100th (DH) meeting, 30 November, 2 December 2010, Annotated Agenda, Decision, Section 4.3:

[https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/OJ/DH\(2010\)1100&Language=lanFrench&Ver=section4.3public&Site=DG4&BackColorInternet=B9BDEE&BackColorIntranet=FFCD4F&BackColorLogged=FFC679](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/OJ/DH(2010)1100&Language=lanFrench&Ver=section4.3public&Site=DG4&BackColorInternet=B9BDEE&BackColorIntranet=FFCD4F&BackColorLogged=FFC679).

The fact that a state may subsequently be deemed as "safe" does not remove the obligation to comply with Convention requirements.

³⁵ In its findings the Court stated that indirect expropriation aimed at legitimizing *de facto* situations brought about by unlawful conduct of public authorities. Furthermore it allowed the public authorities to acquire and transform property without simultaneous compensation.

³⁶ *Supra* note 1, at paragraph 59.

³⁷ *Belvedere Alberghiera SRL v. Italy*, application no. 31524/96, Judgment of 30 August 2000.

³⁸ See Appendix II to Interim Resolution CM/ResDH(2007)3 of 14 February 2007:

<https://wcd.coe.int/ViewDoc.jsp?id=1095781&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383>.

³⁹ *Supra* note 1, paragraph 128.

⁴⁰ See "Supervision of the execution of judgments of the European Court of Human Rights – annual report 2012", at <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2241478&SecMode=1&DocId=1977924&Usage=2>, p. 36.

2.1. Failure to re-open proceedings

22. In the *Hulki Günes v. Turkey*⁴¹ group of cases, the Court found that the applicants were convicted in unfair criminal proceedings on the basis of testimony of witnesses that never appeared before the court or of statements obtained under duress and in the absence of a lawyer (violations of Articles 3 and 6 §§ 1 and 3c).⁴² The Court requested the reopening of proceedings,⁴³ but the Turkish Code of Criminal Procedure only provides for the reopening of judgments finalised before 4 February 2003 and those applications lodged with the Court after that date.⁴⁴

23. As Mr Pourgourides explained in his report, “significant pressure has been brought to bear on the Turkish authorities” regarding this issue for nearly a decade.⁴⁵ Following the CM’s urgent call at its 1136th DH meeting (March 2012) for the Turkish authorities to “translate their political will and determination into concrete action,”⁴⁶ Turkey submitted information on the draft law announced in 2009, which, if adopted, would allow for the reopening of domestic proceedings in the applicants’ cases.⁴⁷ At its 1144th DH meeting (June 2012), the CM noted with satisfaction the information provided by the Turkish authorities on the content of the draft law⁴⁸, which was to be adopted as early as July 2012 if added to the “Third package” of amendments on judicial reform pending before the Turkish Parliament. However, the draft law was not adopted in July 2012 and the Turkish authorities prepared an alternative draft law, which allows the reopening of proceedings in cases under the supervision of the Committee of Ministers as of 15 June 2012, and which requires the reopening of proceedings as an individual measure.⁴⁹ At its 1157th meeting

⁴¹ Application no. 28490/95, judgment of 19 June 2003. For a list of the four cases contained in the group, see Pending cases: current state of execution – Application 28490/95, available at:

http://www.coe.int/t/dghl/monitoring/execution/reports/pendingcases_EN.asp?CaseTitleOrNumber=28490%2F95&StateCode=&SectionCode.

⁴² See supra note 1, paragraph 130.

⁴³ See *Göçmen v. Turkey*, application no. 72000/01, judgment of 17 October 2006, paragraph 87.

⁴⁴ See Interim Resolution concerning the judgment of the European Court of Human Rights of 19 June 2003 in the case of *Hulki Günes* against Turkey, 948th (DH) meeting, 29-30 November 2005, ResDH(2005)113 of 30 November 2005, available at:

[https://wcd.coe.int/ViewDoc.jsp?Ref=ResDH\(2005\)113&Language=lanEnglish&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383](https://wcd.coe.int/ViewDoc.jsp?Ref=ResDH(2005)113&Language=lanEnglish&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383).

⁴⁵ Supra note 1, paragraph 131. See also “Cases of unfair proceedings requiring reopening of domestic proceedings,” Information document, CM/Inf/DH(2009)5rev14 of 28 September 2009, available at:

[https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Inf/DH\(2009\)5&Language=lanEnglish&Ver=rev14&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Inf/DH(2009)5&Language=lanEnglish&Ver=rev14&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383); and in particular see the following documents:

- Letters of 21 February 2005 and of 12 April 2006 from the Chairman of the Committee of Ministers to the Minister of Foreign Affairs of Turkey, Annotated Agenda Section 4: Cases raising special questions (individual measures, measures not yet defined or special problems), 966th (DH) meeting, 6-7 June 2006, CM/Del/OJ/DH(2006)966 Addendum 4 of 18 May 2006, available at:

[https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/OJ/DH\(2006\)966&Language=lanEnglish&Ver=add4&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/OJ/DH(2006)966&Language=lanEnglish&Ver=add4&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864);

- Interim Resolution concerning the Execution of the judgment of the European Court of Human Rights *Hulki Günes* against Turkey, 992nd (DH) meeting, 3-4 April 2007, CM/ResDH(2007)26 of 4 April 2007, available at:

<https://wcd.coe.int/ViewDoc.jsp?id=1115271&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383>;

- Interim Resolution on the execution of the judgment of the European Court of Human Rights *Hulki Günes* against Turkey, 1013th (DH) meeting, 3-5 December 2007, CM/ResDH(2007)150 of 5 December 2007, available at:

<https://wcd.coe.int/ViewDoc.jsp?id=1222771&Site=CM>;

- Decisions of the Committee of Ministers concerning the *Hulki Günes* group of cases, 1035th (DH) meeting, 17-18 September 2008, CM/Del/Dec(2008)1035 of 18 September 2008, available at:

[https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/Dec\(2008\)1035&Language=lanEnglish&Ver=immediat&Site=COE&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/Dec(2008)1035&Language=lanEnglish&Ver=immediat&Site=COE&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864).

⁴⁶ Decisions of the Committee of Ministers concerning the *Hulki Günes* group of cases, 1136th (DH) meeting, 6-8 March 2012, CM/Del/Dec(2012)1136 of 8 March 2012, supra note 6.

⁴⁷ Communication from the government of Turkey in the case of *Hulki Günes* against Turkey, 1144th (DH) meeting, 4-6 June 2012, DH-DD(2012)547 of 4 June 2012, available at:

<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2097385&SecMode=1&DocId=1896570&Usage=2>.

⁴⁸ Decisions of the Committee of Ministers concerning the *Hulki Günes* group of cases, 1144th (DH) meeting, 4-6 June 2012, CM/Del/Dec(2012)1144 of 6 June 2012, supra note 9.

⁴⁹ DH-DD(2012)851 of 24 September 2012, available at:

<https://wcd.coe.int/ViewDoc.jsp?id=1980063&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383>;

and DH-DD(2012)1015 of 5 November 2012, available at:

(December 2012)⁵⁰, the CM noted that this alternative draft law would be submitted to the Turkish Parliament before the end of 2012 within the context of the “Fourth package” of draft laws. It also considered that, if adopted, it would constitute “an adequate response to the execution” of judgments from this group of cases and strongly encouraged the Turkish authorities to keep it informed about the legislative process and “in any event, bring it to an end without any further delay”.⁵¹ At its 1164th (DH) meeting (March 2013), the CM expressed confidence that the Turkish Government and Parliament would translate their political will into finalisation of the said legislative process.⁵² It is to be noted that the “Fourth package” was submitted to the Turkish Parliament for debate on 14 March 2013.⁵³

2.2. Repeated imprisonment for conscientious objection

24. In the case of *Ülke v. Turkey*,⁵⁴ the Court found that Turkey violated Article 3 of the Convention by repeatedly convicting and imprisoning the applicant for conscientious objection.⁵⁵ According to the Court, the Turkish authorities’ actions forced the applicant to go into hiding and endure a life equivalent to “civil death.”⁵⁶

25. After a number of years of inaction and failure to communicate on the side of the Turkish authorities,⁵⁷ the CM, at its 1144th DH meeting (June 2012), was finally able to welcome the fact that the Eskisehir Military Court had lifted the arrest warrant against the applicant for desertion.⁵⁸ Nevertheless, it remained unclear to the CM, “whether the applicant is still subject to further prosecution or conviction and whether he can exercise his civic rights without hindrance.”⁵⁹ As stressed by the applicant’s representative, “the withdrawal of the arrest warrant is important,” but “it will only eliminate the problem partially.”⁶⁰ The CM requested that the Turkish authorities keep it informed of the applicant’s situation, and provide a precise timeline for the

<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2174335&SecMode=1&DocId=1947864&Usage=2>.

See also the decision adopted at the 1150th CM(DH) meeting 24-26 September 2012, CM/Del/Dec(2012)1150/23 of 20 September 2012, available at:

[https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/Dec\(2012\)1150&Language=lanEnglish&Ver=immediat&Site=&BackColorInternet=B9BDEE&BackColorIntranet=FFCD4F&BackColorLogged=FFC679](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/Dec(2012)1150&Language=lanEnglish&Ver=immediat&Site=&BackColorInternet=B9BDEE&BackColorIntranet=FFCD4F&BackColorLogged=FFC679).

⁵⁰ Decisions of the Committee of Ministers concerning the Hulki Gunes group of cases, 1157th (DH) meeting (4-6 December 2012), CM/Del/Dec(2012)1157/26 of 03 December 2012, available at:

[https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/Dec\(2012\)1157&Language=lanEnglish&Ver=immediat&Site=&BackColorInternet=B9BDEE&BackColorIntranet=FFCD4F&BackColorLogged=FFC679](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/Dec(2012)1157&Language=lanEnglish&Ver=immediat&Site=&BackColorInternet=B9BDEE&BackColorIntranet=FFCD4F&BackColorLogged=FFC679).

⁵¹ Supra note 50, items 2 and 3 of the decision.

⁵² Decisions of the Committee of Ministers concerning the Hulki Günes group of cases, 1164th (DH) meeting, 5-7 March 2013, CM/Del/Dec(2013)1164/29 of 4 March 2013, Item 3 of the decision, available at:

[https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/Dec\(2013\)1164&Language=lanEnglish&Ver=immediat&Site=&BackColorInternet=B9BDEE&BackColorIntranet=FFCD4F&BackColorLogged=FFC679](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/Dec(2013)1164&Language=lanEnglish&Ver=immediat&Site=&BackColorInternet=B9BDEE&BackColorIntranet=FFCD4F&BackColorLogged=FFC679).

⁵³ See “More Sessions for the Judicial Reform Bill”, Hurriyet Daily News, 15 March 2013, available at:

<http://www.hurriyetdailynews.com/more-sessions-for-judicial-reform-bill.aspx?pageID=238&nID=43007&NewsCatID=338>.

⁵⁴ Application no. 39437/98, judgment of 24 January 2006.

⁵⁵ Ibid, paragraph 64.

⁵⁶ Ibid, paragraph 62.

⁵⁷ For example, see:

- Decisions of the Committee of Ministers concerning the Ülke case, 1100th (DH) meeting, 1-2 December 2010, CM/Del/Dec(2010)1100 of 6 December 2010, supra note 3;

- Decisions of the Committee of Ministers concerning the Ülke case, 1108th (DH) meeting, 8-10 March 2011, CM/Del/Dec(2011)1108/5 of 11 March 2011, supra note 32;

- Decisions of the Committee of Ministers concerning the Ülke case, 1115th (DH) meeting, 7-8 June 2011, CM/Del/Dec(2011)1115/24 of 10 June 2011, available at:

[https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/Dec\(2011\)1115/24&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/Dec(2011)1115/24&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383).

⁵⁸ Decisions of the Committee of Ministers concerning the Ülke case, 1144th (DH) meeting, 4-6 June 2012, CM/Del/Dec(2012)1144 of 6 June 2012, supra note 9.

⁵⁹ Supra note 58.

⁶⁰ Communication from the applicant’s representative in the case of Ülke against Turkey, 1144th (DH) meeting, 4-6 June 2012, DH-DD(2012)545 of 1 June 2012, available at:

<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2126722&SecMode=1&DocId=1896048&Usage=2>.

See also the applicant’s representative’s communication of 21 September 2012, DD-DH(2012)844 of 21 September 2012, available at:

<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2145544&SecMode=1&DocId=1928242&Usage=2>.

adoption of the required general measures, on which consultations were on-going among relevant Turkish authorities.⁶¹

26. At its 1150th (DH) meeting (September 2012), the CM noted with interest the assurances given by the Turkish authorities⁶² that the applicant could exercise his civic rights without any hindrance, obtain a passport and travel abroad.⁶³ However, as a result of the application of the legislation in force, an investigation against the applicant for desertion was still pending, and therefore the applicant could still be theoretically subjected to prosecution and conviction.⁶⁴ In December 2012, the CM noted with concern that further individual measures were still needed in the cases of *Erçep and Feti Demirtaş*.⁶⁵ It urged the Turkish authorities to erase the consequences of the violations for the applicants⁶⁶ and to “take the necessary legislative measures with a view to preventing the repetitive prosecution and conviction of conscientious objectors and to ensure that an effective and accessible procedure is made available to them in order to establish whether they are entitled to conscientious objector status”.⁶⁷

2.3. Freedom of expression

27. The Court found violations of the right of freedom of expression in over 100 cases against Turkey, 93 of which are pending execution before the CM.⁶⁸

28. Although Turkey has enacted a number of reforms aimed at adequately protecting freedom of speech and pluralism since 1998,⁶⁹ Mr Pourgourides concluded in his report that the legislative amendments put forth and training initiatives undertaken did “not eradicate the root of the problem” and were “merely a different expression of the same Convention-violating substance.”⁷⁰ It would appear that no apparent progress has been made since then, although in November 2011 the Secretary General of the Council of Europe announced that the Council of Europe would implement a project on “Freedom of Expression and Media in Turkey”, specifically designed to address the problems stemming from this group of judgments.⁷¹

29. From 27 to 29 April 2011 the then Council of Europe Commissioner for Human Rights, Mr Thomas Hammarberg, visited Turkey to gather information on the latest press and media freedom developments.⁷² In his report, Mr Hammarberg observed that the recent changes to the Turkish Constitution were “likely to have a positive effect on freedom of expression and media freedom.”⁷³ He noted, however, that “the letter and spirit of the 1982 Constitution continue to lie at the very heart of the origins of the serious, long-standing dysfunctions” affecting freedom of expression in Turkey. Moreover, he echoed the Pourgourides report’s

⁶¹ Supra note 50.

⁶² DH-DD(2012)791 of 11 September 2012, available at:

<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2207854&SecMode=1&DocId=1922876&Usage=2>.

⁶³ Item 2, Decisions of the Committee of Ministers concerning the Ulke case, 1150th (DH) meeting (24-26 September 2012), [CM/Del/Dec\(2012\)1150/24 of 20 September 2012](https://wcd.coe.int/CM/Del/Dec(2012)1150/24_of_20_September_2012), supra note 49 .

⁶⁴ Ibid, item 3. See also DH-DD(2012)1014 of 30 October 2012, available at:

<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2184847&SecMode=1&DocId=1947850&Usage=2>.

⁶⁵ Item 2, Decisions of the Committee of Ministers concerning the Ulke case, 1157th (DH) meeting (4-6 December 2012), supra note 12.

⁶⁶ Ibid, item 3.

⁶⁷ Ibid, item 4.

⁶⁸ See the *Inçal v. Turkey* (Application no. 22678/93, judgment of 9 June 1998) group of cases; for a list of the cases in this group, see “Inçal group against Turkey: List of cases and information concerning the adoption of individual measures – 102 cases concerning freedom of expression,” 1100th (DH) meeting, 1-2 December 2010, CM/Del/OJ/DH(2010)1100appendix20E of 23 September 2010, available at:

[https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/OJ/DH\(2010\)1100&Language=lanEnglish&Ver=prel0020&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/OJ/DH(2010)1100&Language=lanEnglish&Ver=prel0020&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383).

⁶⁹ Supra note 1, paragraphs 134-136.

⁷⁰ Ibid.

⁷¹ Pending cases: current state of execution, *Inçal v. Turkey*, 93 cases mainly concerning freedom of expression, available at:

https://www.coe.int/t/dghl/monitoring/execution/Reports/pendingCases_en.asp?CaseTitleOrNumber=incal&StateCode=&SectionCode=

⁷² See “Freedom of expression and media freedom in Turkey,” Report by Thomas Hammarberg (former Commissioner for Human Rights of the Council of Europe) following his visit to Turkey from 27 to 29 April 2011, CommDH(2011)25 of 12 July 2011, available at:

<https://wcd.coe.int/com.instranet.InstraServlet?Index=no&command=com.instranet.CmdBlobGet&InstranetImage=1884670&SecMode=1&DocId=1765908&Usage=2>.

⁷³ Ibid, p. 2.

concerns that “the various amendments to the Turkish Criminal Code and the Anti-Terrorism Act have not been sufficient to effectively ensure freedom of expression.”⁷⁴

30. Among the issues highlighted in Mr Hammarberg’s report were the on-going lack of proportionality in the interpretation of the statutory provisions and their application by courts and prosecutors, the absence from the Turkish legal system of the defences of truth and public interest, and the unfairness of detention and trial proceedings in cases related to freedom of speech. Mr Hammarberg “urge[d] the Turkish authorities to address these problems through legislative and practical measures, as well as through systematic training and awareness raising activities within the justice system.”⁷⁵

2.4. Excessive length of detention on remand

31. There are currently over 120 excessive length of detention on remand cases against Turkey pending execution before the CM.⁷⁶

32. The effectiveness of the measures taken by the Turkish authorities to solve this problem, such as amendments to the Code of Criminal Procedure requiring that reasons be given for detention, that detention be periodically reviewed, and that detention periods not exceed a maximum length of time, has not been confirmed yet. In his report, Mr Pourgourides recognised these steps as positive developments, noted that more information is required, and urged Turkey to introduce “an effective remedy to challenge the lawfulness of detention on remand.”⁷⁷ Similarly, in the report following his visit to Turkey in October 2011, Mr Hammarberg acknowledged Turkey’s efforts to eradicate this systemic problem, but noted that more needed to be done, particularly with regards to the use of adequate alternatives and the establishment of an effective remedy.⁷⁸

33. Information on the Turkish courts’ practice on justifying continued detention and providing compensation for unlawful detention had been awaited since 2009.⁷⁹ In June 2011, the Turkish authorities informed the CM that a working group was set up in the Ministry of Justice in order to examine the legislative amendments required to execute these judgments and that further training of judges was envisaged.⁸⁰ At the LAHR Committee’s meeting in January 2013 concerning implementation of the Court judgments, the Turkish delegation submitted that the percentage of detained persons had been reduced from 49% to 23 % and this measure was being used only in 1% of criminal cases. In only 4 % of cases detention on remand lasted over 3 years.⁸¹

2.5. Actions of security forces

34. Despite the positive changes made to the Turkish legislative framework governing the security forces’ behaviour and the training of law enforcement officers,⁸² there are over 60 cases regarding the lack of effective investigation into the actions of Turkish security forces currently pending execution before the CM.⁸³

⁷⁴ Ibid.

⁷⁵ Ibid.

⁷⁶ See the *Halise Demirel v. Turkey* (Application no. 39324/98, judgment of 28 January 2003) group of cases; for a list of the cases in this group, see “Demirel group against Turkey: List of cases and information concerning individual measures – 121 cases of length of detention on remand and of length of criminal proceedings,” 1100th (DH) meeting, 1-2 December 2010, CM/Del/OJ/DH(2010)1100appendix21E of 23 September 2010, available at: [https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/OJ/DH\(2010\)1100&Language=lanEnglish&Ver=prel0021&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/OJ/DH(2010)1100&Language=lanEnglish&Ver=prel0021&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383).

⁷⁷ Supra note 1, paragraphs 138-139.

⁷⁸ “Administration of justice and protection of human rights in Turkey,” Report by Thomas Hammarberg (former Commissioner for Human Rights of the Council of Europe) following his visit to Turkey from 10 to 14 October 2011, CommDH(2012)2 of 10 January 2012, pp. 2-3, available at: <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2005423&SecMode=1&DocId=1842380&Usage=2>.

⁷⁹ Pending cases: current state of execution, Demirel group of cases, available at:

http://www.coe.int/t/dghl/monitoring/execution/Reports/pendingCases_en.asp?CaseTitleOrNumber=demirel&StateCode=&SectionCode=

⁸⁰ DH-DD(2011)578E of 5 August 2011, available at:

<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=1893451&SecMode=1&DocId=1769342&Usage=2>.

⁸¹ See AS/Jur (2013) 13, supra note 8.

⁸² See supra note 1, paragraphs 140-141.

⁸³ See the *Bati and others v. Turkey* (Application nos. 33097/96 and 57834/00, judgment of 3 June 2004) group of cases; for a list of the cases in this group, see “Bati group of cases against Turkey – 68 cases concerning the lack of effective

35. According to the Turkish authorities' action plan of 29 July 2011 for the execution of the *Bati and others v. Turkey* group of cases,⁸⁴ the new Criminal Code (No. 5237) extends the prescription period after which wrongful actions of the security forces may no longer be investigated or punished. Besides that, in November 2011, the Ministry of Justice organised an international seminar on the execution of judgments of the ECtHR. The issue of effective investigations is to be considered in the framework of professional training for judges and prosecutors and a road map for the execution of the judgments from this group is being prepared.⁸⁵

2.6. Issues concerning Cyprus

36. In the interstate case of *Cyprus v. Turkey*,⁸⁶ the Court found multiple violations of the Convention in connection with Turkey's 1974 military intervention in Cyprus concerning Greek-Cypriot missing persons and their relatives, the property rights of displaced Greek Cypriots, as well as the living conditions of Greek Cypriots and the rights of Greek Cypriots in the northern part of Cyprus. In his report, Mr Pourgourides highlighted the lack of progress in resolving the issue of missing persons, and also focused on the issue of the property rights of displaced Greek Cypriots.⁸⁷

37. Despite the CM's close supervision, issues concerning Cyprus remain. At its 1128th (November-December 2011), 1136th (March 2012), 1144th (June 2012), 1157th (December 2012) and 1164th (March 2013) DH meetings, the CM discussed these matters at length.⁸⁸ As regards the issue of homes and other immovable property of displaced Greek Cypriots (violation of Articles 8 and 13 and Article 1 of Protocol No. 1), the CM decided to postpone its examination since the ECtHR has been seized of a request under Article 41⁸⁹. Concerning the property rights of Greek-Cypriots residing in the northern part of Cyprus (violation of Article 1 of Protocol No. 1), the CM took note of the information provided by both the Cypriot and Turkish authorities and decided to resume the examination of this issue on the basis of an assessment to be prepared by its Secretariat.⁹⁰ Moreover, as regards the issue of Greek-Cypriot missing persons and their relatives (violations of Articles 2, 3 and 5), at its 1144th DH meeting (June 2012) the CM encouraged Turkey's efforts undertaken following the identification of missing persons by the Committee on Missing Persons in Cyprus ("CMP").⁹¹ The CM, however, underlined the urgency to make further progress in respect of effective investigations into deaths of persons identified. It insisted Turkey must "adopt a proactive approach as regards effective investigations into the fate of persons who are still missing"⁹² and requested "further concrete information on the steps taken by the authorities aimed at giving the CMP and investigative officers access to all relevant information and places, in particular concerning military zones."⁹³ At its 1157th

investigations in respect of the actions of the Turkish security forces," 1120th (DH) meeting, 13-14 September 2011, CM/Del/OJ/DH(2011)1120list5 of 17 June 2011, available at:

[https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/OJ/DH\(2011\)1120&Language=lanEnglish&Ver=prel0005&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/OJ/DH(2011)1120&Language=lanEnglish&Ver=prel0005&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383).

⁸⁴ Action plan (available in French only), DH-DD(2011)559F of 1 August 2011, available at:

<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=1893337&SecMode=1&DocId=1768336&Usage=2>.

⁸⁵ Pending cases: current state of execution, *Bati and others v. Turkey*, available at:

http://www.coe.int/t/dghl/monitoring/execution/Reports/pendingCases_en.asp?CaseTitleOrNumber=bati&StateCode=&SectionCode=

⁸⁶ Application no. 25781/94, judgment of 10 May 2001.

⁸⁷ Supra note 1, paragraphs 144-147.

⁸⁸ See Decisions of the Committee of Ministers concerning the Cyprus case, 1128th (DH) meeting, 29 November-2 December 2011, CM/Del/Dec(2011)1128/20 of 2 December 2011, available at:

[https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/Dec\(2011\)1128/20&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/Dec(2011)1128/20&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383);

Decisions of the Committee of Ministers concerning the Cyprus case 1136th (DH) meeting, 6-8 March 2012, CM/Del/Dec(2012)1136 of 8 March 2012, supra note 6 and Decisions of the Committee of Ministers concerning the cases *Cyprus v. Turkey* and *Varnava and others v. Turkey*: 1144th (DH) meeting, 4-6 June 2012, CM/Del/Dec(2012)1144 of 6 June 2012, supra note 9; 1164th (DH) meeting, 5-7 March 2013, CM/Del/Dec(2013)1164/29 of 4 March 2013, supra note 52.

⁸⁹ Decisions of the Committee of Ministers concerning the cases *Cyprus v. Turkey* and *Varnava v. Turkey*, 1157th (DH) meeting, 4-6 December 2012, CM/Del/Dec(2012)1157 of 10 December 2012, supra note 6, and 1164th (DH) meeting, 5-7 March 2013, CM/Del/Dec(2013)1164/29 of 4 March 2013, supra note 52.

⁹⁰ Items 3 and 4 of the decision taken at the 1164th meeting, supra note 52

⁹¹ Decisions of the Committee of Ministers concerning the *Cyprus v. Turkey* and *Varnava v. Turkey* cases, 1144th (DH) meeting, 4-6 June 2012, CM/Del/Dec(2012)1144 of 6 June 2012, supra note 9.

⁹² Ibid.

⁹³ Ibid. See also Communication from the applicant's representative (25/10/12) in the case of *Varnava v. Turkey* (application No. 16064/90), 1157th (DH) meeting, 4-6 December 2012, DH-DD(2012)1012 of 30 October 2012.

(DH) and 1164th (DH) meetings (respectively in December 2012 and March 2013), the CM recalled these conclusions.

38. In his report, Mr Pourgourides⁹⁴ expressed concern about the case of *Xenides-Arestis v. Turkey*⁹⁵, in which, despite two interim resolutions of the CM, there had been no progress in payment of the just satisfaction awarded in 2006 by the Court. He stressed that this situation was “an unacceptable state of affairs”. Following the ECtHR’s 2010 inadmissibility decision in the case of *Demopoulos v. Turkey* (March 2010), the Committee of Ministers is now analysing its impact on the individual and general measures in the *Xenides-Arestis* case. According to the Turkish delegation, the applicant could now bring claims to the Immovable Property Committee and that was why the Secretariat of the Committee of Ministers had promised to close this aspect of the case. The Turkish authorities were waiting for the final assessment of the Committee of Ministers.⁹⁶

2.7. Excessive length of judicial proceedings and lack of an effective remedy

39. In the *Ormanci and Others v. Turkey* group of cases, the Court found excessive the length of proceedings before administrative, civil, criminal, labour, land registry, military, commercial and consumers’ courts and decided that Turkey did not have an effective remedy in this respect. Currently, more than 250 cases concerning these issues are pending before the Committee of Ministers.⁹⁷ In the case of *Ümmühan Kaplan v. Turkey* the Court noted that the repetitive violations found against Turkey on account of excessive length of proceedings had been continuing for a number of years and that this situation constituted a systemic and a structural problem in the Turkish legal order. The Court therefore decided to apply the pilot judgment procedure and held that Turkey should introduce an effective domestic remedy against excessive length of proceedings in line with the Convention principles as interpreted by the Court in its case-law. The Court also indicated that Turkey should introduce this remedy within one year after the judgment in the *Ümmühan Kaplan* case became final (the deadline will expire on 20 June 2013).⁹⁸

40. The Turkish authorities submitted an action plan on 11 January 2013 which sets out in detail the five main measures taken against excessive length of proceedings: judicial reform strategies, legal and administrative regulations, human resources developments, increase in budget, new court premises and computerised court management systems. The action plan also contains information on the introduction of domestic remedies against excessive length of proceedings.⁹⁹

41. At its 1164th meeting (March 2013), the Committee of Ministers noted with interest the measures proposed by the authorities but decided that further information, particularly concerning the statistics and practical application of the measures, was needed to assess their viability and compliance with the Convention standards.¹⁰⁰

3. Russian Federation

42. The Pourgourides report defined a number of areas, which give rise to the overload of the Convention system due to underlying structural problems and which are of special seriousness:

- non-enforcement of domestic judicial decisions;

Requesting assistance in executing the said judgment, the representative requests the amendment of the terms of reference of the CMP. Available at:

<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2181451&SecMode=1&DocId=1947220&Usage=2>.

⁹⁴ Supra note 1, paragraph 147.

⁹⁵ Application No. 46347/99, judgments of 22 December 2005 and 7 December 2006.

⁹⁶ See AS/Jur (2013) 13, supra note 8.

⁹⁷ For a list of cases in the group see “Cases against Turkey”, 1164th (DH) meeting, 5-7 March 2013, CM/Del/Dec(2013)1164/31 of 4 March 2013, available at:

<https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/OJ/DH%282013%291164&Language=lanEnglish&Ver=prel0040&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864>.

⁹⁸ *Ümmühan Kaplan v. Turkey* (no. 24240/07), judgment of 20 March 2012, See Press release for the judgment in the case, available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=003-3883609-4473675>.

⁹⁹ *DH-DD(2013)82E*, available at:

<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2246881&SecMode=1&DocId=1975048&Usage=2>.

¹⁰⁰ See Decisions of the Committee of Ministers concerning the Ormanci and Ümmühan Kaplan group of cases, 1164th (DH) meeting, 5-7 March 2012, CM/Del/Dec(2013)1164/31, supra note 52.

- violation of the principle of legal certainty on account of the quashing of final judicial decisions through the “supervisory review procedure” (Nadzor);
- unacceptable conditions of detention on remand, in particular in pre-trial detention centres;
- excessive length of and lack of relevant and sufficient reasons for detention on remand;
- torture and ill-treatment in police custody and lack of an effective domestic investigation in this respect.¹⁰¹

43. The report also focused on the actions of the security forces in the Chechen Republic.¹⁰² Additionally, at the June 2012 meeting of the LAHR Committee attention was drawn to Russia’s disregard of the Court’s interim measures indicated under Rule 39 of the Rules of Court and violations of the freedom of assembly coupled with discrimination on the grounds of sexual orientation.

3.1. *Non-enforcement of domestic judicial decisions*

44. In 2009, the Court adopted a pilot judgment in the case of *Burdov v. Russia (No. 2)*,¹⁰³ imposing on the Russian authorities an obligation to introduce in their national legal system an effective remedy for non-enforcement of domestic judicial decisions. A remedy was put in place by two new federal laws, which came into force on 4 May 2010. This new remedy allows claims for compensation for extremely lengthy judicial proceedings as well as delayed non-enforcement of domestic judgments delivered against the state. The Court has since required applicants to make use of this law before complaining to the ECtHR.¹⁰⁴

45. In its latest Interim Resolution CM/ResDH(2011)293,¹⁰⁵ the CM welcomed the improvements that have occurred following the pilot judgment concerning this issue. It also decided to close the examination of the issue with respect to the specific obligations¹⁰⁶ laid down in the pilot judgment and to join the examination of further general measures with the *Timofeyev* group,¹⁰⁷ in which it identifies and addresses underlying structural problems of non-enforcement more generally.

46. Notwithstanding this progress, the Court held in two recent judgments¹⁰⁸ that the new legislation did not resolve the specific problem of failure to enforce decisions ordering the provision of housing to 50 members of the Russian armed forces. The Court noted with regret that there was still no remedy available in Russia with respect to complaints relating to such delays, and that the problem remained unresolved despite the Compensation Act. At the same time, the Court invited the Russian authorities to tackle the structural problem in question in the context of another group of cases¹⁰⁹ communicated to the Government on 10 April 2012 with a view to a possible pilot judgment dealing with non-enforcement or delayed enforcement of judicial decisions imposing obligations in kind on the state¹¹⁰. Nearly 500 similar cases are pending before the Court.¹¹¹

¹⁰¹ Supra note 1, paragraph 108.

¹⁰² Ibid, paragraphs 126-127.

¹⁰³ *Burdov v. Russia (No. 2)*, Application No. 33509/04, Judgment of 15 January 2009.

¹⁰⁴ *Nagovitsyn and Nalgiyev v. Russia (dec.)*, application nos. 27451/09 and 60650/09, judgments of 23 September 2010.

¹⁰⁵ CM/ResDH(2011)293 of 2 December 2011, available at:

[https://wcd.coe.int/ViewDoc.jsp?Ref=CM/ResDH\(2011\)293&Language=lanEnglish&Site=DG4&BackColorInternet=B9BDEE&BackColorIntranet=FFCD4F&BackColorLogged=FFC679](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/ResDH(2011)293&Language=lanEnglish&Site=DG4&BackColorInternet=B9BDEE&BackColorIntranet=FFCD4F&BackColorLogged=FFC679).

¹⁰⁶ Specific obligations were: to set-up an effective domestic remedy or combination of such remedies which secures adequate and sufficient redress for non-enforcement or delayed enforcement of domestic judgments in line with the Convention principles as established in the Court’s case-law and to grant such redress to all applicants in the cases lodged with the Court before the delivery of the pilot judgment, see *Burdov v. Russia (no. 2)*, supra note 103.

¹⁰⁷ *Timofeyev v. Russia* (application no. 58263/00), judgment of 23 October 2003. The group comprises 291 cases, which concern non-enforcement or delayed enforcement of domestic judicial decisions and lack of an effective remedy in this respect; for a list of cases:

[https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/OJ/DH\(2012\)1136&Language=lanFrench&Ver=prel0037&Site=DG4&BackColorInternet=B9BDEE&BackColorIntranet=FFCD4F&BackColorLogged=FFC679](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/OJ/DH(2012)1136&Language=lanFrench&Ver=prel0037&Site=DG4&BackColorInternet=B9BDEE&BackColorIntranet=FFCD4F&BackColorLogged=FFC679); see also Interim Resolution CM/ResDH(2009) 43, 19 March 2009, available at:

[https://wcd.coe.int/ViewDoc.jsp?Ref=CM/ResDH\(2009\)43&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/ResDH(2009)43&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383).

¹⁰⁸ *Ilyushkin and others v. Russia A* (application no. 5734/08) and *Kalinkin and others v. Russia* (application no. 16967/10), judgments of 17 April 2012.

¹⁰⁹ *Gerasimov and 14 other applications v. Russia*, application no. 29920/05.

¹¹⁰ Such as the provision of housing, housing maintenance and repair services, provision of a car for a disabled person, etc.

¹¹¹ See Press Release, ECHR 170 (2012), 17 April 2012, available at:

<http://cmiskp.echr.coe.int/tkp197/view.asp?action=open&documentId=906283&portal=hbkm&source=externalbydocnumb&table=F69A27FD8FB86142BF01C1166DEA398649>.

3.2. Violation of the principle of legal certainty on account of the quashing of final judicial decisions through the “supervisory review procedure”

47. The Supervisory Review Procedure (*nadzor*), which has led to the quashing of final judicial decisions under the Code of Civil Procedure, has been another cause of multiple clone cases at the ECtHR. In 2003, the Court found a violation of Article 6§1 of the ECHR in the case of *Ryabykh v. Russia*.¹¹² Although two legislative reforms have been undertaken since, the ECtHR did not regard them as sufficient to solve the problem.¹¹³ The newest reform of the Code of Civil Procedure, aimed at the introduction of appeal courts in the system of Russian courts of ordinary jurisdiction, was adopted in December 2010 and entered into force in January 2012. This reform has not yet been subject to the assessment by the ECtHR.¹¹⁴

48. Currently, there are nearly 90 cases grouped with the *Ryabykh* case.¹¹⁵ Due to the continuing flow of applications to the Court, the latter is likely – so it is understood – to deliver a pilot judgment on this issue.¹¹⁶ According to Mr Pourgourides, the above mentioned (third) reform in respect of this problem should be made a top political priority.¹¹⁷

3.3. Poor conditions of pre-trial detention and its excessive length

49. The *Kalashnikov* group comprises 71 cases under the CM supervision in which the ECtHR found that the poor conditions of pre-trial detention, particularly the severe overcrowding and unsanitary environment, amounted to degrading treatment (violations of Article 3 of the ECHR).¹¹⁸ A further 61 cases concern unlawful detention, excessive length and insufficient grounds for extending detention on remand (violations of Article 5).¹¹⁹ Communications regarding a number of specific cases¹²⁰ have been submitted to the CM, but until now the measures taken (and envisaged) are not regarded as satisfactory.¹²¹

50. In January 2012, the Court delivered a pilot judgment in the case of *Ananyev and others v. Russia*¹²², in which it found that inadequate conditions of detention were a recurrent structural problem in Russia resulting in a malfunctioning of its penitentiary system, with insufficient legal and administrative safeguards. It further noted that the primary cause of overcrowding was the excessive use of pre-trial detention without proper justification and the excessive duration of such detention. Remand in custody had to be an exceptional measure rather than the norm, and preventive and compensatory remedies had to be introduced. The Court held that the Russian authorities had to produce, within six months from the date on which the judgment becomes final, a binding time frame for resolving these problems. In view of the fundamental nature of Article 3, the Court did not adjourn the examination of similar applications pending before it. At its 1144th meeting (June 2012), the CM recalled the pressing need for solving these issues of inadequate detention conditions, and urged the Russian Federation to produce a binding time frame for the setting up of domestic remedies as required by the judgment, as well as an action plan outlining other general measures to be taken.¹²³ This case was further examined at the 1150th (September 2012), 1157th

¹¹² Application No. 52854/99, judgment of 24 July 2003.

¹¹³ See *Martynets v. Russia* (application no. 29612/09), decision of 5 November 2009.

¹¹⁴ See the Court’s questions in the case of *Ryabkin and others* (application no. 52166/08) of 6 April 2011, at: <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=ryabkin&sessionid=100017108&skin=hudoc-cc-en>

¹¹⁵ As of 6 March 2012, list available at:

[https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/OJ/DH\(2012\)1136&Language=lanFrench&Ver=prel0034&Site=DG4&BackColorInternet=B9BDEE&BackColorIntranet=FFCD4F&BackColorLogged=FFC679](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/OJ/DH(2012)1136&Language=lanFrench&Ver=prel0034&Site=DG4&BackColorInternet=B9BDEE&BackColorIntranet=FFCD4F&BackColorLogged=FFC679).

¹¹⁶ See additional questions to the parties in the application of *Ryabykh and others v. Russia* (application no. 52166/08), judgment of 6 April 2011, available at:

<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=Ryabkin&sessionid=92565400&skin=hudoc-cc-en>.

¹¹⁷ *Supra* note 1, paragraph 117.

¹¹⁸ See *Kalashnikov v. Russia* (application no. 47095/99), judgment of 15 July 2002; List of 71 cases grouped with it as of 6 March 2012, available at:

[https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/OJ/DH\(2012\)1136&Language=lanFrench&Ver=prel0020&Site=DG4&BackColorInternet=B9BDEE&BackColorIntranet=FFCD4F&BackColorLogged=FFC679](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/OJ/DH(2012)1136&Language=lanFrench&Ver=prel0020&Site=DG4&BackColorInternet=B9BDEE&BackColorIntranet=FFCD4F&BackColorLogged=FFC679).

¹¹⁹ *Kiyakhin v. Russia* (application no. 46082/99), judgment of 30 November 2004; list of cases grouped with it, last updated on 6 March 2012, available at: <https://wcd.coe.int/ViewDoc.jsp?id=1890505>.

¹²⁰ See documents available at: http://www.coe.int/t/dghl/monitoring/execution/Themes/Add_info/RUS-Kalashnikov_en.asp and http://www.coe.int/t/dghl/monitoring/execution/Themes/Add_info/RUS-ai2_en.asp.

¹²¹ See Interim Resolution CM/ResDH(2010)35, available at: <https://wcd.coe.int/ViewDoc.jsp?id=1594661&Site=CM>.

¹²² *Ananyev and others v. Russia* (application no. 42525/07), judgment of 10 January 2012.

¹²³ See the decisions of the Committee of Ministers concerning this group of cases, 1144th (DH) meeting, *supra* note 9.

(December 2012) and 1164th (March 2013) CM (DH) meetings. An action plan and an action report were provided by the Russian authorities in October¹²⁴ and November 2012¹²⁵, which were welcomed by the CM at the 1157th meeting (December 2012); a further assessment of the action plan by the CM Secretariat is awaited.¹²⁶ A communication from the NGOs concerning this case was received by the CM on 29 November 2012.¹²⁷

3.4. *Ill-treatment in police custody and lack of an effective investigation in this respect*

51. In the case of *Mikheyev* and 33 similar cases, the Court found that the applicants had been subject to ill-treatment in police custody and that the state subsequently either failed entirely to investigate wrongdoing by state officials or did it ineffectively.¹²⁸ In 2011, in the course of a comprehensive reform of the Ministry of Interior, Russia has adopted a new law "On Police" and has taken a number of other measures to prevent new similar violations.¹²⁹ However, as stressed in the Pourgourides' report, this law, which was described by the Russian authorities as capable of contributing to the solution of numerous problems, particularly those concerning the prevention of torture and ill-treatment of detainees, fails to address important issues such as safeguards in police custody.¹³⁰ The CM assessed the state of implementation of this group of cases for the last time at its 1100th DH meeting in November 2010¹³¹ and noted that there were still issues requiring further general measures to ensure effective protection against torture and ill-treatment.¹³²

3.5. *Actions of the security forces in the Chechen Republic*

52. Since 2005 the Court has found grave human rights violations in approximately 170 cases against the Russian Federation caused by the action of security forces in the Chechen Republic between 1999 and 2003 (unlawful killings, unacknowledged detention, disappearances, torture, destruction of property, lack of effective investigations as well as of effective domestic remedies).¹³³

53. Since then, systemic problems of the state's failure to effectively investigate and provide domestic remedies are still prevalent. The CM has consistently urged the Russian authorities to improve the legal and regulatory framework governing the anti-terrorist activities of security forces, to ensure accountability of perpetrators, to provide domestic remedies for victims and to enhance awareness-raising and training of members of security forces.

54. In June 2011, the CM Secretariat held bilateral consultations with Russian investigators, prosecutors and judges as well as victims and their representatives in Grozny. Throughout 2011 the Russian authorities have provided information concerning the measures adopted at national level to remedy victims and conduct effective investigation.¹³⁴

¹²⁴ DH-DD(2012)1009E, at:

<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2173309&SecMo de=1&DocId=1945466&Usage=2>.

¹²⁵ DH-DD(2012)1072E, at:

<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2185249&SecMo de=1&DocId=1953694&Usage=2>.

¹²⁶ Items 2, 3 and 7 of the CM decision, 1157th (DH) meeting, 4-6 December 2012, supra note 12.

¹²⁷ DH-DD (2013)92E, available at:

<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2231113&SecMo de=1&DocId=1976514&Usage=2>.

¹²⁸ *Mikheyev v. Russia* (application no. 77617/01), judgment of 26 January 2006; *Mikheyev* group list as of 6 March 2012:

[https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/OJ/DH\(2012\)1136&Language=lanFrench&Ver=prel0027&Site=DG4&BackColorInternet=B9BDEE&BackColorIntranet=FFCD4F&BackColorLogged=FFC679](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/OJ/DH(2012)1136&Language=lanFrench&Ver=prel0027&Site=DG4&BackColorInternet=B9BDEE&BackColorIntranet=FFCD4F&BackColorLogged=FFC679).

¹²⁹ As described in Communication from the Russian authorities in the *Mikheyev* group of cases against the Russian Federation, DH - DD(2010)591E, 24 November 2010, available at:

<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=1772833&SecMo de=1&DocId=1662198&Usage=2>.

¹³⁰ Supra note 1, paragraph 124.

¹³¹ Supra note 3.

¹³² See also communication from NGOs on this subject:

<https://wcd.coe.int/ViewBlob.jsp?id=1661499&SourceFile=1&BlobId=1725331&DocId=1615120> (1 September 2010).

¹³³ See list of cases in *Khashiyev v. Russia* (application no. 57942/00), judgment of 24 February 2005, available at: [https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/OJ/DH\(2012\)1136&Language=lanFrench&Ver=prel0021&Site=DG4&BackColorInternet=B9BDEE&BackColorIntranet=FFCD4F&BackColorLogged=FFC679](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/OJ/DH(2012)1136&Language=lanFrench&Ver=prel0021&Site=DG4&BackColorInternet=B9BDEE&BackColorIntranet=FFCD4F&BackColorLogged=FFC679) (6 March 2012).

¹³⁴ See DH(2011)130E, DD(2011)977E; measures include the following: setting up of a Special Investigating Unit as well as Special Supervising Unit; setting up of appropriate regulatory frameworks governing activities of prosecutors and investigators as well as governing the search for disappeared people, efforts with a view to remedying the shortcomings

55. In its Interim Resolution, adopted at the 1128th meeting in November 2011, the CM criticised the lack of decisive progress in domestic investigations with regard to the grave human rights violations identified in the ECtHR judgments, even where key elements had been established with sufficient clarity.¹³⁵ Further issues of great concern which were noted were the risk of loss of evidence with the passage of time, and especially the possible expiry of time-limits in the statutes of limitation, which would render it impossible to bring perpetrators to justice.¹³⁶ The CM therefore called on the Russian authorities to ensure independent and thorough investigations in cooperation between all the law-enforcement and military bodies (which should include the participation of victims and relatives and to increase the effectiveness of the remedies available to them). It also urged the authorities to rapidly take measures to intensify the search for disappeared and missing persons through better co-ordination between agencies, in cooperation with relatives of disappeared persons.¹³⁷ Although the Russian authorities provided further information on 14 May 2012¹³⁸, at its 1144th (June 2012)¹³⁹ and 1150th (September 2012) meetings¹⁴⁰, the CM reiterated these concerns with regard to the lack of any conclusive results in the majority of investigations, and once again underlined the urgency of the situation in the face of the negative effect the expiration of the statute of limitations would have on the judgments' implementation. It also demanded that all means be put towards effective use by the investigators, and encouraged the Russian authorities to continue ensuring victims' participation and access to all documents necessary.¹⁴¹ It is worth recalling here that, as stated by Mr Dick Marty in his report of June 2010, the Chechen situation "constitutes today the most serious and most delicate situation from a standpoint of safeguarding human rights and upholding rule of law, in the entire geographical area covered by the Council of Europe".¹⁴² The lack of tangible progress in these cases was also deplored in the Pourgourides report.¹⁴³

56. On 18 December 2012 the Court delivered its judgment in the case of *Aslakhanova and Others v. Russia*, which became final in March 2013. In this ruling the Court concluded that the situation of disappearances resulted from a systemic problem of non-investigation of such crimes, for which there was no effective remedy at the national level. The Court outlined two types of general measures, under Article 46 of the Convention, to be taken by Russia to address those problems: to alleviate the continuing suffering of the victims' families; and, to remedy the structural deficiencies of the criminal proceedings. A corresponding strategy was to be prepared by Russia without delay and to be submitted to the Committee of Ministers for

of the initial investigations; enhancing the search for disappeared people (DNA tests); measures to guarantee that remedies are used in line with the Convention's requirements.

¹³⁵ CM/ResDH(2011)292 of 6 December 2011 available at:

<https://wcd.coe.int/ViewDoc.jsp?id=1881949&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383>.

¹³⁶ In relation to the problem of statutes of limitation see Communication from NGOs, DH-DD(2011)1144, 15 December 2011, available at: [https://wcd.coe.int/ViewDoc.jsp?Ref=DH-DD\(2011\)1144&Language=lanEnglish&Ver=original&Site=DG4&BackColorInternet=B9BDEE&BackColorIntranet=FFCD4F&BackColorLogged=FFC679](https://wcd.coe.int/ViewDoc.jsp?Ref=DH-DD(2011)1144&Language=lanEnglish&Ver=original&Site=DG4&BackColorInternet=B9BDEE&BackColorIntranet=FFCD4F&BackColorLogged=FFC679).

The NGOs show their deep concern about examples of cases signalling an emerging practice of the application of statutes of limitations in cases where the perpetrators have been established. They argue that crimes committed in the Chechen Republic amount to crimes against humanity and war crimes and therefore do not allow for the application of statutes of limitation of domestic prosecutions. Under Russian Law, crimes into which investigations are currently pending in cases in the Khashiyev group carry limitation periods of 10 to 15 years. The Government provides no guarantee that limitation periods will be dis-applied to prosecution for crimes. In its submission (DH-DD(2011)977, p. 6) the Government asserts however that "the prescription limit for criminal prosecution established by the Russian legislation is not an obstacle for investigation of the category of cases under consideration". See also in this respect the statement on limitation periods made by the Court in the case *Association "21 December 1989" and others v. Romania*, application no. 33810/07, judgment of 28 November 2011, paragraph 144.

¹³⁷ See also, in this connection, AS/Jur (2012) 23 "Information Note prepared by the Secretariat upon the instructions of Mr de Vries", especially Part III on non-implementation of Strasbourg Court judgments.

¹³⁸ DH-DD(2012)488-part 1, available at:

<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2126245&SecMode=1&DocId=1889686&Usage=2>; and DH-DD(2012)488-part2 of 15 May 2012, available at: <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2126251&SecMode=1&DocId=1889712&Usage=2>.

¹³⁹ Decisions of the Committee of Ministers concerning the Khashiyev and Akayeva group of cases, 1144th (DH) meeting, 4-6 June 2012, supra note 9.

¹⁴⁰ Decisions of the Committee of Ministers concerning the Khashiyev and Akayeva group of cases, 1150th (DH) meeting, 24-26 September 2012, supra note 49.

¹⁴¹ Ibid, items 2-3 of the decisions.

¹⁴² "Legal remedies for human rights violations in the North-Caucasus Region", Report Mr. Dick Marty (Switzerland, ALDE), Doc. 12276 of 4 June 2010, at: <http://assembly.coe.int/ASP/Doc/XrefViewPDF.asp?FileID=12481&Language=EN>

¹⁴³ Supra note 1, paragraphs 127 and 212.

the supervision of its implementation. At the same time, the Court decided not to adjourn the examination of similar cases pending before it.¹⁴⁴

57. On 2 May 2013 a group of NGOs submitted to the Committee of Ministers a communication concerning the Khashiyev and Akayeva group of cases.¹⁴⁵

3.6. Other areas of concern

3.6.1. Risk of ill-treatment in cases of extradition and disregard of ECtHR interim measures under Rule 39 of the Rules of the Court

58. In the case of *Iskandarov v. Russia*, the Court held the Russian Federation responsible for a violation of Article 3 on account of the applicant's unexplained abduction by unidentified persons whom the Court found to be Russian State agents and his forcible transfer to Tajikistan in circumstances in which the authorities must have been aware that the applicant faced a real risk of ill-treatment.¹⁴⁶ The case is now pending execution before the CM.¹⁴⁷

59. In January 2012, the Court's Registrar sent to the Representative of the Russian Federation at the ECtHR a letter indicating that the Court had been confronted with repeated incidents of this kind in four other cases notwithstanding the interim measures indicated under Rule 39 of the Rules of Court¹⁴⁸ (a copy of this letter was also sent to the Assembly's President). This information was noted by the CM with great concern in their March 2012 decision on that group of cases. Thus, the CM urged the Russian authorities to take all necessary steps to shed light on the circumstances of these cases and to ensure that similar incidents were not to occur in the future.¹⁴⁹ Since then, several new cases of disappearance have been reported by the representatives of the applicants and Russian human rights NGOs¹⁵⁰. In October 2012 and February 2013 respectively, the Court gave its rulings in the cases of *Abdulkhakov* and *Zokhidov*, finding that the applicants had been forcibly removed with the involvement or passive connivance of the Russian authorities, in breach of Articles 3 and 34 of the Convention.¹⁵¹

60. At its 1144th meeting (June 2012), the CM reiterated its concerns regarding similar incidents that have taken place after the *Iskandarov* judgment and regretted the lack of tangible progress in the Russian authorities' investigations into the applicants' kidnappings and transfers, as well as their failure to establish the responsibility of any state agent. The CM also invited the Russian Federation to clarify whether disseminating the CM's previous decision of March 2012 to all relevant authorities was sufficient to effectively prevent future incidents.¹⁵² At its 1157th DH meeting in December 2012, the Committee called upon the Russian authorities to address without further delay this situation, notably by adopting protective measures in respect of other persons who may be subject to an interim measure indicated by the Court under Rule 39 in connection with their removal from the Russian territory and ensuring that all such incidents are effectively investigated in strict compliance with their Convention obligations.¹⁵³

¹⁴⁴ *Aslakhanova and Others v. Russia*, application nos. 2944/06 et al, judgment of 18 December 2012.

¹⁴⁵ DH-DD(2013)491E, available at:

<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2281027&SecMode=1&DocId=2009286&Usage=2>.

¹⁴⁶ *Iskandarov v. Russia*, application no. 17185/05, judgment of 23 September 2010.

¹⁴⁷ See *Garabayev v. Russia*, application no. 38411/02, judgment of 30 January 2008; for list of cases see supra note 9.

¹⁴⁸ *Savridin Dzhurayev v. Russia*, application no. 71386/10; *Abdulkhakov v. Russia*, application no. 14743/11; *Koziyev v. Russia*, application no. 58221/10; *Zokhidov v. Russia*, application no. 67286/10. See also Communication from a NGO, DH-DD(2012)158 of 9 February 2012, at:

<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2077150&SecMode=1&DocId=1855636&Usage=2>.

¹⁴⁹ See CM decisions in the group of cases, 1136th (DH) meeting, supra note 6.

¹⁵⁰ See communication from the NGOs DH-DD(2012)422E of 18 April 2012, at:

<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2078515&SecMode=1&DocId=1884486&Usage=2>; letters from the Court DD(2012)214E, DH-DD(2012)538E DH-DD(2012)1046E, - DD(2013)76, DH-DD(2013)75E.

¹⁵¹ *Abdulkhakov v. Russia* (no. 14743/11), judgment of 2 October 2012; and *Zokhidov v. Russia* (no. 67286/10), judgment of 5 February 2013

¹⁵² See also the decisions of the Committee of Ministers concerning this group of cases, 1144th (DH) meeting, supra note 9 and PACE Recommendation 1809 (2007) on Council of Europe member states' duty to co-operate with the European Court of Human Rights, as well as the report by Mr Ch. Pourgourides, Doc. 11183 of 9 February 2007.

¹⁵³ Decisions of the Committee of Ministers concerning the Garabayev group of cases, 1157th (DH) meeting, 4-6 December 2012, supra note 12.

61. On 1 February 2013, the Russian authorities provided information on the execution of this group of cases,¹⁵⁴ indicating that the up-dated list of persons in favour of whom the Court has indicated an interim measure was disseminated to all competent authorities. The question of the relevance of this measure remains open in situations such as those highlighted in the cases of *Iskandarov*, in which the authorities do not consider that they have any responsibility or involvement in the applicants' disappearances and transfer.

62. At its 1164th (DH) meeting (March 2013), the CM, in addition to reiterating its concerns and previous calls, decided to invite the President of the Committee of Ministers address a letter to its Russian counterpart in order to draw his attention to the problem and to return to this issue, in case of a new similar incident, immediately following notification of such an incident.¹⁵⁵

63. It is noteworthy that following an attempted abduction in another case in March 2013, the Russian authorities granted the applicant temporary asylum and moved him together with his family to a different region in Russia.¹⁵⁶

64. In April 2013, the Ministry of Justice published on its website a draft law (to be tabled before the State Duma) amending the Russian Code of Criminal Procedure in the part concerning extradition, designed to bring this aspect of national law in line with the Convention requirements (eg, obligation to take into account the views of international organisations while deciding on an extradition request, automatic refusal of extradition of applicants benefitting from the interim measure indicated under Rule 39, etc.).¹⁵⁷

65. On 25 April 2013, the Court delivered an important judgment in the case of *Savridin Dzhurayev v. Russia*,¹⁵⁸ where it established that disappearances of the persons who made the subject of extradition requests followed a certain factual pattern and occurred with the direct or indirect involvement of the authorities.

3.6.2. Violation of the freedom of assembly and discrimination on grounds of sexual orientation

66. In the case *Alekseyev v. Russia* the Court found a violation of the applicant's freedom of assembly, the lack of an effective remedy in this respect and discrimination on the grounds of sexual orientation due to the repeated bans over a period of three years, on the holding of gay-rights marches and pickets imposed by Moscow authorities on account of their failure to adequately assess the risk of the safety of the participants and public order.

67. On 11 October 2011, the Russian authorities provided an interim report¹⁵⁹ on the case. However, the situation of LGBT-persons and activists raises further concerns in the light of recently adopted laws restricting the freedom of expression for LGBT-persons.¹⁶⁰ At its 1144th meeting (June 2012), the CM echoed these concerns regarding the different laws prohibiting gay propaganda aimed at minors adopted in different regions of the Russian Federation and invited the Russian authorities to clarify how those laws could be compatible with the Court's judgment.¹⁶¹

68. After having assessed the statistics and examples submitted by the Russian government in September 2012, the CM noted that out of the total number of notifications submitted to the authorities in respect of LGBT events, only a very limited number of such events could effectively take place. The CM

¹⁵⁴ DH-DD(2013)93, available at:

<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2235085&SecMode=1&DocId=1976536&Usage=2>.

¹⁵⁵ Decisions of the Committee of Ministers concerning the Garabayev group of cases, 1164th (DH) meeting, 5-7 March 2013, CM/Del/Dec(2013)1164/22 of 4 March 2013, supra note 52.

¹⁵⁶ See the government's submissions of 27 March 2013 in response to the CM's questions, available at: <https://wcd.coe.int/com.instranet.InstraServlet?Index=no&command=com.instranet.CmdBlobGet&InstranetImage=2273209&SecMode=1&DocId=1998824&Usage=2>.

¹⁵⁷ <http://minjust.ru/node/4848>

¹⁵⁸ Application no. 71386/10, judgment of 25 April 2012, not yet final.

¹⁵⁹ DH-DD(2011)842E, 13 October 2011, available at:

[https://wcd.coe.int/ViewDoc.jsp?Ref=DH-DD\(2011\)842&Language=lanEnglish&Site=CM](https://wcd.coe.int/ViewDoc.jsp?Ref=DH-DD(2011)842&Language=lanEnglish&Site=CM).

¹⁶⁰ See, for instance, appeals of the Observatory for the Protection of Human Rights Defenders of 10 May 2012, at: <http://www.fidh.org/Russian-Federation-Sentencing-of>, and of 17 February 2012, at:

<http://www.fidh.org/Open-Letter-to-the-Legislative.11334>; communications from several NGOs dated 30 August 2012, DH-DD(2012)790, 5 September 2012 DH-DD(2012)835, 13 September 2012, DH-DD(2012)852E; and 20 February 2013, DH-DD(2013)29; also a communication from the International Commission of Jurists of 15 February 2013, DH-DD(2013)193; and a communication from ILGA-Europe of 15 February 2013, DH-DD(2013)194.

¹⁶¹ See decisions of the Committee of Ministers concerning this case, 1144th (DH) meeting, supra note 9.

further observed that this situation calls for further general measures, in particular those regarding training and awareness-raising of the authorities in charge of handling the notifications of public events. As regards domestic remedies, the CM considered that the general remedy allowing the challenge of actions or omissions of public authorities before a court may not provide adequate redress in all circumstances as required by the Convention and consequently invited the Russian authorities to adopt the necessary measures, through legislative action, if need be. As a result of this examination, the Committee invited the Russian authorities to submit a comprehensive action plan on the execution of this case.¹⁶² On 25 January 2013, the authorities submitted new information on the execution of this case,¹⁶³ which is currently under assessment.

69. In January 2013, a federal draft law banning “homosexual propaganda” was approved by the State Duma at first reading.¹⁶⁴ At its 1164th (DH) meeting (March 2013), the CM expressed serious concerns about this legislative work and reiterated its previous concerns about the overall developments in the law and practice in Russia in this context.¹⁶⁵

4. Ukraine

70. Mr Pourgourides’ report summarised the main issues concerning Ukraine as follows:

- non-enforcement of domestic judicial decisions;
- length of civil and criminal proceedings;
- issues concerning detention on remand (poor conditions, length, ill-treatment);
- unfair trial, inter alia, due to lack of impartiality and independence of judges.¹⁶⁶

71. The report also dealt with the issues surrounding the Gongadze case.¹⁶⁷

4.1. Non-enforcement of domestic judicial decisions

72. In its pilot judgment in the case of *Yuriy Nikolayevich Ivanov v. Ukraine*¹⁶⁸ of 2009, the Court noted that Ukraine “has demonstrated an almost complete reluctance” to solve the structural problems concerning non-enforcement of domestic judicial decisions and fixed a specific deadline of 15 January 2011 for the establishment of effective domestic remedies. After extending the deadline once and finding that the measures called for in the pilot judgment had still not been adopted, on 21 February 2012, the Court took the decision to resume the examination of applications raising similar issues, thus making Ukraine the first state in the Court’s history to have failed to execute a pilot judgment. Since then, the Court has examined a total of 432 applications, rejecting a number of unilateral declarations proposed by Ukraine in some of these cases and concluded that at the moment, no domestic remedy existed for these applicants.¹⁶⁹

73. The law “On State guarantees concerning execution of judicial decisions” was finally adopted by the Ukrainian parliament on 5 June 2012 and entered into force on 1 January 2013.¹⁷⁰ It introduced a new specific procedure for the execution of domestic judicial decisions delivered against the State after its entry into force: pecuniary debts are to be met by the State Treasury within certain deadlines if the debtor (State bodies, State companies, or legal entities whose property cannot be subjected to a forced sale within enforcement proceedings) fails to pay them in due time. The law also provides for automatic compensation if the authorities delay payments under this special procedure. No information is currently available as regards the impact in practice of the new remedy legislation on the general problem of non-execution of domestic judicial decisions.

¹⁶² Decisions of the Committee of Ministers concerning the Alekseyev case, 1150th (DH) meeting, 24-26 September 2012, CM/Del/Dec(2012)1150/16 of 20 September 2012, supra note 49.

¹⁶³ (DH-DD(2013)67), available at:

<https://wcd.coe.int/ViewDoc.jsp?id=2025379&Site=&BackColorInternet=B9BDEE&BackColorIntranet=FFCD4F&BackColorLogged=FFC679>.

¹⁶⁴ “PACE rapporteur calls on State Duma not to support law banning ‘gay propaganda’”, at: http://www.assembly.coe.int/ASP/NewsManager/EMB_NewsManagerView.asp?ID=8383.

¹⁶⁵ Items 2 and 3 of the decision, supra note 52.

¹⁶⁶ Supra note 1, at paragraph 149.

¹⁶⁷ Supra note 1, paragraphs 172-173.

¹⁶⁸ Application No. 40450/04, judgment of 15 October 2009.

¹⁶⁹ See Decisions of the Committee of Ministers concerning the Yuriy Nikolayevich Ivanov and Zhvoner group of cases, 1164th (DH) meeting, 5-7 March 2013, supra note 52.

¹⁷⁰ See also CM Interim Resolution CM/ResDH(2012)234 of 6 December 2012, in which the CM urged the Ukrainian authorities to adopt this draft law.

74. As regards the domestic judgments already delivered (i.e. before 1 January 2013), including those complained of before the Court and which are not covered by the aforementioned law, the Ukrainian authorities submitted that they intend to resolve this problem by introducing another special procedure, which is expected to start to operate in 2014. A separate draft law in this respect has been prepared and is currently under consideration by the Cabinet of Ministers after which it shall be further submitted to Parliament for adoption. No concrete timeline for its adoption has been provided.¹⁷¹ At its 1164th meeting (March 2013), the CM noted its concerns as regards the effectiveness of the measures taken to ensure execution within a reasonable time in all situations (notably because of the inflexibility of the new system, including the level of compensation) and the absence of adaptation of other legislation (in particular the moratorium laws). It also encouraged the Ukrainian authorities to adopt with the utmost urgency the required legislation, taking into account the recommendations made, and to develop, awaiting the reforms, a viable practice of friendly settlements and unilateral declarations before the Court, as well as to resolve also the issue of non-enforcement of judicial decisions imposing non-pecuniary obligations.¹⁷²

4.2. Excessive length of civil and criminal proceedings

75. Two groups of cases - concerning mainly the excessive length of civil (the *Svetlana Naumenko* group¹⁷³) and criminal (the *Merit* group¹⁷⁴) proceedings and the lack of an effective remedy in this respect (violations of Articles 6 § 1 and 13) – are pending execution before the CM (in total, almost 200 cases) since 2004.

76. Since 2005, the Committee of Ministers has been informed of the preparation of legislation aimed, *inter alia*, at setting up a domestic remedy with respect to complaints against the length of judicial proceedings. However, no law or any other measure capable of effectively assuaging the problem of the excessive length of domestic proceedings has been adopted. The information received so far mainly focuses on the question of a remedy and not on solutions to the root causes for excessive length of judicial proceedings.¹⁷⁵ Thus, the CM had no other choice than to urge the Ukrainian authorities, in its decision of March 2012, to take concrete measures to solve the structural problem revealed,¹⁷⁶ recalling its Recommendation CM/Rec(2010) 3 on effective remedies for excessive length of proceedings.¹⁷⁷

4.3. Issues concerning Detention on Remand

4.3.1. Poor conditions of detention

77. Mr Pourgourides' report highlighted several problems concerning detention facilities. Violations of Article 3 mainly arose from overcrowded, unhygienic conditions and a lack of adequate medical assistance, especially for those suffering from tuberculosis, hepatitis and HIV.¹⁷⁸ There have been some attempts by the Ukrainian authorities to address these problems, but still more information on the developments in this respect is awaited.¹⁷⁹ The Committee of Ministers has been awaiting a plan detailing such improvements since 2005. In spite of some information provided by the authorities in May 2012¹⁸⁰, at its 1144th (DH) meeting (June 2012) the CM invited them to "provide urgently an action plan aimed at responding to the structural problems highlighted by the Court in respect of conditions of detention and medical care (...)".¹⁸¹

¹⁷¹ Supra note 169.

¹⁷² Supra note 169.

¹⁷³ *Svetlana Naumenko v. Ukraine*, application no. 41984/98, judgment of 9 November 2004.

¹⁷⁴ *Merit v. Ukraine*, application no. 66561/01, judgment of 30 March 2004.

¹⁷⁵ See the government's action report of 7 August 2012, DH-DD(2012)709E, available at:

<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2132401&SecMo de=1&DocId=1913960&Usage=2>.

¹⁷⁶ Decisions of the Committee of Ministers concerning the Naumenko and Merit group of cases, 1136th (DH) meeting, 4-6 March 2012, item 3 of the decision, supra note 6.

¹⁷⁷ Of 24 February 2010, at: <https://wcd.coe.int/ViewDoc.jsp?id=1590115&Site=CM>.

¹⁷⁸ See in particular the Nevmerzhiysky Group (*Nevmerzhiysky v. Ukraine*, application no. 54825/00, judgment of 5 April 2005) with 6 pending cases, and the Kuznetsov Group (*Kuznetsov v. Ukraine*, application no. 39042/97, judgment of 29 April 2003) with 6 pending cases, see:

http://www.coe.int/t/dghl/monitoring/execution/Reports/pendingCases_en.asp?CaseTitleOrNumber=&StateCode=UKR& SectionCode=&HideClones=1.

¹⁷⁹ *Ibid.*

¹⁸⁰ DH-DD(2012)444E of 4 May 2012, at:

<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2083030&SecMo de=1&DocId=1886218&Usage=2>.

¹⁸¹ Item 2 of the decision, *Nevmerzhiysky* and other groups of cases, supra note 9.

78. Moreover, in its most recent preliminary observations, the CPT expressed deep concerns about extremely poor conditions of detention in Ukrainian prisons, and in particular about the poor state of repair of numerous cells and the severe overcrowding in some establishments.¹⁸²

4.3.2 *Ill-treatment by police and lack of effective investigation*

79. At present over 20 cases are pending execution in this area.¹⁸³ Since the legislative amendments and changes to the training regime of prosecutors in 2005 referred to in Mr Pourgourides' report,¹⁸⁴ no further action has been recorded.¹⁸⁵ A comprehensive action plan is still outstanding.¹⁸⁶ In its latest observations, the CPT, noted that ill-treatment by police remains a widespread phenomenon and, in a number of cases, it was of such a severity that it could well amount to torture.¹⁸⁷ According to a report of Amnesty International of 12 October 2011,¹⁸⁸ the Ukrainian authorities still have to take more efforts to deal with "endemic police criminality", as the use of torture, beatings and extortion by police are widespread phenomena.¹⁸⁹ In December 2012, the Ukrainian authorities submitted a communication indicating that a number of legislative and administrative measures had been put in place to remedy the problem, among which are the establishment of a special supervisory committee for human rights within the Ministry of the Interior and the adoption of a new code of criminal procedure in April 2012.¹⁹⁰

4.3.3 *Unlawful and/or excessively long pre-trial detention*

80. Numerous judgments of the Court pertaining to the issue of unlawful and/or excessively long pre-trial detention¹⁹¹ are currently pending execution as regards Ukraine, some of them for many years (2005). A "quasi-pilot" judgment was delivered by the Court in February 2011 in the case of *Kharchenko v. Ukraine*¹⁹² in which it highlighted the structural nature of the problem regarding the legal framework governing pre-trial detention in Ukraine. The Court stressed that specific reforms in legislation and administrative practice should be urgently implemented in order to bring such legislation and practice into line with the requirements of Article 5.

81. The Court set a six-month deadline for Ukraine to submit to the CM a strategy adopted in this respect. On 9 November 2011, the Ukrainian authorities submitted an action plan,¹⁹³ according to which a new Criminal Procedure Code was to be adopted. The new draft of the Criminal Procedure Code ('CPC') was published and registered with Parliament on 13 January 2012.¹⁹⁴ It has been the object of extensive expert advice from the Council of Europe.¹⁹⁵ It aims to set up a modern adversarial criminal procedure based on the equality of arms of the parties to the process and other fair trial guarantees. It should create the necessary

¹⁸² Preliminary observations made by the delegation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) which visited Ukraine from 29 November to 6 December 2011, published on 12 March 2012, pp. 6 and 7, at: <http://www.cpt.coe.int/documents/ukr/2012-08-inf-eng.pdf>.

¹⁸³ See the Kaverzin/Afanasyev group of cases (24 cases) - *Kaverzin v. Ukraine* (no. 23893/03), judgment of 15 May 2012, *Afanasyev v. Ukraine* (no. 38722/02), judgment of 5 April 2005.

¹⁸⁴ Supra note 1, at paragraph 168.

¹⁸⁵ http://www.coe.int/t/dghl/monitoring/execution/Reports/pendingCases_en.asp?CaseTitleOrNumber=afanasyev&StateCode=UKR&SectionCode=

¹⁸⁶ Cf. in this connection paragraph 42 and footnote 113 of the Report "Guaranteeing the authority and effectiveness of the European Convention on Human Rights", by Ms Marie-Louise Bemelmans-Videc (the Netherlands, Group of the European People's Party), Doc. 12811 of 3 January 2012.

¹⁸⁷ Supra note 182, p. 6.

¹⁸⁸ Available at: <http://www.amnesty.org/en/library/asset/EUR50/009/2011/en/8b104ee8-689f-4bc3-9fb2-2c68916be33b/eur500092011en.pdf>.

¹⁸⁹ See press release of 12 October 2011 at:

<http://www.amnesty.org/en/news-and-updates/report/ukraine-must-act-deal-endemic-police-criminality-2011-10-12>.

¹⁹⁰ Communication from Ukraine concerning the Afanasyev group of cases, DH-DD(2012)1182E, 20 December 2012, available at:

<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2247040&SecMode=1&DocId=1965592&Usage=2>.

¹⁹¹ http://www.coe.int/t/dghl/monitoring/execution/Reports/pendingCases_fr.asp?CaseTitleOrNumber=&StateCode=UKR&SectionCode=

¹⁹² *Kharchenko v. Ukraine*, application no. 40107/02, judgment of 10 February 2011.

¹⁹³ Action plan concerning the case of *Kharchenko against Ukraine*, DH-DD(2011)1066E, 22 November 2011, <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=1995139&SecMode=1&DocId=1824778&Usage=2>.

¹⁹⁴ <http://www.amnesty.org/en/library/asset/EUR50/003/2012/en/181d3959-1345-4422-ae99-d2c15bea1327/eur500032012en.html>.

¹⁹⁵ http://www.coe.int/t/dghl/cooperation/capacitybuilding/expertises_en.asp.

conditions for the proper implementation of the ECHR in Ukraine. Despite these improvements, the CM awaits information on other measures taken or planned to solve problems identified in other cases from this group, such as the practice of unregistered detention by police or the use of administrative arrest for criminal investigation purposes.¹⁹⁶ At its 1128 DH meeting (29 November – 2 December 2011), the CM welcomed the fact the Ukrainian authorities' strategy paper requested in the *Kharchenko* judgment had been provided in time and invited the authorities to implement it rapidly.¹⁹⁷ However, the CM also called upon the Ukrainian authorities to provide information on the measures taken or planned to resolve the remaining problems highlighted in other cases of this group. In response, in August 2012 the Ukrainian authorities provided information related to the general measures in the context of the case of *Balitskiy* against Ukraine¹⁹⁸ and in October 2012 in the context of the *Kharchenko* group of cases.¹⁹⁹ In both submissions, the authorities mainly referred to provisions of the new Code of Criminal Procedure which entered into force on 20 November 2012. They also provided statistics on the application of detention on remand covering 2010, 2011 and the first half of 2012. In February 2013, the authorities submitted a revised action plan,²⁰⁰ of which the CM took note at its 1157th (DH) meeting (March 2013). The CM Secretariat is currently preparing an in-depth assessment of the information provided by the Ukrainian government.²⁰¹

4.4. *Unfair trial, inter alia, due to lack of impartiality and independence of judges*

82. Several judgments are pending before the Committee of Ministers on this issue.²⁰² In order to tackle the problems identified in the Strasbourg Court's judgments, on 7 July 2010 the Verkhovna Rada adopted the Law on the Judiciary and the Status of Judges.²⁰³ It is noted that this legislative reform has been the object of several Venice Commission opinions.²⁰⁴ The extent to which this new legislation will remedy the violations found by the Court remains to be assessed by the CM.

83. In its Resolution 1862 (2012),²⁰⁵ the Assembly again expressed its deep concern regarding the lack of independence of the judiciary and considered it to be the principal challenge for the justice system in Ukraine.

¹⁹⁶ http://www.coe.int/t/dghl/monitoring/execution/Reports/pendingCases_en.asp?CaseTitleOrNumber=kharchenko&StateCode=&SectionCode=

¹⁹⁷ Items 2 and 3 of the decision of the CM, 1128th (DH) meeting, 29 November – 2 December 2011, CM/Del/Dec(2011)1128E, 6 December 2011, supra note 88.

¹⁹⁸ See DH-DD(2012)1023, available at:

<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2174638&SecMode=1&DocId=1947976&Usage=2>.

¹⁹⁹ See DH-DD(2012)1180, available at:

<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2247046&SecMode=1&DocId=1965564&Usage=2>.

²⁰⁰ DH-DD(2013)190, available at:

<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2246320&SecMode=1&DocId=1984292&Usage=2>.

²⁰¹ Item 4 of the CM decision, 1164th (DH) meeting, supra note 52.

²⁰² See in particular the *Salov* group (*Salov v. Ukraine*, application No. 65518/01, judgment of 6 September 2005), at: http://www.coe.int/t/dghl/monitoring/execution/Reports/pendingCases_en.asp?CaseTitleOrNumber=salov&StateCode=&SectionCode=

²⁰³ Law of Ukraine No. 2453-VI on the Judiciary and the Status of the Judges adopted by the Verkhovna Rada on 7 July 2010, available at: [http://www.venice.coe.int/docs/2010/CDL\(2010\)084-e.pdf](http://www.venice.coe.int/docs/2010/CDL(2010)084-e.pdf).

²⁰⁴ See in particular: Joint opinion on the law on the judicial system and the status of Judges of Ukraine by the Venice Commission and the Directorate of Co-operation within the Directorate General of Human Rights and Legal Affairs of the Council of Europe adopted by the Venice Commission at its 84th Plenary Session (Venice, 15-16 October 2010), CDL-AD(2010) 026, available at: [http://www.venice.coe.int/WebForms/documents/?pdf=CDL-AD\(2010\)026-e](http://www.venice.coe.int/WebForms/documents/?pdf=CDL-AD(2010)026-e); Joint opinion on the draft law amending the law on the judiciary and the status of judges and other legislative acts of Ukraine by the Venice Commission and the Directorate of Justice and Human Dignity within the Directorate General of Human Rights and Rule of Law of the Council of Europe adopted by the Venice Commission at its 88th Plenary Session (Venice, 14-15 October 2011), CDL-AD (2011) 033, available at: [http://www.venice.coe.int/WebForms/documents/?pdf=CDL-AD\(2011\)033-e](http://www.venice.coe.int/WebForms/documents/?pdf=CDL-AD(2011)033-e).

²⁰⁵ Resolution 1862 (2012) of 26 January 2012, paragraph 6.1. See also the Monitoring Committee's report: 'The functioning of democratic institutions in Ukraine', Document 12814 of 9 January 2012, co-rapporteurs: Ms Mailis Reps (Estonia, ALDE) and Ms Marietta de Pourbaix-Lundin (Sweden, Group of European People's Party), at: <http://www.assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta12/ERES1862.htm>.

4.5. Other issues

4.5.1. The Gongadze case

84. A specific case of concern is the case of *Gongadze v. Ukraine*, in which the Court found a violation of Articles 2 and 3 of the Convention on account of a journalist's death and a lack of effective investigation into it.²⁰⁶ This case is particularly sensitive politically, as several senior state officials, including a former President, are implicated.²⁰⁷ As stated in the Pourgourides Report, 'any delays addressing this issue should be subject to close monitoring by parliament which should have appropriate means to compel the government to solve these issues as a matter of priority'.²⁰⁸ In February 2012, the Assembly's Rapporteur on "Threats to the rule of law in Council of Europe member states – asserting the authority of the Assembly", Ms Marieluise Beck (Germany, ALDE), carried out an information visit to Ukraine in order to assess the implementation of the Assembly's earlier report on "Investigation of crimes allegedly committed by high officials during the Kuchma rule in Ukraine – the Gongadze case as an emblematic example".²⁰⁹

4.5.2. Freedom of assembly

85. Another case that would require the supervision of the Committee of Ministers in the near future is *Vyrentsov v. Ukraine*, where the Court discovered a lacuna in the Ukrainian legislation in respect of a procedure for holding demonstrations and required an urgent reform.²¹⁰

5. Poland

86. Mr Pourgourides' report summarised the main Polish issues as follows:

- excessive length of proceedings and lack of an effective remedy;
- excessive length of detention on remand.²¹¹

87. The report also dealt with some other issues, which included poor conditions of detention, violation of the freedom to assembly and unfairness of lustration proceedings.²¹²

5.1. Excessive length of proceedings and lack of an effective remedy

88. The Pourgourides report requested that Poland provide statistical data on the effectiveness of the Polish authorities' various domestic efforts to eradicate the problem of excessively long proceedings.²¹³ Since then, further information has been provided as regards progress on reducing the length of criminal²¹⁴ (*Kudła v. Poland* and other cases) and civil proceedings (*Podbielski v. Poland* and other cases)²¹⁵ as well as proceedings before administrative authorities and courts (*Fuchs v. Poland* and other cases).²¹⁶

²⁰⁶ *Gongadze v. Ukraine*, application no. 34056/02, judgment of 8 November 2005.

²⁰⁷ See, in particular, the most recent CM decision on this case taken at its 1157th meeting (December 2012), supra note 12.

²⁰⁸ Supra note 1, at paragraphs 173 and 174.

²⁰⁹ Doc. 11686 (2008) of 11 July 2008; rapporteur: Sabine Leutheusser-Schnarrenberger (Germany, ALDE); at: <http://assembly.coe.int/ASP/Doc/XrefViewHTML.asp?FileID=11981&Language=EN>

see Resolution 1645 (2009) and Recommendation 1856 (2009) of 27 January 2009, at:

<http://assembly.coe.int/ASP/Doc/XrefViewPDF.asp?FileID=17702&Language=EN>

<http://assembly.coe.int/ASP/Doc/XrefViewPDF.asp?FileID=17703&Language=EN>.

²¹⁰ *Vyrentsov v. Ukraine*, application no. 20372/11, judgment of 11 April 2013.

²¹¹ Supra note 1, paragraph 75.

²¹² Supra note 1, paragraphs 86-91.

²¹³ Supra note 1, paragraph 80.

²¹⁴ See "Kudła group of cases against Poland – 66 cases mainly concerning the length of criminal proceedings and the lack of an effective remedy," 1136th (DH) meeting, 6-8 March 2012, CM/Del/OJ/DH(2012)1136list23 of 3 January 2012, available at:

[https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/OJ/DH\(2012\)1136&Language=lanEnglish&Ver=prel0023&Site=&BackColorInternet=B9BDEE&BackColorIntranet=FFCD4F&BackColorLogged=FFC679](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/OJ/DH(2012)1136&Language=lanEnglish&Ver=prel0023&Site=&BackColorInternet=B9BDEE&BackColorIntranet=FFCD4F&BackColorLogged=FFC679).

²¹⁵ See "Podbielski group against Poland – 234 cases of length of civil proceedings before civil and labour courts," 1136th (DH) meeting, 6-8 March 2012, CM/Del/OJ/DH(2012)1136list46 of 3 January 2012, available at:

[https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/OJ/DH\(2012\)1136&Language=lanFrench&Ver=prel0046&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/OJ/DH(2012)1136&Language=lanFrench&Ver=prel0046&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383).

²¹⁶ See "Fuchs group against Poland – 79 cases of length of proceedings concerning civil rights and obligations before administrative bodies and courts," 1136th (DH) meeting, 6-8 March 2012, CM/Del/OJ/DH(2012)1136list15 of 3 January 2012, available at:

89. On 22 November 2011, the Polish authorities submitted an action plan²¹⁷ concerning the *Kudla v. Poland*²¹⁸ and *Podbielski v. Poland*²¹⁹ groups of cases, and on 23 November 2011 they submitted a separate action plan concerning the *Fuchs v. Poland*²²⁰ group of cases.²²¹ Both action plans contained summaries of legislative and other general measures taken by the Polish authorities to remedy this problem (including computerisation of judicial proceedings and increase in the judiciary's budget and staff),²²² as well as statistical information on the matter of length of proceedings up to 2010. It should be noted that, according to these statistics for 2010, the domestic courts' backlog had increased by nearly 9%.²²³ However, as regards pre-trial proceedings - according to the latest information provided in Mr Halicki's letter of 10 September 2012 - the number of protracted cases lowered by 28% in 2011, following special monitoring measures taken vis-à-vis prosecutors.

90. Concerning the effectiveness of the domestic complaint against excessive length of proceedings, the Polish authorities are of the opinion that courts were taking into account the Court's case law to a greater extent, although, between 2009 and 2010, the number of such complaints increased by nearly 35%.²²⁴ In 2010, the percentage of admissible complaints amounted to 19%²²⁵ and, in 91% of these complaints, applicants had been awarded pecuniary compensation.²²⁶

91. Concerning the excessive length of administrative proceedings, the statistical information included in the action plan on the *Fuchs* group of cases reveals that administrative courts usually completed complaints about the inactivity of administrative authorities within 3-6 months²²⁷ and that the workload of the Supreme Administrative Court remained stable.²²⁸ In 2011, a new law on financial liability of public officials for gross violation of law²²⁹ and new amendments to the Code of Administrative Procedure entered into force.²³⁰

92. These groups of cases were discussed at the CM's 1128th DH meeting (November-December 2011).²³¹ The CM welcomed the various measures taken to address Poland's systemic problem of excessive length of proceedings, as well as the Polish authorities' commitment to monitor their implementation. A substantive examination of the action plans, however, remains to be undertaken by the CM.

5.2. Excessive length of detention on remand

93. The *Trzaska v. Poland*²³² and *Kauczor v. Poland*²³³ group of nearly 170 cases is primarily concerned with excessive length of detention on remand and deficiencies in the procedure for reviewing the lawfulness of pre-trial detention.²³⁴

[https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/OJ/DH\(2012\)1136&Language=lanEnglish&Ver=preI0015&Site=&BackColorInternet=B9BDEF&BackColorIntranet=FFCD4F&BackColorLogged=FFC679](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/OJ/DH(2012)1136&Language=lanEnglish&Ver=preI0015&Site=&BackColorInternet=B9BDEF&BackColorIntranet=FFCD4F&BackColorLogged=FFC679).

²¹⁷ Action plan, DH-DD(2011)1074 of 24 November 2011, available at:

<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=1995088&SecMode=1&DocId=1826164&Usage=2>.

²¹⁸ Application no. 30210/96, judgment of 26 October 2000.

²¹⁹ Application no. 27916/95, judgment of 30 October 1998.

²²⁰ Application no. 33870/96, judgment of 11 May 2003.

²²¹ Action plan, DH-DD(2011)1073 of 24 November 2011, available at:

<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=1995085&SecMode=1&DocId=1826150&Usage=2>.

²²² Supra note 215, pp. 4-6.

²²³ Ibid, p. 7.

²²⁴ Ibid, p. 9. In 2010, courts completed 96.3% of the incoming complaints concerning excessive length of proceedings.

²²⁵ Ibid.

²²⁶ In 926 complaints as compared with 588 in 2009; *ibid*, p. 11.

²²⁷ The majority of complaints related to public information and press law, construction issues, expropriation and restitution of real property; in this context, see in particular the problems with the implementation of individual measures concerning property restitution in the case of *Beller v. Poland*, Application No. 51837/99, judgment of 1 February 2005; communications from the Helsinki Foundation for Human Rights, DH-DD(2011)110 of 16 February 2011 and DH-DD(2012)252 of 19 March 2012.

²²⁸ Supra note 221, pp. 2 and 5.

²²⁹ Law of 20 January 2011, *ibid*.

²³⁰ Supra note 221, p. 6. As a result of these amendments, it is now possible not only to complain about the inactivity of administrative authorities, but also about protracted proceedings before the latter.

²³¹ Decisions by the Committee of Ministers concerning the Podbielski, Kudla, and Fuchs groups of cases, 1128th (DH) meeting, 29 November-2 December 2011, CM/Del/Dec(2011)1128/15 of 2 December 2011, supra note 88.

²³² Application no. 25792/94, judgment of 11 July 2000.

²³³ Application no. 45219/06, judgment of 3 February 2009.

94. On 21 November 2011, the Polish authorities submitted an action plan regarding the *Trzaska* group of cases, which contains information on measures taken to solve this problem, such as closer supervision of the grounds for and the length of detention on remand, intensified oversight of relevant criminal proceedings, and increased training of judges and prosecutors.²³⁵ Furthermore, the action plan presents detailed statistical data on this issue from 2005 to 2010. According to the information provided, there has been a significant decline in the number of pre-trial detention orders, a substantial reduction in the length of detention on remand, and a steady increase in the use of alternatives to pre-trial detention since 2005.²³⁶ The numbers, however, also show that more time is needed for Poland's new measures to become well-established domestic practice, especially since the trends in the data regarding the length of detention imposed by regional courts were less conclusive than those regarding district courts.²³⁷

95. At its 1136th DH meeting (March 2012), the CM welcomed the Polish authorities' progress in eradicating this problem and their commitment to further monitor the situation.²³⁸ The CM also invited Poland to continue its efforts, especially with respect to training and awareness-raising measures for the judiciary and prosecutors.²³⁹ Furthermore, it decided at that meeting to transfer this group of cases for supervision under the standard procedure.²⁴⁰

5.3. Outstanding issues

5.3.1. Poor conditions of detention

96. There are several cases against Poland pending execution before the CM regarding inhuman and degrading treatment due to inadequate conditions of detention caused by overcrowding (*Orchowski v. Poland* and *Sikorski Norbert v. Poland*)²⁴¹ and the lack of adequate medical care (*Kaprykowski v. Poland* and other cases),²⁴² among other things. As the Court recalled in *Orchowski v. Poland*, inadequate imprisonment conditions constitute a recurrent problem in Poland, and overcrowding in Polish prisons and remand centres reveals a persistent structural problem.²⁴³

97. On 17 March 2010²⁴⁴ and on 12 September 2011, the Polish authorities submitted action plans concerning the *Orchowski* and *Sikorski Norbert* cases.²⁴⁵ As pointed out in the first action plan, in December 2009, the legislative provision allowing the placement of convicted persons for an indefinite period of time in cells where the surface per inmate was below the statutory 3m² was repealed. The second action plan demonstrates a decline in the number of detainees combined with a solid increase in prison and remand centre holding capacity from 2006 to July 2011.²⁴⁶ Moreover, according to the Polish authorities, for the first time in ten years, the number of detainees in prisons and remand centres in 2010 was lower than the overall

²³⁴ See "Trzaska and Kauczor group of cases against Poland – 168 cases of length of detention on remand," 1136th (DH) meeting, 6-8 March 2012, CM/Del/OJ/DH(2012)1136list39 of 3 January 2012, available at: [https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/OJ/DH\(2012\)1136&Language=lanEnglish&Ver=prel0039&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/OJ/DH(2012)1136&Language=lanEnglish&Ver=prel0039&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864).

²³⁵ Action plan, DH-DD(2011)1067 of 22 November 2011, available at:

<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=1995142&SecMode=1&DocId=1824818&Usage=2>.

Moreover, Mr Halicki's letter of 10 September 2012 contains updated information on training measures.

²³⁶ *Ibid.*, pp. 5, 7-9.

²³⁷ See Notes concerning the *Trzaska* and *Kauczor* group of cases, 1136th (DH) meeting, 6-8 March 2012, CM/Del/Dec(2012)1136 of 13 March 2012, *supra* note 6.

²³⁸ Decisions by the Committee of Ministers concerning the *Trzaska* and *Kauczor* group of cases, 1136th (DH) meeting, 6-8 March 2012, CM/Del/Dec(2012)1136/16 of 8 March 2012, *supra* note 6.

²³⁹ *Ibid.*

²⁴⁰ *Ibid.*

²⁴¹ *Orchowski v. Poland*, application no. 17885/04, judgment of 22 October 2009, and *Sikorski Norbert v. Poland*, application no. 17599/05, judgment of 22 October 2009.

²⁴² *Kaprykowski v. Poland* (application no. 23052/05, judgment of 3 February 2009), *Musial Sławomir v. Poland* (application no. 28300/06, judgment of 20 January 2009), *Wenerski v. Poland* (application no. 44369/02, judgment of 20 January 2009), *Wierzbicki Andrzej v. Poland* (application no. 48/03, judgment of 19 January 2010), and *Rokosz v. Poland* (application no. 15952/09, judgment of 27 July 2010).

²⁴³ *Orchowski v. Poland*, paragraph 147.

²⁴⁴ DH-DD(2011)627 of 11 August 2011.

²⁴⁵ Action plan, DH-DD(2011)709E of 12 September 2011, available at:

<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=1913488&SecMode=1&DocId=1781184&Usage=2>.

²⁴⁶ *Ibid.*, p.3.

capacity of those establishments on a nationwide scale, with an occupancy rate of 99.4%.²⁴⁷ According to information provided in Mr Halicki's letter, as of 28 August 2011, this rate amounted to 96.6% and, moreover, following the introduction of the electronic surveillance system in 2009, the number of convicts serving their sentences outside penitentiary establishments has been gradually rising. It is also important to note that the ECtHR delivered two inadmissibility decisions in 2010, where it found that an effective remedy against detention facility overcrowding was available (civil action compensation), and declared that it may require applicants in future cases to make use of the new complaints system introduced by the Code of Execution of Criminal Sentences.²⁴⁸

98. A first action report/plan on the *Kaprykowski* group of cases was submitted to the CM in March 2010²⁴⁹ and then supplemented on 12 September 2011²⁵⁰. Additional information was provided by the government on 11 January 2013.²⁵¹ The authorities stated that a reform of penitentiary hospital facilities aimed at improving the quality and consistency of medical treatment for all prisoners was under way.²⁵² Furthermore, in December 2010, the Minister of Justice adopted a decree "On the provision of medical services to persons in confinement by health-care establishments for persons deprived of liberty", which defines the scope of medical services offered to detainees.²⁵³ Further information was provided to the CM in January 2013.²⁵⁴

99. At its 1120th meeting (September 2012), the CM noted with interest the action plans provided, but noted that it still needs to fully assess them.²⁵⁵ As regards the *Orchowski* and *Sikorski Norbert* cases, it observed that information on aggravating factors identified by the Court was still absent and invited the Polish authorities to submit such additional information. This information was submitted by the authorities in January 2013 and included two factors: the frequent transfer of prisoners, and possibilities for prisoners to exercise. No information was provided on the other aggravating factors identified by the Court which include lack of privacy, insalubrious conditions and lack of consideration for vulnerable detainees with medical conditions.²⁵⁶ At its 1164th meeting (March 2013), the CM invited the Polish authorities to provide consolidated action reports/plans including the outstanding information on the *Orchowski* and *Sikorski Norbert* cases²⁵⁷ and additional information on prisoners' access to healthcare.²⁵⁸

100. Although there has apparently been some progress, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("CPT") found in its report of July 2011 on its 2009 visit to Poland that overcrowding persisted in detention facilities, and recommended that the Polish authorities revise the legal standards for detainee living space to ensure 4m² per inmate.²⁵⁹ Similarly, in her communication to the CM from November 2011, the Polish Ombudsman pointed out that the issue of overcrowding in Polish detention facilities remained unresolved, although, at the time of her submission, the population density in detention centres amounted to 96,4% at the national level, as measured against overall

²⁴⁷ Ibid, p. 6.

²⁴⁸ See *Łatak v. Poland*, application no. 52070/08, decision of 12 October 2010, paragraph 87, and *Łomiński v. Poland*, application no. 33502/09, decision of 12 October 2010, paragraph 78. Under the new system, detainees may appeal against the prison administration's decisions to reduce their living space.

²⁴⁹ Communication from the Polish authorities of 26 February 2010, available at:

http://www.coe.int/t/dghl/monitoring/execution/Source/Documents/Info_cases/Pologne/Kaprykowski17032010.pdf.

²⁵⁰ Action plan, DH-DD(2011)710E of 12 September 2011, available at:

<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=1919380&SecMode=1&DocId=1781198&Usage=2>.

²⁵¹ Communication from Poland concerning the *Kaprykowski* group of cases, [DH-DD\(2013\)89](https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2231092&SecMode=1&DocId=1976472&Usage=2), available at: <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2231092&SecMode=1&DocId=1976472&Usage=2>.

²⁵² Ibid, p. 4-6. Mr Halicki's letter contains an update on health care facilities in Polish prisons.

²⁵³ Ibid, p. 3. The decree entered into force on 3 January 2011.

²⁵⁴ DH-DD(2013)89E available at:

<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2231092&SecMode=1&DocId=1976472&Usage=2>.

²⁵⁵ Decisions by the Committee of Ministers concerning the *Orchowski* and *Sikorski* and *Kaprykowski* group of cases, 1120th (DH) meeting, 13-14 September 2011, CM/Del/Dec(2011)1120/7 of 14 September 2011, available at:

[https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/Dec\(2011\)1120/7&Language=lanEnglish&Ver=original&Site=&BackColorIntranet=B9BDEE&BackColorIntranet=FFCD4F&BackColorLogged=FFC679](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/Dec(2011)1120/7&Language=lanEnglish&Ver=original&Site=&BackColorIntranet=B9BDEE&BackColorIntranet=FFCD4F&BackColorLogged=FFC679).

²⁵⁶ [DH-DD\(2013\)88](https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2231089&SecMode=1&DocId=1976458&Usage=2), available at:

<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2231089&SecMode=1&DocId=1976458&Usage=2>.

²⁵⁷ Item 6 of the decision, supra note 52.

²⁵⁸ Items 3-5 of the decision in the *Kaprykowski* group of cases, supra note 52.

²⁵⁹ See Report to the Polish Government on the visit to Poland carried out by the CPT from 26 November to 8 December 2009, CPT/Inf (2011) 20 of 12 July 2011, paragraph 83, available at: <http://www.cpt.coe.int/documents/pol/2011-20-inf-eng.pdf>.

capacity.²⁶⁰ The overall figures may hide important regional differences or reflect differences in the methods used to compile statistics.

5.3.2. Violation of the right to freedom of assembly

101. In the case of *Bączkowski and others v. Poland*,²⁶¹ the Court found a violation of the applicant's right to freedom of assembly, a lack of an effective remedy against this violation, and discriminatory treatment due to the Polish authorities' refusal, "not prescribed by law", of requests to hold demonstrations in 2005 seeking to raise awareness about discrimination against minorities, women, and persons with disabilities.²⁶²

102. The lack of an effective remedy against local authorities' refusal to hold a demonstration still remains an issue. According to Poland's action plan, which was submitted on 17 February 2012,²⁶³ and which is still to be assessed by the CM, interim measures (mainly a broad dissemination of the ECtHR judgment) are in place, whilst awaiting a final legislative solution (two draft laws amending the 1990 Assemblies Act have been issued).²⁶⁴

5.3.3. Unfairness of lustration proceedings

103. The *Matyjek* group of cases²⁶⁵ deals with unfairness of "lustration" proceedings²⁶⁶ due, in particular, to the applicants' restricted access to case-files classified as secret. On 4 March 2011, the Polish authorities submitted an action report/plan on this group of cases, providing detailed information on a number of legislative measures taken to address this problem.²⁶⁷ According to the Polish authorities, these changes "have substantially restricted the number of classified materials which can be used in lustration proceedings and no further general measures are required in these cases".²⁶⁸ The information provided, however, contains no news on progress made in dealing with this issue since the Pourgourides report and remains to be assessed by the CM. According to the information provided by the Polish delegation at the September 2012 hearing, a new decree of the Minister of Justice entered into force in March 2013; it broadens the scope of access to classified court materials.

²⁶⁰ The Ombudsman has been acting in the capacity of the National Preventive Mechanism (NPM), which carries out preventive visits in all detention facilities in Poland. She expressed concerns regarding the NPM inspectors' findings, which demonstrated that "the inexistence of the overcrowding problem is reflected only by statistical data" that was misrepresented as a result of inadmissible practices, such as the placing together of prisoners with different security classification status. See Communication from the Office of the Human Rights Defender in the cases of *Orchowski* and *Sikorski* against Poland (Applications No. 17885/04 and 17599/05) and reply of the government, DH-DD(2011)1108 of 9 December 2011, available at:

<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2025469&SecMo de=1&DocId=1835028&Usage=2>.

²⁶¹ Application no. 1543/06, judgment of 3 May 2007.

²⁶² *Ibid*, paragraph 70.

²⁶³ Action plan, DH-DD(2012)362 of 3 April 2012, available at:

<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2066767&SecMo de=1&DocId=1877910&Usage=2>.

²⁶⁴ The first was initially published in 2009 and, at the time of the action plan's submission, was pending consideration by the Government Legislation Centre. It established that final decisions on possible assembly bans "shall be delivered to the organisers at least 24 hours before the planned date of the event". The second draft law was introduced to Parliament by the Polish President on 24 November 2011, and at its first reading on 21 December 2011, it was noted that the law must be expanded to better address the Court's concerns raised in *Bączkowski and others v. Poland*, namely "the time-limits for examination of the refusal of permission to hold a demonstration." In July 2012, the Senate adopted its amendments to this draft law.

²⁶⁵ *Matyjek v. Poland* (Application no. 38184/03, judgment of 24 April 2007), *Bobek v. Poland* (Application no. 68761/01, judgment of 17 July 2007), *Jalowiecki v. Poland* (Application no. 34030/07, judgment of 17 February 2009), *Luboch v. Poland* (Application no. 37469/05, judgment of 15 January 2008), and *Rasmussen v. Poland* (Application no. 38886/05, judgment of 28 April 2009).

²⁶⁶ These are "proceedings aimed at exposing persons exercising public functions who worked for or collaborated with the state's security services during the communist period." Pending cases: current state of execution – Application no. 38184/03, available at:

http://www.coe.int/t/dghl/monitoring/execution/Reports/pendingCases_en.asp?CaseTitleOrNumber=38184%2F03&State Code=&SectionCode.

²⁶⁷ Action plan, DH-DD(2011)151 of 7 March 2011, available at:

<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=1961965&SecMo de=1&DocId=1708164&Usage=2>.

²⁶⁸ *Ibid*, p. 7.

6. Romania

104. The Pourgourides report identified the vast majority of problems in the following areas:

- failure to restore or compensate for nationalised property;
- excessive length of judicial proceedings and lack of effective remedy;
- non-enforcement of domestic judicial decisions;
- poor conditions of detention.²⁶⁹

105. The report also dealt with the issue of respect for private life raised in the case of *Rotaru v. Romania*.²⁷⁰

106. Another sizable group of cases concerning ill-treatment by police and lack of effective investigation has been identified in the CM 2012 Annual Report.²⁷¹

6.1. Failure to restore or compensate for nationalised property

107. The issue of nationalised property represents a systemic problem linked to the failure of Romania to set up, after 1989, an effective mechanism to restitute or compensate for properties nationalised during the communist period. The ECtHR has, very often, found a violation of Article 1 of Protocol No.1 and Article 6(1) ECHR with respect to this problem, and a total of 267 such cases are currently pending before the CM.²⁷²

108. Due to the continuous flow of such applications and the Court's repeated rulings in similar cases, the ECtHR handed down a pilot judgment in the case of *Maria Atanasiu and others v. Romania*. The Court required Romania to put in place simplified and effective procedures to provide redress to victims as a matter of urgency. The time-limit set by the Court for the adoption of appropriate measures was to expire on 12 July 2012, but it was subsequently extended to 12 April 2013 and then to 12 May 2013.

109. Romania submitted to the CM a revised action plan in November 2011,²⁷³ as well as two additional communications in March²⁷⁴ and April 2012.²⁷⁵ The revised action plan presents preliminary statistical data with regard to restitution and compensation claims, information on the work of the inter-ministerial commission set up in December 2010 to deal with legislative amendments in this respect, as well as a calendar for the implementation of legislative measures. The inter-ministerial commission prepared a draft law aimed at rendering the restitution and compensation process more effective. The draft law envisages, amongst others, the fixing of the amount of compensation at 15% of the property value, and its payment in instalments, due to budgetary restraints. On 11 April 2012 a public debate on this draft law was launched and the Government has now started the text's examination.²⁷⁶ Noteworthy in this process is the role played by the above-mentioned parliamentary sub-committee on monitoring the execution of ECtHR judgments which met repeatedly with the members of the inter-ministerial commission, stressing the need to accelerate the drafting process.²⁷⁷

110. Despite the progress highlighted by the Romanian authorities in their action reports, as well as in the preliminary data on the progress in the compensation and restitution process,²⁷⁸ the CM stressed at its 1136th meeting (March 2012) that the issues raised in this group of cases concerned a large-scale systemic

²⁶⁹ Supra note 1, paragraph 92.

²⁷⁰ Supra note 1, paragraphs 105-107.

²⁷¹ See the CM 2012 annual report, supra note 40, p. 35.

²⁷² See list of cases in the Strain Group of cases (*Strain and others v. Romania*, application no.57001/00, judgment of 21 July 2005 (not in this list: pilot judgment *Maria Atanasiu and others v. Romania*, application no. 30767/05, judgment of 12 October 2011)), available at:

<https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/OJ/DH%282012%291136&Language=lanFrench&Ver=prel0048&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864>.

²⁷³ See DD(2011)1039F of 16 November 2011, available (in French only) at:

<https://wcd.coe.int/ViewDoc.jsp?Ref=DH-DD%282011%291039&Language=lanEnglish&Site=CM>.

²⁷⁴ See DD (2012) 212 of 2 March 2012, available (in French only) at:

<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2077435&SecMode=1&DocId=1865154&Usage=2>.

²⁷⁵ See DD (2012) 424 of 26 April 2012, available (in French only) at:

<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2090296&SecMode=1&DocId=1884616&Usage=2>.

²⁷⁶ Ibid.

²⁷⁷ See Response of 23 January 2012 to PACE President's letter of 5 April 2011 (Text on file with the Secretariat).

²⁷⁸ Supra note 274.

problem and underlined the urgency to make progress in the implementation of the relevant judgments. On 15 May 2012, the Romanian authorities submitted to the Committee of Ministers a copy of the draft law on compensation proceedings for former owners of real estate confiscated under the communist rule.²⁷⁹ At its 1144th meeting (June 2012), the CM noted with great interest the draft law, but was concerned by the level of compensation, the timetable for its payment in instalments fixed therein and by the absence of justification of these choices based on precise data.²⁸⁰ Consequently, the CM requested additional information regarding, in particular, the justifications for the measures included in the draft law, the present state of the compensation and restitution process, as well as the authorities' calendar for completion, adoption, and enforcement of the new law.²⁸¹ On 5 April 2013, high-level representatives of the Romanian government came to Strasbourg to meet with the Department for the Execution of Judgments of the European Court, the Directorate General of Human Rights and Rule of law and the Registry of the European Court, for in-depth consultations on the draft law prepared by the Romanian authorities. A memorandum was drawn up as a result of the meeting, by the Department for the Execution of Judgments of the ECHR, with specific conclusions defining the direction of the authorities' efforts in amending the draft law.²⁸² The draft law was introduced to the Parliament on 17 April 2013 and was deemed as adopted on 22 April 2013.²⁸³

6.2 Excessive length of judicial proceedings and lack of an effective remedy

111. The cases of *Nicolau v. Romania*²⁸⁴ and *Stoianova and Nedelcu v. Romania*²⁸⁵ concern the excessive length of civil and criminal proceedings and in some cases also the lack of an effective remedy in this respect. At present, almost 60 similar cases are pending execution before the CM concerning this structural problem.²⁸⁶ On 10 October 2011 Romania submitted an action plan to the CM detailing a number of measures Romania is taking to solve these problems.²⁸⁷

112. Firstly, in order to *simplify and accelerate judicial proceedings* a "small reform" was instituted in 2010, through which a number of legislative amendments to the Civil and Criminal Procedure Codes were introduced.²⁸⁸ The new Civil and Criminal Procedure Codes were adopted in July 2010; the Civil Procedure Code entered into force in February 2013, and the Criminal Procedure Code is expected to follow suit in 2014." They envisage large-scale legislative measures.

113. With respect to the *lack of effective remedies*, the above-mentioned new Code of Civil Procedure has introduced a remedy aimed at accelerating civil proceedings. For the time being, no statutory provision (including in the new Codes) provides for a compensatory remedy. The Romanian authorities pointed out that domestic courts' case law has evolved to include the direct application of the ECHR, thereby providing interested persons with remedies, allowing for acceleration of proceedings and compensation for damages suffered.

²⁷⁹ Draft Law – Communication from the government of Romania in the Strain and others group of cases against Romania), DH – DD(2012)505, 18 May 2012, available at:

<https://wcd.coe.int/com.instranet.InstraServlet?Index=no&command=com.instranet.CmdBlobGet&InstranetImage=2126401&SecMode=1&DocId=1890892&Usage=2>.

²⁸⁰ See Decisions concerning this group of cases, Committee of Ministers, 1144th (DH) meeting, 4-6 June 2012, CM/Del/Dec(2012)1144/13, 6 June 2012, items 1-3, supra note 9.

²⁸¹ Ibid, items 3-4, and 6 of the decisions. See also CM Secretariat's assessment of this draft law in document [CM/Inf/DH\(2012\)18](http://www.coe.int/t/dghl/monitoring/execution/News/H-Exec(2013)1_Strain_fr.pdf) of 30 May 2012, in which further outstanding issues were identified, and the decisions taken by the CM at its 1157th (December 2012) and 1164th (March 2013) meetings, supra notes 12 and 52.

²⁸² See H/Exec(2013)1, available at: [http://www.coe.int/t/dghl/monitoring/execution/News/H-Exec\(2013\)1_Strain_fr.pdf](http://www.coe.int/t/dghl/monitoring/execution/News/H-Exec(2013)1_Strain_fr.pdf) (in French; an English version is due shortly).

²⁸³ See at <http://dcr.coe.int/Wires/WiresLectureE.asp?WiresID=211310>. The law is now being examined by the Constitutional Court, see at (in Romanian):

<http://www.agerpres.ro/media/index.php/justitie/item/191166-CCR-discuta-pe-22-mai-sesizarea-PDL-referitoare-la-legea-privind-restituirea-proprietatilor.html>.

²⁸⁴ Application No. 1295/02, judgment of 3 July 2006.

²⁸⁵ Application No. 77517/01, judgment of 4 November 2005.

²⁸⁶ 16 cases in the *Stoianova* Group (see list in decisions by CM in its 1136th meeting, supra note 46); for a list of cases in *Nicolau* Group, see:

<https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/OJ/DH%282011%291128&Language=lanFrench&Ver=prel0035&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383>.

²⁸⁷ See DD(2011)900F, available at:

<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=1971850&SecMode=1&DocId=1808020&Usage=2>.

²⁸⁸ Law no. 202/2010 for accelerating the judicial proceedings.

114. In November 2011, at the 1128th (DH) meeting, the Ministers' Deputies welcomed the action plan, as well as the measures envisaged to be taken by Romania, in particular the new Codes of Civil and Criminal Procedure. The Romanian authorities have been requested to keep the CM informed of the effects and results of the reforms undertaken and to provide clarifications on the domestic courts' case law.²⁸⁹ A revised action plan was submitted in January 2013²⁹⁰ and is currently under assessment.

6.3. Non-enforcement of domestic judicial decisions

115. There are currently approximately 140 cases under the supervision of the CM with regard to the state's failure to enforce final domestic court decisions.²⁹¹ In November 2011 the Romanian authorities provided a revised action report to the CM regarding the *Ruianu* group.²⁹² Moreover, an action plan concerning the *Sacaleanu* group of cases was submitted in January 2012.²⁹³ The authorities asserted in both documents that the violations found in these cases did not originate in an underlying structural problem within the Romanian justice system, but were rather singular cases. On 6 September 2012 the Romanian government submitted additional comments concerning the *Sacaleanu* group, asserting, in particular, that a new Code of Civil Procedure, entering into force on 1 January 2013, contained provisions simplifying the domestic enforcement procedure and thus better safeguarding the rights of the creditors.²⁹⁴ At its 1150th (DH) meeting (September 2012), the CM noted with interest the said action plans, but expressed concern that several crucial issues related to general measures were still outstanding.²⁹⁵ In the action report submitted for the *Ruianu* group, this answer was explained with reference to various similar cases concerning enforcement of judicial decisions that had been brought before the Strasbourg Court, and which had been deemed inadmissible due to non-exhaustion of domestic remedies.²⁹⁶ The Romanian authorities further detailed, in their action report, the various general measures taken with respect to such cases²⁹⁷ and have requested the CM to close the examination of this group of cases. On 22 June 2012, they also provided an action plan concerning the *Strungariu* group of cases,²⁹⁸ subsequently revised on 15 March 2013.²⁹⁹ The CM is currently assessing the above-mentioned action plans.

²⁸⁹ Decisions of the Committee of Ministers concerning the Nicolau group of cases, 1128th (DH) meeting, supra note 88.

²⁹⁰ DH-DD(2013)39F, available at:

<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2247034&SecMode=1&DocId=1969610&Usage=2>.

²⁹¹ See, e.g. *Sacaleanu v. Romania*, application no. 73970/01, judgment of 6 December 2005; *Strungariu v. Romania*, application No. 23878/02, judgment of 29 December 2005; *Ruianu v. Romania*, application No. 34647/97, judgment of 17 June 2003. See also CM/Inf/DH(2007)33: Information on Conclusions of "Round Table on "Non-enforcement of domestic courts decisions in member states: general measures to comply with European Court judgments, available at: <https://wcd.coe.int/ViewDoc.jsp?id=1158611>.

²⁹² This group of cases concerns failure of domestic authorities to assist the applicants in the enforcement of final court decisions placing various obligations on private parties. See action plan DD(2011)1037F of 16 November 2011, available (in French only) at:

<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=1977619&SecMode=1&DocId=1820858&Usage=2>.

²⁹³ These are cases concerning failure or delay of the administration in enforcing final domestic court decisions. See action plan concerning the *Sacaleanu* group of cases, DH-DD(2012)63, 23 January 2012, available (in French only) at:

<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2021536&SecMode=1&DocId=1848750&Usage=2>.

²⁹⁴ DH-DD(2013)417, available at:

<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2272909&SecMode=1&DocId=2004956&Usage=2>.

²⁹⁵ Items 2 and 3 of the decision in the *Sacaleanu* group, supra note 49; see also Memorandum of the CM Secretariat CM/Inf/DH(2012)24, available at:

<https://wcd.coe.int/ViewDoc.jsp?id=1968171&Site=&BackColorInternet=B9BDEE&BackColorIntranet=FFCD4F&BackColorLogged=FFC679>.

²⁹⁶ Referral is made to the cases of *Topcirov v. Romania*, application No. 17369/02, decision of 15 June 2006; *Fociac v. Romania*, application No. 2577/02, decision of 3 February 2005; *Maghiran v. Romania*, application No. 29402/07, decision of 19 January 2010; *Butan v. Romania*, application No. 40067/06, decision of 29 September 2009; *Radvan v. Romania*, application no. 26846/04, decision of 2 June 2009.

²⁹⁷ Round Table organised by the Department for the Execution of Judgments of the ECtHR on 21 and 22 June 2007, Conclusions available at: <https://wcd.coe.int/ViewDoc.jsp?id=1158611>.

²⁹⁸ DH-DD(2012)673 of 2 August 2012. These cases concern mainly failure to enforce final court decisions ordering the applicants' reinstatement in their posts in public bodies or delays in enforcing such decisions.

²⁹⁹ DH-DD(2013)458E, available at:

<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2278120&SecMode=1&DocId=2007938&Usage=2>.

6.4. Poor conditions of detention

116. In the cases of *Bragadireanu v. Romania*³⁰⁰ and *Petrea v. Romania*³⁰¹ the Court held that the applicants' conditions of detention amounted to inhuman and degrading treatment (violation of Article 3 ECHR), due, in particular, to prison overcrowding and a lack of medical facilities. At present, almost 40 similar cases concerning structural problem of overcrowding in prisons and police detention facilities³⁰² are pending before the CM.

117. An action plan was submitted by the Romanian authorities on 27 April 2011³⁰³ and assessed at the Deputies' Ministers' 1115th meeting on 7-9 June 2011.³⁰⁴ However, the submissions left many questions open,³⁰⁵ which is why the CM, on 29 March 2012, received a revised action plan.³⁰⁶ This document reveals that there is still severe overcrowding in Romanian prisons and police detention facilities. At its 1144th meeting (June 2012), the CM noted with interest the revised action plan.³⁰⁷ While the CM welcomed the news that the domestic prison monitoring mechanism used evaluation criteria similar to those of the Strasbourg Court and that its findings were accessible to civil society, it expressed concerns about most detention facilities' inability to observe the national standards guaranteeing a minimum individual living space to prisoners.³⁰⁸ The CM also encouraged the Romanian authorities to establish a similar monitoring mechanism for police detention facilities, and to intensify their efforts to tackle poor detention conditions. The Romanian authorities were also requested to provide information on other concrete measures taken in response to other outstanding issues identified by the CM Secretariat³⁰⁹ and their effects, in particular the setting up of effective domestic remedies.³¹⁰

118. Moreover, the CPT, after its visit to Romania in September 2010, raised concerns about several shortcomings regarding conditions of detention in its report.³¹¹ It mentioned, amongst others, serious overcrowding in establishments all over the country (150% of the capacity), insufficient conditions in police detention facilities regarding minimum living space (in most of the visited establishments less than 4m²), hygienic situation in cells and sanitary facilities, quality and quantity of food served in some facilities, as well as a lack of outdoor activities for detainees.³¹² Furthermore the Committee made several recommendations concerning deficiencies in the provision of medical services.

6.5. Ill-treatment by police and lack of effective investigations

119. There are currently over 20 cases concerning this issue before the Committee of Ministers.³¹³ In the *Barbu Anghelescu* group of cases the Court found violations of the Convention on account of several issues: ill-treatment of the applicants in police custody, lack of effective investigation into the abuses, racially

³⁰⁰ Application No. 22088/04, judgment of 6 March 2008, group of 28 cases, list available at:

[https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/OJ/DH\(2011\)1128&Language=lanFrench&Ver=prel0008&Site=DG4&BackColorInternet=B9BDEE&BackColorIntranet=FFCD4F&BackColorLogged=FFC679](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/OJ/DH(2011)1128&Language=lanFrench&Ver=prel0008&Site=DG4&BackColorInternet=B9BDEE&BackColorIntranet=FFCD4F&BackColorLogged=FFC679).

³⁰¹ Application No. 4792/03, judgment of 1 December 2008.

³⁰² See in particular item 1 of the CM decision concerning the *Bragadireanu* group of cases taken at its 1115th (DH) meeting on 7-8 June 2011; in CM/Del/Dec(2011)1115, 10 June 2011, supra note 57.

³⁰³ DD(2011)301F of 27 April 2011, available (in French only) at:

<https://wcd.coe.int/ViewDoc.jsp?id=1780137&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383>.

³⁰⁴ Committee of Ministers 1115th meeting (DH), 7-8 June 2011, CM/Del/Dec(2011)1115, supra note 57.

³⁰⁵ See outstanding questions raised in the Memorandum CM/Inf/DH(2011)26 of 10 May 2011, available at:

<https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Inf/DH%282011%2926&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383>.

³⁰⁶ DH – DD(2012)388, published on 11 April 2012, available at:

<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2082013&SecMode=1&DocId=1880482&Usage=2>.

³⁰⁷ See Decisions concerning this group of cases, Committee of Ministers, 1144th (DH) meeting, 4-6 June 2012, CM/Del/Dec(2012)1144/14, 6 June 2012, supra note 9.

³⁰⁸ Ibid, items 2-3 of the decisions.

³⁰⁹ [CM/Inf/DH\(2012\)13](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Inf/DH(2012)13) of 7 May 2012.

³¹⁰ Supra note 307, item 4 of the decisions.

³¹¹ *Rapport au Gouvernement de la Roumanie relatif à la visite effectuée en Roumanie par le Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants (CPT) du 5 au 16 septembre 2010*, CPT/Inf (2011)32 published on 24 November 2011 (in French only). See also the response by Romania, issued on 24 November 2011: <http://www.cpt.coe.int/documents/rom/2011-32-inf-fra.htm>.

³¹² Ibid, paragraphs 41-47.

³¹³ *Barbu Anghelescu v. Romania* (no. 46430/99), judgment of 5 October 2004; for a list of cases see http://www.coe.int/t/dghl/monitoring/execution/Reports/pendingCases_en.asp?CaseTitleOrNumber=barbu+anghelescu&StateCode=&SectionCode=.

motivated treatment of the detainees of the Roma origin, etc.

120. On 9 January 2013 the Romanian authorities submitted an action plan for execution of this group of judgments,³¹⁴ but the Committee of Ministers found multiple deficiencies in it.³¹⁵ First of all, the fundamental procedural safeguards against ill-treatment, comprised of the right to legal and medical assistance and to informing the third party of the apprehension continue to apply only to those individuals who have been formally remanded. Issues are also to be noted in the implementation the regulatory provisions on the medical examination of prisoners: non-observance of the confidentiality of the medical examinations and medical files of the prisoners; incomplete medical examinations and information included in the medical charts and non-compliance with the obligation on the medical doctors to report to the relevant judicial authorities the signs of violence and aggression possibly observed. Moreover, the regulatory provisions on the forensic examination of persons detained in police detention facilities who present traumatic injuries appear to delay such examination and to leave it at the discretion of an authority which lacks the required operational independence (the head of the detention facility). The awareness-raising and training measures taken do not appear to have been capable of completely eradicating acts contrary to Articles 2 and 3. Additional measures, in the context of a policy of “zero-tolerance” of such acts, appear therefore necessary in respect of all law enforcement services.

121. As regards the effectiveness of criminal investigations into abuses by police, no convictions for acts prescribed by Articles 2 and 3 were reported during the reference period (2003 – 2012) and problems persist as regards prosecutors’ compliance with courts’ instructions on the conduct of the investigation.

122. The Committee of Ministers requested further information and actions from the Romanian authorities.³¹⁶

6.6. Other areas of specific concern

123. In the case of *Rotaru v. Romania*³¹⁷ the Court identified a breach of the applicant’s right to respect for his private life (Article 8 ECHR) due to the lack of sufficient legal safeguards against abuse of the way in which the Romanian Intelligence Service collected, kept and used information. Since the Pourgourides’ report no noticeable progress has been noted by the CM in this area.³¹⁸ However, in his reply to the letter by the President of the PACE of 5 April 2011, the then head of the Romanian delegation Mr Cezar Preda mentioned that some progress had been made concerning the elaboration of the new legislation regulating the functioning of the Romanian Intelligence Service, which was scheduled to be adopted in March 2012.

124. Furthermore, problems with the lack of statutory safeguards for the protection of private life in the field of secret surveillance measures in cases of alleged threats to national security will be further assessed in the context of the case *Association ‘21 Decembre 1989’ and Maries v. Romania*.³¹⁹

7. Greece

125. According to the Pourgourides report, the most serious problems concerning Greece include:

- excessive length of proceedings and lack of an effective remedy;
- use of lethal force and ill-treatment by law enforcement officials and lack of effective investigation into such abuses.³²⁰

³¹⁴ Communication from Romania concerning the Barbu Anghelescu group of cases, 15 January 2013, DH-DD(2013)35E, available at: <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2246968&SecMode=1&DocId=1969554&Usage=2>.

³¹⁵ Decisions of the Committee of Ministers concerning the Barbu Anghelescu group of cases, 1164th (DH) meeting, 5-7 March 2013, supra note 52.

³¹⁶ See Decisions of the Committee of Ministers concerning the group, 1164th (DH) meeting, 5-7 March 2013, CM/Del/Dec(2013)1164/21 of 4 March 2013, supra note 52.

³¹⁷ Application no. 28341/95, judgment of 4 May 2000.

³¹⁸ For more information on progress made and remaining shortcomings, see Pourgourides Report, supra note 1, paragraphs 105-107; CM Interim Resolution Res/DH(2005)57, 5 July 2005, available at: <https://wcd.coe.int/ViewDoc.jsp?id=878271&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383>.

³¹⁹ Application no. 33810/07, judgment of 24 May 2011. See the decision on this case taken at the 1157th (DH) CM meeting (December 2012), supra note 12.

³²⁰ Supra note 1, paragraph 32.

126. Another two issues were discussed by the LAHR Committee at its January 2013 hearing: the conditions of detention of foreigners/asylum procedure and violations of the right to freedom of association of Turkish ethnic minorities.

127. Additionally, the CM 2012 Annual Report lists poor conditions of detention in prisons as an important issue.³²¹

7.1. Excessive length of proceedings

128. At present over 280 judgments against Greece are pending execution, in which the Court found violations of the right to a fair trial due to excessive length of proceedings and lack of an effective remedy (Articles 6§1 and 13 ECHR).³²² A 2007 CM interim resolution highlighted these chronic violations and urged the adoption of draft legislation on the acceleration of proceedings and provision of compensation to victims.³²³ Due to the persistence of this problem, the ECtHR decided to apply its pilot judgment procedure in *Vassilios Athanasiou and others v. Greece*, finding that the excessive length of proceedings before administrative courts was a structural problem and holding that Greece was to introduce an effective remedy or a combination of remedies at the national level, which would prevent further similar violations, within one year after the judgment became final (i.e. 21/03/2012).³²⁴ Thus some general measures have been taken or are underway.

129. Law No. 3900/2010, entitled “Rationalisation and acceleration of proceedings before administrative courts and other provisions,” entered into force on 1 January 2011.³²⁵ The new law provides that legal disputes raising new and similar issues in numerous cases can be prioritised and brought before a committee of three judges of the Council of State, whose judgment will serve as a guideline for other cases pending before the administrative courts. The Council of State was able to transfer 4,333 cases to lower administrative courts within the first five months of the law’s entry into force. Furthermore, stricter conditions for lodging appeal proceedings and a single judge system in the courts of appeal were introduced and the number of posts for administrative judges at all levels of jurisdiction was increased.³²⁶ At its 1136th DH meeting (March 2012), the CM noted these measures with interest and encouraged the Greek authorities to keep the CM regularly informed of the law’s impact.³²⁷

130. On 6 March 2012 Law No. 4055/2012 providing a compensatory remedy in cases of excessive length of proceedings before administrative courts and the Council of State was adopted by the Parliament – before the expiry of the deadline set by the European Court (i.e. 21 March 2012).³²⁸ According to the new law, anyone claiming that proceedings before administrative courts are excessively lengthy may request compensation for damage caused. Furthermore, courts shall assess the reasonableness of the procedure’s length and the amount of the compensation to be awarded according to the case law of the ECtHR. The CM, at its 1136th DH meeting (March 2012), welcomed the adoption of the law before the expiry of the deadline set by the Court, and took note of the Greek authorities’ intention to follow the compensatory remedy’s

³²¹ See the CM 2012 annual report, supra note 40, p. 34.

³²² As of March 2011, there were 171 cases concerning length of proceedings before administrative courts and the Council of State, and 44 cases before civil courts. See list of the Manios group cases against Greece, available at: [https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/OJ/DH\(2012\)1136&Language=lanFrench&Ver=prel0025&Site=DG4&BackColorInternet=B9BDEE&BackColorIntranet=FFCD4F&BackColorLogged=FFC679](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/OJ/DH(2012)1136&Language=lanFrench&Ver=prel0025&Site=DG4&BackColorInternet=B9BDEE&BackColorIntranet=FFCD4F&BackColorLogged=FFC679).

For the list of cases concerning length of proceedings before criminal courts (67 cases), see the list of cases concerning the Diamantides No. 2 group, 1150th DH meeting, September 2012, at:

[https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/OJ/DH\(2012\)1150&Language=lanFrench&Ver=prel0047&Site=COE&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/OJ/DH(2012)1150&Language=lanFrench&Ver=prel0047&Site=COE&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864).

³²³ Interim Resolution, CM/ResDH(2007)74, adopted at 997th meeting of the Committee of Ministers, 6 June 2007, available at: <https://wcd.coe.int/ViewDoc.jsp?id=1146395&Site=CM>.

³²⁴ *Vassilios Athanasiou and others v. Greece*, application no. 50973/08, judgment of 21 December 2010, paragraphs 36-58.

³²⁵ “Communication from Greece concerning the case of Athanasiou and others against Greece,” DH-DD(2011)349 of 16 May 2011, available at:

<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=1852009&SecMode=1&DocId=1738236&Usage=2>.

³²⁶ Action plan, DH-DD(2011)850F of 17 October 2011, available (in French only) at:

<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=1971556&SecMode=1&DocId=1802118&Usage=2>.

³²⁷ Decisions of the Committee of Ministers concerning the *Vassilios Athanasiou and others* and the Manios groups of cases, 1136th (DH) meeting, 6-8 March 2012, CM/Del/Dec(2012)1136/10 of 6 March 2012, supra note 6.

³²⁸ *Ibid.*

implementation and to explore if necessary, in the light of its functioning, the opportunity for possible adjustments.³²⁹ According to the information from the Head of the Greek Delegation to PACE of 28 November 2012,³³⁰ a first case under Law No. 4055/2012 has already been adjudicated by the Council of State and significant compensation has been awarded to the plaintiff.

131. Independently of the progress noted in respect of the acceleration of proceedings before administrative courts and the Council of State, the ECtHR adopted a pilot judgment, on 4 April 2012, in the case of *Michelioudakis v. Greece* concerning excessive length of criminal proceedings.³³¹ In its judgment (final on 3 July 2012), the Court highlighted the structural nature of the problem at stake and called on Greece to introduce, within one year (i.e. by 3 July 2013), a domestic remedy or a set of remedies capable of affording redress for the unreasonable length of criminal proceedings, and decided to adjourn all similar cases (50 out of 250 pending cases before the Court concern criminal proceedings) during that time. It noted that, despite the adoption of Law No. 3904/2010 containing a set of provisions aimed at simplifying and accelerating criminal proceedings and various other legislative initiatives, the domestic legal system did not provide to the parties concerned a remedy or remedies enabling them to enforce their right to have their cases heard within a reasonable time.³³² Therefore, at its 1150th DH meeting (September 2012), the CM underlined the importance to comply in due course with this pilot judgment and invited the Greek authorities to introduce an effective domestic remedy (or a set of remedies) against excessive length of criminal proceedings taking into consideration the indications given by the Court in this pilot judgment.³³³ In February 2013, an action plan on this case was submitted to the CM³³⁴ and the CM Secretariat is now assessing it.³³⁵

132. Similarly, on 30 October 2012, a pilot judgment was delivered in the case of *Glykantzi v. Greece*,³³⁶ concerning excessive length of proceedings before civil courts and the lack of an effective remedy in this respect. The judgment became final on 30 January 2013. The Court requested that Greece put in place an effective remedy for excessively lengthy civil proceedings before 30 January 2014. At its 1157th (DH) meeting (March 2013), the CM invited the Greek authorities to present by 30 July 2013 at the latest their action plan in this case.³³⁷

7.2. Use of lethal force and ill-treatment by law enforcement officials and lack of effective investigation into such abuses

133. Violations of Articles 2 and 3 of the ECHR arose due to the excessive use of lethal force and ill-treatment by law enforcement officials and the subsequent failure of the Greek authorities to conduct effective investigations into such abuses. Currently there are eleven cases pending full implementation in compliance with the ECtHR's judgment before the CM.³³⁸

134. As concerns the use of lethal force by police officers in the absence of an appropriate legislative and administrative framework relating to the use of firearms, the Greek authorities have taken a number of measures to avoid further similar violations of Article 2 of the Convention.³³⁹ In particular, Law No. 29/1943

³²⁹ Ibid.

³³⁰ Text in file within the Secretariat.

³³¹ *Michelioudakis v. Greece*, application no. 54447/10, judgment of 3 April 2012; see also "Excessive length of criminal proceedings: Greece must take measures to deal with this systemic problem," Press Release, ECHR 131 (2012) of 3 April 2012, available at:

<http://cmiskp.echr.coe.int/tkp197/view.asp?action=open&documentId=905574&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>.

³³² *Michelioudakis v. Greece*, supra note 331, paragraph 67.

³³³ Decisions of the Committee of Ministers concerning the *Michelioudakis* judgment and the group of cases *Diamantides No. 2* (application No. 71563/01, judgment of 19 May 2005), 1150th (DH) meeting, 24-26 September 2012, supra note 49.

³³⁴ DH-DD(2013)96, available at:

<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2246857&SecMode=1&DocId=1976740&Usage=2>.

³³⁵ See item 1 of the decision taken in the *Michelioudakis* and *Diamantides No. 2* cases at the 1164th (DH) meeting, 5-7 March 2013, supra note 52.

³³⁶ Judgment of 30 October 2012, application no. 40150/09.

³³⁷ See item 3 of the decision taken in the *Glykantzi* case and *Konti-Arvaniti* group of cases at the 1164th (DH) CM meeting (March 2013), supra note 52.

³³⁸ For instance, *Makaratzis v. Greece*, application no. 50385/99, judgment of 20 December 2004. For a list of all the cases see: Ministers' Deputies, Annotated order of Business and decisions adopted, 1157th Meeting (DH), 4-6 December 2012, CM/Del/Dec(2012)1157 of 10 December 2012, supra note 12.

³³⁹ CM/Inf/DH (2012)40 of 27 November 2012, available at:

<https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Inf/DH%282012%2940&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864>.

on the use of firearms, which had been criticised by the ECtHR, was abolished. New comprehensive legislation detailing the rules for the use of firearms by police officers was introduced.³⁴⁰ Furthermore, since 2003 there are no similar cases communicated or pending before the Court. Consequently, the CM decided to close the examination of this aspect of the cases in question at its 1157th (DH) meeting (December 2012).³⁴¹

135. As regards ill-treatment under the responsibility of the police (violations of Article 3), several measures have been taken by the Greek authorities, such as adopting a new Disciplinary Code,³⁴² disseminating circulars to police stations and prosecutors as reminders of their obligation to effectively investigate human rights violations, as well as training police officers more extensively on human rights issues.³⁴³ The practical impact of these measures, however, remains to be assessed.

136. Furthermore, by Law No. 3938/2011, an independent, three-member committee competent to evaluate the advisability of opening new administrative investigations following judgments of the Court was established in order to ensure effective investigations into deaths and other abuses by police officers (procedural violations of Articles 2 and 3).³⁴⁴ At its 1157th (DH) meeting (December 2012), the CM welcomed this progress and invited the Greek authorities to keep them updated about its establishment and effective functioning.³⁴⁵

137. It should be noted, however, that, according to some prominent international NGOs, abuse of force by police officers remains a worrying phenomenon in Greece, especially concerning anti-austerity protesters,³⁴⁶ migrants and asylum-seekers.³⁴⁷

7.3. Emerging issues

7.3.1. Conditions of detention of foreigners and asylum procedure

138. In several cases, examined by the CM subsequent to the case of *M.S.S v. Belgium and Greece*,³⁴⁸ the Court found violations of Article 3 due to the conditions under which the applicants (including unaccompanied minors³⁴⁹) were detained as irregular migrants (overcrowding, lack of beds/mattresses, insufficient ventilation, no regular access to toilets or sanitary facilities, and no outdoor exercise).

139. In March 2011, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("CPT") issued a public statement regarding the treatment and conditions of detention of persons deprived of their liberty in Greece, in particular that of irregular migrants,³⁵⁰ and put forward a series of recommendations in its related report on its January 2011 visit to Greece.³⁵¹ Following the CPT's strong criticism, the Secretary General of the Council of Europe urged the Greek authorities to take all necessary steps to ensure the improvement of the situation.³⁵² The CPT statement and the response of the Greek authorities were also discussed at the meeting of the Sub-Committee on Human Rights on 4

³⁴⁰ Law No. 3169/2003.

³⁴¹ By-law No. 3938/2011.

³⁴² Presidential decree No. 120/2008. It entered into force in September 2008.

³⁴³ Supra note 339.

³⁴⁴ Idem. It was established within the Ministry of the Citizen Protection.

³⁴⁵ Supra note 338.

³⁴⁶ Serious incidents were reported at demonstrations in Athens in May in June 2011, as well as in April 2012.

³⁴⁷ Human Rights Watch, "Greece needs 'zero tolerance' approach to police violence", by Eva Cossé, 17 October 2012, at: <http://www.hrw.org/news/2012/10/17/greece-needs-zero-tolerance-approach-police-violence>. and Amnesty International, "Greek authorities must send a strong message against cases of police abuse", public statement of 24 October 2012, at: <http://www.amnesty.org/en/library/asset/EUR25/010/2012/en/ae3436dd-dc46-4f24-85b0-21ddb3472a64/eur250102012en.html>.

³⁴⁸ Application no. 30696/09, judgment of 21 January 2011 (Grand Chamber). Other cases include: *S.D. v. Greece* (Application no. 53541/07, judgment of 11 June 2009), *Tabesh v. Greece* (Application no. 8256/07, judgment of 26 November 2009), *A.A. v. Greece* (Application no. 12186/08, judgment of 22 July 2010), *Kaja v. Greece* (Application no. 32927/03, judgment of 27 July 2006), *Efremidze v. Greece* (Application No. 33225/08, judgment of 21 June 2011).

³⁴⁹ See *Rahimi v. Greece*, Application No. 8687/08, judgment of 5 April 2011, and *R.U. v. Greece*, Application No. 2237/08, judgment of 7 June 2011.

³⁵⁰ CPT Public Statement concerning Greece, CPT/Inf (2011) 10 of 15 March 2011, available at: <http://www.cpt.coe.int/documents/grc/2011-10-inf-eng.pdf>.

³⁵¹ Report to the Government of Greece on the visit to Greece carried out by the CPT from 19 to 27 January 2011, CPT/Inf (2012) 1 of 10 January 2012, available at: <http://www.cpt.coe.int/documents/grc/2012-01-inf-eng.pdf>.

³⁵² Letter from the Secretary General of the Council of Europe to the Greek Prime Minister of 17 March 2011, available at: <http://www.coe.int/t/secretarygeneral/sq/speeches/2011/20110318.pdf>.

October 2012 in light of a presentation by Mr Miltiadis Varvitsiotis. The Sub-Committee decided to revert to this issue at a subsequent meeting.³⁵³

140. The case of *M.S.S. v. Belgium and Greece*³⁵⁴ also addressed shortcomings in the Greek authorities' examination of the applicant's asylum request and the risks he would face upon being returned directly or indirectly to his country of origin. The Court found that his asylum application was treated without any serious examination of its merits, and that he lacked access to an effective remedy (violation of Article 13 taken in conjunction with Article 3).

141. After having submitted an action plan in August 2011,³⁵⁵ the Greek authorities provided the CM, in January 2012, with further information on the implementation of the CPT's recommendations through measures aiming to manage the situation in the Greek eastern border region of Evros, and improve the living conditions of illegal migrants in detention facilities, notwithstanding the extremely difficult economic situation.³⁵⁶ Measures include the technical improvement of border guard stations and detention facilities for illegal migrants, as well as the construction of new special detention facilities. It appears that these measures will, to a large extent, be taken with the help and support of the European Union External Borders Fund.³⁵⁷ Moreover, following the entry into force of Law No. 3907/2011 "On the establishment of an Asylum Service and a First Reception Service" which aims to bring detention and living conditions, as well as asylum procedures, into conformity with the Court's conclusions, an Initial Reception Centre was established within the Ministry of Citizen Protection.³⁵⁸ Its main task is to screen, register and identify third-country nationals.³⁵⁹ At its 1144th DH meeting (June 2012), the CM welcomed the measures taken by Greece to remedy the situation, but invited the authorities to intensify their efforts.³⁶⁰

142. The issue of the examination of the asylum requests was the focus of the Committee of Ministers' 1164th meeting in March 2013. According to information provided both by Greek authorities and other actors active in this field the following results have been achieved: the number of examined asylum cases has increased; the quality of asylum decision-making process (in particular at second instance) has improved; backlog cases have decreased; provision of interpretation services was increased; screening, identification and country of origin information systems are being set up. The authorities further indicated that access to information and to legal aid was more effective. As for the new Asylum Service, it has still not started functioning on account of budgetary constraints. Forced returns are carried out with administrative and judicial safeguards and monitored by the Greek Ombudsman, who collaborates with international organisations and the European Union Agency Frontex in this respect.

143. The efforts of the Greek authorities were noted by concurring sources (e.g. PACE in its resolution 1918(2013) and the subsequent recommendation adopted on 24 January 2013 following an urgent debate

³⁵³ See Synopsis of the Committee's meeting in Strasbourg held from 1-4 October 2012, [AS/Jur\(2012\) CB 07](#) of 9 October 2012.

³⁵⁴ Supra note 349.

³⁵⁵ Action plan DH-DD(2011)567F of 3 August 2011, available (in French only) at:

<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=1918165&SecMode=1&DocId=1768912&Usage=2>.

³⁵⁶ Communication from the government of Greece in the case of *M.S.S. against Belgium and Greece*, DH-DD(2012)173 of 15 February 2012, available at:

<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2077978&SecMode=1&DocId=1857812&Usage=2>.

Communication from Greece in the case of *M.S.S. against Belgium and Greece*, Greek Action Plan on Migration Management, DH-DD(2011)670E of 2 September 2011, available at:

<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=1918567&SecMode=1&DocId=1775996&Usage=2>.

See also "Coping with a fundamental rights emergency: The situation of persons crossing the Greek land border in an irregular manner," Report by the European Union Agency for Fundamental Rights of 8 March 2011, available at: http://fra.europa.eu/fraWebsite/attachments/Greek-border-situation-report2011_EN.pdf.

³⁵⁷ Ibid.

³⁵⁸ See also Decisions of the Committee of Ministers concerning the *M.S.S.* case, 1120th (DH) meeting, 13-14 September 2011, CM/Del/Dec(2012)1120/2 of 14 September 2011, supra note 255.

³⁵⁹ "M.S.S. against Belgium and Greece: Assessment of the general measures presented in the action plans of Belgium and Greece," Information Memorandum by the Department for the Execution of Judgments of the European Court of Human Rights, CM/Inf/DH(2012)19 of 29 May 2012, available at:

[https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Inf/DH\(2012\)19&Language=lanEnglish&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864#P141_14828](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Inf/DH(2012)19&Language=lanEnglish&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864#P141_14828).

³⁶⁰ Decisions of the Committee of Ministers concerning the *M.S.S.* case, 1144th (DH) meeting, 4-6 June 2012, CM/Del/Dec(2012)1144/5 of 6 June 2012, supra note 9.

on “Migration and asylum: mounting tensions in the Eastern Mediterranean”³⁶¹) related to the issues of asylum and detention as raised in the M.S.S. group of cases). Nonetheless as indicated by the authorities, the new Asylum Service has still not started functioning. Therefore, there is a need to accelerate delayed reforms and to resolve practical problems regarding access to asylum procedure, registration of asylum requests as well as introduction of asylum claims (both in and out of detention) offering procedural safeguards. Furthermore, continuation and enhancement of interpretation services, better access to information material and dealing with backlog of pending cases timely and effectively is needed.

144. Regarding conditions of detention and living conditions, as it emerged from the reports of all actors involved in the field, despite the efforts made, conditions of detention remain substandard. Additionally, according to the above-mentioned PACE resolution 1918(2013), detention of irregular migrants-including unaccompanied minors alongside adults- continues to be used systematically and for prolonged periods of time (up to 18 months according to new legislation). Concerns have been expressed concerning the lack of available reception places as well as the non-functioning of first reception centres. The CM urged the Greek authorities to intensify their efforts with a view to accelerating delayed reforms (in particular the functioning of the new Asylum Service) and to resolving practical problems regarding access to the asylum procedure (especially registration of asylum requests at the Aliens Department in Petrou Ralli) and introduction of asylum claims, while in detention.³⁶²

145. Following his visit to Greece, the Council of Europe Commissioner for Human Rights Niels Muižnieks issued a statement in April 2013 where, inter alia, he urged Greece “to remedy certain serious, long-standing gaps which adversely affect the human rights of migrants, including asylum seekers and refugees...”³⁶³

7.3.2. Freedom of association

146. In the *Bekir-Ousta and others* judgment and other similar cases, the Court found violations of the right to freedom of association due to the Greek authorities’ refusal to register associations,³⁶⁴ and to the dissolution of an association promoting the idea that a Turkish ethnic minority exists in Greece (violations of Article 11).³⁶⁵

147. After the ECtHR judgments had been delivered, the applicants in all the cases requested the revocation of the impugned domestic courts’ decisions, but their requests were rejected at the second level of jurisdiction for procedural reasons. In the cases of *Bekir-Ousta and others* and *Emin and others* the applicants lodged cassation appeals, which are currently pending.³⁶⁶ The cassation appeal lodged by the association *Tourkiki Enosi Xanthis* was rejected by the Court of Cassation,³⁶⁷ according to which in a non-contentious procedure a judgment of the ECtHR did not constitute “a change of circumstances” allowing for a revision or revocation of a final domestic judgment.³⁶⁸

148. According to the information provided by Greece, 43 requests for the registration of associations whose title indicated the adjective “minority” or indicated in some way that they were of minority origin, were accepted between January 2008 and February 2012 and there had been only four cases in which registration was refused.³⁶⁹ Moreover, by judgment 24/2012, the Greek Court of Cassation overturned a judgment of the Thrace Court of Appeal that had refused the “South Evros Cultural and Educational Association of Western Thrace Minority” associations’ application for registration, holding, with reference to Article 11 of the Convention, that a mere suspicion resulting from an ambiguity in the title of the association was insufficient to establish a danger to public order, and that there was no imperative social need to refuse

³⁶¹ Resolution 1918 (2013), available at: <http://assembly.coe.int/ASP/XRef/X2H-DW-XSL.asp?fileid=19467&lang=EN>; Recommendation 2010 (2013), available at: <http://assembly.coe.int/ASP/XRef/X2H-DW-XSL.asp?fileid=19470&lang=en>.

³⁶² Decisions of the Committee of Ministers concerning the M.S.S. case, 1164th (DH) meeting, 5-7 March 2013, CM/Del/Dec(2013)1164/5 of 5 March 2013, item 4 of the decision, supra note 52.

³⁶³ “Greece Must Curb Hate Crime and Combat Impunity”, HR Commissioner’s statement of 16 April 2013, available at: http://www.coe.int/t/commissioner/News/2013/130416GreeceReport_en.asp.

³⁶⁴ *Bekir-Ousta and others v. Greece*, application no. 35151/05, judgment of 11 October 2007, and *Emin and others v. Greece*, application no. 34144/05, judgment of 27 March 2008.

³⁶⁵ *Tourkiki Enosi Xanthis and others v. Greece*, application no. 26698/05, judgment of 27 March 2008.

³⁶⁶ According to their representative, see [DH-DD\(2012\)1085](https://www.coe.int/t/commissioner/News/2012/120416DH-DD(2012)1085) of 22 November 2012.

³⁶⁷ By judgment of 353/2012.

³⁶⁸ See item 3 of the decision adopted at the CM(DH) 1144th meeting, Decisions of the Committee of Ministers concerning the Bekir-Ousta group of cases, CM/Del/Dec(2012)1144 of 6 June 2012, supra note 9.

³⁶⁹ DH-DD(2012)1022 of 5 November 2012, available (in French only) at:

<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2206822&SecMo de=1&DocId=1947962&Usage=2>.

to recognise the association in question.³⁷⁰ In November 2012, the Greek authorities indicated that a new hearing in the said case would be held before the Court of Appeal of Thrace on 7 December 2012 and that the Cassation Court's decision could be followed by lower jurisdictions.³⁷¹

149. At its 1157th (DH) meeting (December 2012), the CM took note of this new development and "recalled the commitment reiterated by the Greek authorities to implementing fully and completely the judgments under consideration, which have been under the supervision of the Committee of Ministers since 2008 and without excluding any avenue in that respect".³⁷² It also invited the Greek authorities to provide precise and concrete information on the measures taken or envisaged.³⁷³ On 8 April 2013 the Greek government submitted new information,³⁷⁴ which is currently under assessment.

150. It should be recalled in this context that the situation of the Turkish minority in Western Thrace has been the subject of several reports by the LAHR Committee.³⁷⁵ In its Resolution 1704 (2010), the Assembly urged the Greek authorities to "fully implement the judgments of the European Court of Human Rights concerning freedom of religion and association, *inter alia*, relating to the titles of associations, and to allow associations to use the adjective "Turkish" in their name if they so wish".³⁷⁶

8. Bulgaria

151. According to Mr Pourgourides' report, the most serious problems concerning Bulgaria are:

- deaths and ill-treatment taking place under the responsibility of law enforcement officials and the subsequent lack of effective investigation into such abuses;
- excessive length of judicial proceedings and lack of an effective remedy;
- violations of the right to respect for family life due to deportation/orders to leave the territory.³⁷⁷

152. The CM 2012 Annual Report also lists poor conditions of detention, insufficient guarantees against arbitrary use of the powers accorded by the law on special surveillance means, and placement in a social care home for people with mental disorders as major issues.³⁷⁸

8.1. Deaths and ill-treatment taking place under the responsibility of law enforcement officials and the subsequent lack of effective investigation into such abuses

153. The Committee of Ministers is currently examining 25 cases concerning deaths and ill-treatment at the hands of law enforcement officials. Furthermore, in most of those cases, the state was found to have failed to conduct effective investigations.³⁷⁹ Currently, the *Velikova* group of cases³⁸⁰ comprises 19 cases concerning

³⁷⁰ DH-DD(2012)625 of 22 June 2012, available at:

<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2127322&SecMode=1&DocId=1904194&Usage=2>.

³⁷¹ Ibid.

³⁷² Item 3, supra note 12.

³⁷³ Ibid, item 4.

³⁷⁴ DH-DD(2013)452, available at:

<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2278072&SecMode=1&DocId=2007560&Usage=2>.

³⁷⁵ See in particular, Report by Boriss Cilevičs (Latvia, SOC) on "Minority protection in Europe: best practices and deficiencies in implementation of common standards", Committee on Legal Affairs and Human Rights, Doc. 12109 of 20 January 2010; report of our former Committee colleague Mr Michel Hunault (France, EDG) on "Freedom of religion and other human rights for non-Muslim minorities in Turkey and for the Muslim minority in Thrace (Eastern Greece)", Doc. 11860 of 21 April 2009.

³⁷⁶ Assembly's Resolution 1704 (2010) on "Freedom of religion and other human rights for non-Muslim minorities in Turkey and for the Muslim minority in Thrace (Eastern Greece)", of 27 January 2010, paragraph 18.9.

³⁷⁷ Supra note 1, at paragraph 32.

³⁷⁸ See the CM 2012 annual report, supra note 40, p. 33.

³⁷⁹ See Interim Resolution CM/ResDH(2007)107 of 17 October 2007, available at:

<https://wcd.coe.int/ViewDoc.jsp?Ref=CM/ResDH%282007%29107&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383>.

³⁸⁰ See judgment *Velikova v. Bulgaria*, Application No. 41488/98, judgment of 18 May 2000. For other cases see also at: http://www.coe.int/t/dghl/monitoring/execution/Reports/pendingCases_en.asp?CaseTitleOrNumber=velikova&StateCode=&SectionCode=;

deaths and ill-treatment and the *Nachova* judgment³⁸¹ groups 6 cases regarding excessive use of fire-arms, all of which are pending before the CM.

154. In February 2013 the Bulgarian government submitted their latest revised action report and plan for further measures to be taken.³⁸² On 1 July 2012 an amendment, containing important changes to the legal framework restricting the use of force and firearms, to the Ministry of Interior Act (Bill No. 202-01-14) entered into force. Having assessed it, the Committee of Ministers concluded that the new legislation seemed to be in conformity with the requirements of the Convention.³⁸³ This legislative reform is also a relevant measure in respect of the effectiveness of investigations, for this new regime obliges the competent authorities to apply similar criteria to the standards which emerge from the case-law of the Court. The setting-up of a specialised unit in the Chief Public Prosecutor's office responsible for promoting the impartiality and the effectiveness of criminal investigations concerning law enforcement agents is also a positive step forward. However, these measures do not seem sufficient to ensure the effectiveness of the criminal and disciplinary investigations within the meaning of the Court's case-law. Further information or clarifications are necessary, in particular on the following issues: a) exact procedure followed in case of allegation of ill-treatment by law enforcement agents; b) measures taken to ensure the impartiality and independence of the police investigators who carry out investigative steps against other police officers; c) possibility under the current legal framework to question special forces officers when their intervention has given rise to allegations of ill-treatment; or, in the absence of such possibility, measures taken or envisaged in order to bring the domestic legal framework and practice in line with the requirements of the Court's case-law.

155. Moreover, the practical operation of procedural safeguards during police custody has admittedly been improved, but the reports of the CPT³⁸⁴ and the reports prepared by observers from civil society³⁸⁵ show that measures are still necessary in order to overcome some problems which persist and which are related, *inter alia*, to obtaining the assistance of a duty lawyer in police custody and to the record keeping concerning detainees. It seems also useful to take additional measures in order to ensure that the prosecution authorities are systematically informed of every case for which there are indications of ill-treatment by law-enforcement forces.

156. The analysis of the statistical data for the period 2006-2009 has shown a positive downward tendency in the numbers of allegations of ill-treatment as compared to the period prior to 2006. However, additional measures seem necessary in order to produce fuller and more accurate data for the last years, in order to allow a complete assessment of the impact of the measures already taken by the authorities. In fact, currently different institutions collect data in this area, in apparently separate files, which creates risks of mistakes and of incidents being recorded twice. Therefore, it seems useful to put in place nationally coordinated data collection in order to produce information concerning allegations of ill-treatment notified to all institutions, as well as concerning the criminal and disciplinary investigations carried out in this connection. As concerns the internal monitoring, it seems useful to examine the possibility of producing public versions of the monthly and/or annual reports on discipline within the Ministry of Interior.³⁸⁶

³⁸¹ See judgment *Nachova and others v. Bulgaria*, Application No. 43577/98, judgment of 6 July 2005. See also at: http://www.coe.int/t/dghl/monitoring/execution/Reports/pendingCases_en.asp?CaseTitleOrNumber=Nachova&StateCode=&SectionCode=

³⁸² See DD-DH(2013)60revE, available at:

<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2246914&SecMo de=1&DocId=1973064&Usage=2>.

³⁸³ Here and further for this group, see Decisions of the Committee of Ministers concerning the Velikova and Nachova groups, 1164th (DH) meeting, 5-7 March 2013, *supra* note 52. See also Information Document CM/Inf/DH(2013)6 rev of 26 February 2013, available at:

[https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Inf/DH\(2013\)6&Ver=rev&Language=lanEnglish&Site=&BackColorInternet=B9B DEE&BackColorIntranet=FFCD4F&BackColorLogged=FFC679](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Inf/DH(2013)6&Ver=rev&Language=lanEnglish&Site=&BackColorInternet=B9B DEE&BackColorIntranet=FFCD4F&BackColorLogged=FFC679).

³⁸⁴ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) report of 15 March 2012, at: <http://www.cpt.coe.int/documents/bgr/2012-09-inf-eng.htm>.

In May 2012, the CPT carried out an ad hoc visit to Bulgaria, see at: <http://www.cpt.coe.int/documents/bgr/2012-05-14-eng.htm>.

³⁸⁵ Communication from a NGO and reply of the government DH-DD(2011)298, available at:

<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=1831918&SecMo de=1&DocId=1731112&Usage=2>.

³⁸⁶ *Supra* note 383.

8.2. Excessive length of judicial proceedings and lack of an effective remedy

157. The problem of excessive length of proceedings is widespread in criminal, civil and administrative cases in Bulgaria and is usually accompanied by a lack of effective remedies (nearly 110 cases).³⁸⁷ On 10 May 2011, the ECtHR issued two pilot judgments, *Dimitrov and Hamanov v. Bulgaria* and *Finger v. Bulgaria*, concerning the systemic lack of effective legal remedies for unreasonably lengthy criminal, civil and administrative proceedings.³⁸⁸ Bulgaria was asked to introduce such remedies within one year, i.e. by 10 August 2012.

158. The Bulgarian authorities have adopted an administrative compensatory remedy for excessive length of proceedings which entered into force on 1 October 2012. This remedy is accessible only when the judicial proceedings have ended. Moreover, on 26 September 2012 the Bulgarian Parliament adopted at first reading a bill aiming at the introduction of judicial compensatory remedy for excessive length of civil and criminal proceedings. The proposed judicial remedy will be available to persons who are parties in pending judicial proceedings, as well as to persons who have been parties in completed judicial proceedings. The latter will be obliged to exhaust the above-mentioned administrative remedy before they can use the judicial remedy. On 28 November 2012 legislative amendments, aimed at introducing the aforementioned judicial remedy, were adopted.³⁸⁹ Moreover, the authorities have indicated that a working group has been set up in order to examine the possibility to introduce a remedy which would allow requesting the acceleration of criminal proceedings.³⁹⁰

159. As concerns the implementation of the pilot judgments, the Committee of Ministers has already considered at its 1150th DH meeting in September 2012 that the remedies adopted or foreseen by the authorities, taken together, seem capable of meeting the main requirements of the Court's case-law.³⁹¹ It should, however, be noted that, to date, no information is available concerning de facto adoption of the judicial remedy.

160. As concerns the actual length of judicial proceedings, the reforms described in Interim Resolution CM/ResDH(2010)223³⁹² and in Information document CM/Inf/DH(2012)36³⁹³ seem to have improved the efficiency of the Bulgarian judicial system. Thus, in spite of the clear resurgence of the number of cases examined by the Bulgarian courts, the proportion of cases resolved within a year for all the Bulgarian courts has remained stable. However, it seems that the results of these reforms have not yet been entirely consolidated and that problems with length of proceedings may still arise because of the very important workload of some large courts (Sofia City Court, Sofia District Court).³⁹⁴

³⁸⁷ At the 1164th meeting of March 2013, the *Kitov v. Bulgaria* case group (59 criminal proceedings cases,) and another 56 civil proceedings cases are grouped together with *Djangozov v. Bulgaria*, the full list of cases being available at:

<https://wcd.coe.int/ViewDoc.jsp?id=2015633&Site=&BackColorInternet=B9BDEE&BackColorIntranet=FFCD4F&BackColorLogged=FFC679> and <https://wcd.coe.int/ViewDoc.jsp?id=2015311&Site=&BackColorInternet=B9BDEE&BackColorIntranet=FFCD4F&BackColorLogged=FFC679>.

³⁸⁸ *Dimitrov and Hamanov v. Bulgaria*, application nos. 48059/06 and 2708/09; *Finger v. Bulgaria*, application no. 37346/05, judgments of 10 May 2011.

³⁸⁹ DH-DD(2012)1123E, available at:

<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2194426&SecMode=1&DocId=1958858&Usage=2>.

³⁹⁰ Decisions of the Committee of Ministers concerning the length-of-proceedings group of cases, 1157th (DH) meeting, 4-6 December 2012, supra note 12.

³⁹¹ See CM/Inf/DH(2012)27, available at:

[https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Inf/DH\(2012\)27&Language=lanEnglish&Site=&BackColorInternet=B9BDEE&BackColorIntranet=FFCD4F&BackColorLogged=FFC679](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Inf/DH(2012)27&Language=lanEnglish&Site=&BackColorInternet=B9BDEE&BackColorIntranet=FFCD4F&BackColorLogged=FFC679).

³⁹² Interim Resolution CM/ResDH(2010)223, available at:

<https://wcd.coe.int/ViewDoc.jsp?id=1715961&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383>.

³⁹³ Information document CM/Inf/DH(2012)36, available at:

<https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Inf/DH%282012%2936&Language=lanEnglish&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FD C864&BackColorLogged=FDC864>.

³⁹⁴ See Decisions of the Committee of Ministers concerning the Dimitrov and Hamanov group of cases, 1157th (DH) meeting, 3-6 December 2012, supra note 12.

8.3. Violations of the right to respect for family life due to deportation/ order to leave the territory

161. In a number of cases, referred to as the *Al-Nashif and others*³⁹⁵ group regarding deportation or orders to leave the territory on grounds of national security, the ECtHR found violations of the right to respect for family life. Some of the cases from this group also concern other violations of the Convention, such as risk of ill-treatment in case of the implementation of an expulsion order, unlawful detention, lack of an effective remedy or of procedural guarantees in case of expulsion.

162. In action reports sent to the Committee of Ministers on 2 March 2011 and 17 February 2012, the Bulgarian government indicated that the Aliens Act now complies with the ECtHR's judgments.³⁹⁶ However, according to the CM, while some issues such as the unavailability of judicial review in cases concerning the legality of detention pending expulsion have been addressed, many others remain outstanding.³⁹⁷ Deficiencies in the judicial review of expulsion orders, in particular the lack of examination of the facts on which an expulsion order is based, or the lack of an automatic suspensive effect in cases of substantial risk of death or ill-treatment remain.³⁹⁸

8.4. Poor conditions of detention

163. There is a group of 19 cases before the Committee of Ministers concerning inhuman and degrading treatment of the applicants due to poor conditions of detention.³⁹⁹

164. On 15 May 2012 the Bulgarian authorities submitted an action report describing the measures already taken and envisaged for execution of these judgments, in particular: 1) measures taken to promote alternatives to imprisonment and more adequate distribution of the detainees between different penitentiary facilities in order to partially solve the problem of overcrowding; 2) measures taken to strengthen the effectiveness of the domestic compensatory remedy for poor conditions of detention; 3) the setting-up of a national prevention mechanism which assigns an important role to the Ombudsman for the monitoring of detention facilities.⁴⁰⁰

165. Having examined the action report, the Committee of Ministers found that a number of other issues still required clarification: 1) the functioning modalities of the domestic monitoring mechanisms; 2) the impact of the construction and renovation works already accomplished; 3) the authorities' precise assessment of the current situation concerning conditions of detention; 4) the construction and renovation works planned for the future, their funding, the time-limits for their implementation and their expected impact on the living conditions in the places of detention; etc.⁴⁰¹

166. On 9 April 2013 the authorities submitted a revised action plan⁴⁰² which is currently being assessed by the Department for Execution of ECHR Judgments.

³⁹⁵ *Al-Nashif and others v. Bulgaria*, application no. 50963/99, judgment of 20 June 2002.

³⁹⁶ Action report - Communication from Bulgaria concerning the case of Raza against Bulgaria, D(2011)255, 8 April 2011, available at: [https://wcd.coe.int/ViewDoc.jsp?Ref=DH-DD\(2011\)255&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383](https://wcd.coe.int/ViewDoc.jsp?Ref=DH-DD(2011)255&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383).

³⁹⁷ See the Decisions of the Committee of Ministers concerning the *Al-Nashif* group of cases, 1136th (DH) meeting, 6-8 March 2012, CM/Del/Dec(2012)1136E of 13 March 2012, supra note 6.

³⁹⁸ Group of cases *Al-Nashif against Bulgaria*, Memorandum prepared by the Department for the Execution of Judgments and Decisions of the European Court of Human Rights, CM/Inf/DH(2012)3rev, 24 February 2012, available at: <https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Inf/DH%282012%293&Language=lanEnglish&Ver=rev&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864>.

³⁹⁹ *Kehayov v. Bulgaria* (no.41035/98), judgment of 18 January 2005; for the list of cases see http://www.coe.int/t/dghl/monitoring/execution/Reports/pendingCases_en.asp?CaseTitleOrNumber=kehayov&StateCode=&SectionCode=.

⁴⁰⁰ Communication from Bulgaria concerning the *Kehayov* group of cases, DH-DD(2012)426E, 15 May 2012, available at: <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2091760&SecMode=1&DocId=1884756&Usage=2>.

⁴⁰¹ See Decisions of the Committee of Ministers concerning this group of cases, 1144th (DH) meeting, 2-4 June 2012, supra note 9.

⁴⁰² DH-DD(2013)417E, available at: <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2272909&SecMode=1&DocId=2004956&Usage=2>.

167. As indicated in paragraph 3, one specific unresolved issue mentioned in the report by Mr Pourgourides was the need for the United Kingdom to comply with its obligation to execute certain Court judgments in a timely and diligent manner. Whilst the human rights problems in the United Kingdom are in many ways not as serious as those affecting other states listed above, the Pourgourides report highlighted certain “significant implementation problems” that persist, such as prisoner voting rights and the retention of DNA and biometric data.⁴⁰³

168. In the case of *Hirst v. the United Kingdom (No. 2)*⁴⁰⁴ and the pilot judgment of *Greens and M.T. v. the United Kingdom*,⁴⁰⁵ the Court found violations of the Convention as a result of the United Kingdom’s blanket ban on voting for prisoners (violation of Article 3 of Protocol No. 1).

169. Following an exchange of letters between the British delegation and the Registry of the Court in the summer of 2011, the ECtHR agreed to extend the deadline for the implementation of these cases, originally set to be 11 October 2011, to six months after the date of the Grand Chamber judgment in *Scoppola v. Italy (No. 3)*.⁴⁰⁶ Since the Grand Chamber delivered the latter judgment on 22 May 2012, the UK authorities had until 23 November 2012 to comply with the pilot judgment.⁴⁰⁷

170. On 23 November 2012, the UK authorities submitted an Action plan to the CM which outlined legislative proposals introduced to Parliament to amend the electoral law. These proposed amendments include a range of options for a Parliamentary Committee to consider.⁴⁰⁸ At its 1157th (DH) meeting (December 2012), the CM noted this initiative with great interest. It also welcomed the announcement made by the Lord Chancellor and Secretary of State for Justice when presenting it to Parliament that “the Government is under an international legal obligation to implement the Court’s judgment” and “the accepted practice is that the United Kingdom observes its international obligations”. The CM stressed, therefore, that the final version of the legislation should be in line with these obligations and that the third option, included in the draft bill and aimed at retaining the blanket restriction on prisoners’ vote, would not be compatible with the Convention. It invited the authorities to keep it informed about the legislative progress and decide to postpone the examination of these cases until its 1179th (DH) meeting in September 2013.

171. On 12 March 2013 the Court decided to adjourn examination of the 2,354 applications pending before it on the same issue until, at the latest, 30 September 2013.⁴⁰⁹

172. As concerns the retention of DNA and biometric data, in March 2011, the United Kingdom submitted an action plan⁴¹⁰ relative to the implementation of the judgment in *S. and Marper v. the United Kingdom*,⁴¹¹ where the Court found violations of the right to private life as a result of the retention of DNA profiles, fingerprints, and cellular samples of persons accused but not convicted of criminal offenses. The action plan described the legislative changes for England and Wales based on the Scottish model introduced by the Protection of Freedoms Bill, which became law on 1 May 2012.⁴¹² Following the Department for the Execution of Judgments of the European Court of Human Rights’ positive assessment of the UK authorities’

⁴⁰³ Supra note 1, paragraph 9.

⁴⁰⁴ Application no. 74025/01, judgment of 6 October 2005.

⁴⁰⁵ Application nos. 60041/08 and 60054/08, judgment of 23 November 2010.

⁴⁰⁶ Application no. 126/05, judgment of 22 May 2012. See Correspondence between the United Kingdom authorities and the Registry of the European Court concerning the case of Greens and M.T. against the United Kingdom, 1120th (DH) meeting, 13-14 September 2011, DH-DD(2011)679E of 5 September 2011, available at: <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=1927612&SecMode=1&DocId=1777288&Usage=2>.

⁴⁰⁷ See item 5 of the decision taken at 1150th DH meeting (September 2012), supra note 49.

⁴⁰⁸ See: Voting Eligibility (Prisoners) Draft Bill, of 22 November 2012, available at:

<http://www.justice.gov.uk/downloads/legislation/bills-acts/voting-eligibility-prisoners/voting-eligibility-prisoners-command-paper.pdf> and DH-DD(2012)1106, available at: <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2193730&SecMode=1&DocId=1956736&Usage=2>.

⁴⁰⁹ See Press release “Court adjourns 2,354 prisoners’ voting rights cases”, published 26 March 2013.

⁴¹⁰ Action plan, DH-DD(2011)333 of 5 May 2011, available at:

<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2208868&SecMode=1&DocId=1735094&Usage=2>.

⁴¹¹ Application nos. 30562/04 and 30566/04, judgment of 4 December 2008.

⁴¹² “Protection of Freedoms Act 2010-12,” available at:

<http://services.parliament.uk/bills/2010-12/protectionoffreedoms.html>.

action plan,⁴¹³ the CM welcomed the United Kingdom's proposals to establish stricter time limits for the retention of DNA and biometric data at its 1115th DH meeting (June 2011).⁴¹⁴ The CM noted with interest that similar legislative proposals were under consideration in Northern Ireland and strongly encouraged the authorities to progress them "as quickly as possible". Thus, following these developments, the CM also decided to transfer this case under the standard supervision procedure.⁴¹⁵ In their latest communication on the issue, in February 2013, the UK government submitted that the relevant provisions should commence in England and Wales in the autumn of 2013 and in Northern Ireland in early 2014.⁴¹⁶

173. Mr Pourgourides' report also mentioned some landmark cases against the United Kingdom, such as *Al Sadoon and Mufdhi v. the UK*⁴¹⁷ (Article 3), *Gillan and Quinton v. the UK*⁴¹⁸ (Article 8) and *A. and Others v. UK*⁴¹⁹. Although the CM closed the examination of the former case following the individual and general measures taken by the UK,⁴²⁰ the two latter cases, concerning anti-terrorism measures, remain pending execution. In October 2012, the UK authorities provided an action report concerning the implementation of *Gillan and Quinton v. the UK* judgment; it remains to be assessed by the CM.

⁴¹³ See "S. and Marper against the United Kingdom," Information Memorandum by the CM Secretariat, CM/Inf/DH(2011)22rev of 26 May 2011, available at: [https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Inf/DH\(2011\)22&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Inf/DH(2011)22&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383).

⁴¹⁴ See Decisions of the Committee of Ministers concerning the *S. and Marper* case, 1115th (DH) meeting, 7-8 June 2011, CM/Del/Dec(2011)1115/29 of 8 June 2011, supra note 57.

⁴¹⁵ Ibid. For more information see also the communication from the UK, DH-DD(2012)728 of 10 August 2012, which contains an analysis of the DNA retention policy. Available at: <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2207713&SecMode=1&DocId=1915034&Usage=2>.

⁴¹⁶ Communication from the United Kingdom concerning the case of S. and Marper, 6 February 2013, available at: <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2235109&SecMode=1&DocId=1978028&Usage=2>.

⁴¹⁷ Application No. 61498/08, judgment of 2 March 2010.

⁴¹⁸ Application No. 4158/05, judgment of 12 January 2010.

⁴¹⁹ Application No. 3455/05, judgment of 19 February 2009.

⁴²⁰ Resolution CM/ResDH(2012)68 adopted by the CM on 8 March 2012.