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Committee on Legal Affairs and Human Rights

The implementation of judgments of the European Court of Human Rights, 10th report: Turkey and Ukraine

Information note

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1. Introduction

1. The Parliamentary Assembly has taken a keen interest in the issue of implementation of judgments of the European Court of Human Rights (“the Court”) since 2000.¹ Following its last resolution on this topic – [Resolution 2178 \(2017\)](#), it decided to “remain seized of this matter and to continue to give it priority”.² Accordingly, on 10 October 2017, the Committee on Legal Affairs and Human Rights appointed me as the fifth successive rapporteur on this subject. At its meeting in Strasbourg on 23 January 2018, the committee held an initial discussion on my proposals for my work as rapporteur on this issue and on 24 April 2018 and 9 October 2018, it held two hearings with experts. At its meeting on 9 October 2018, the committee authorised me to organise exchanges of views with the heads of the national delegations to the Assembly of the ten countries having the highest number of judgments under examination by the Committee of Ministers, namely the Russian Federation, Turkey, Ukraine, Romania, Italy, Greece, the Republic of Moldova, Bulgaria, Hungary and Azerbaijan. This classification was drawn up on the basis of the [2017 Committee of Ministers annual report](#) on supervision of the execution of judgments and decisions of the European Court of Human Rights (published in March 2018) relating to the situation as at 31 December 2017. As the delegation of the Russian Federation was not represented in the Assembly at that point, this document will therefore focus on the implementation of judgments against two other member States having the highest number of cases pending before the Committee of Ministers: Turkey and Ukraine.

* Document declassified by the Committee on 22 January 2019.

¹ The first report was approved by our committee on 27 June 2000; [Doc. 8808](#), rapporteur Mr Erik Jurgens. On the basis of this report, the Assembly adopted [Resolution 1226 \(2000\)](#). Since 2000, the Assembly has debated nine reports and adopted nine resolutions and eight recommendations on the implementation of judgments of the European Court of Human Rights.

² [Resolution 2178 \(2017\)](#) adopted by the Assembly on 29 June 2017, paragraph 12. Reference No. 4313 of 30 May 2017.

2. Turkey

2.1. Introductory remarks

2. According to the Annual report of the Committee of Ministers on supervision of the execution of judgments and decisions of the European Court of Human Rights 2017 ("11th Annual report") published in March 2018, as at 31 December 2017, 1,446 judgments against Turkey were pending before the Committee of Ministers (at various stages of execution), placing Turkey in second position (behind the Russian Federation) among the states having the highest number of non-executed judgments. The latest figures from the Department for the Execution of Judgments of the European Court of Human Rights indicate that as of October 2018, the Committee of Ministers was examining 1,251 cases relating to Turkey.³

3. In his report on the implementation of judgments of the European Court of Human Rights, our former colleague, Mr Pierre Yves Le Borgn' (France, Socialist Group) identified seven main cases/groups of cases whose implementation was problematic and which were still under the enhanced supervision procedure of the Committee of Ministers. These cases concerned:

- repeated imprisonment of conscientious objectors (*Ülke*),
- violations of freedom of expression following criminal convictions (*Inçal* group),
- ineffectiveness of investigations into the actions of security forces in violation of Articles 2 and 3 of the European Convention on Human Rights ("the Convention") (*Batı* group),
- excessive use of force to disperse peaceful protests (*Oya Ataman* group),
- certain human rights violations in the northern part of Cyprus in the wake of Turkey's military intervention in Cyprus in 1974, related, in particular, to the property rights of displaced and enclaved Greek Cypriots and to the issues of missing persons (*Cyprus v. Turkey*, *Varnava* judgments and *Xenides-Arestis* group of judgments),
- automatic ban on convicted prisoners' voting rights (*Söyler*),
- failure to provide protection against domestic violence (*Opuz*).

4. In his report, Mr Pierre-Yves Le Borgn' noted that since the 2015 report by his predecessor Mr Klaas de Vries (Netherlands, SOC),⁴ the Committee of Ministers had not examined the *Hulki Güneş*⁵ group of cases concerning the unfairness of criminal law procedures and the impossibility of reopening them. This group of cases is currently under the standard supervision procedure following the reforms which had been carried out (in particular due to the introduction of a right to reopen the criminal proceedings at stake). The report by Mr Le Borgn' also took note of the closure of the examination of the group of cases concerning the excessive duration of remand detention (*Halise Demirel* group).⁶ Accordingly, this document will look at the cases already mentioned in the report by Mr Le Borgn' and will take note of other cases raising systemic and/or complex cases referred to in the 11th annual report.

5. In February 2018, I wrote a letter to the heads of the national delegations to the Assembly asking how the recommendations set out in Resolution 2178 (2017) had been/were being implemented. In particular, I wished to know how the national parliaments of the Council of Europe member States had responded to these recommendations. The Turkish delegation replied that the Grand National Assembly had an institutionalised procedure for supervising implementation of the obligations deriving from the Convention. Members of parliament could put written questions to ministers and/or question them on subjects relating to human rights during the debates on the state budget or the budget of the Ministry of Justice.

2.2. Repeated imprisonment for conscientious objection

6. In the *Ülke v. Turkey* case⁷ and in six other cases,⁸ the Court concluded that Turkey had violated Article 3 of the Convention by repeatedly convicting and imprisoning the applicant for conscientious objection.

³ Department for the Execution of Judgments of the European Court of Human Rights, Country factsheet: Turkey.

⁴ Doc. 13864 of 9 September 2015.

⁵ *Hulki Güneş v. Turkey*, Application No. 28490/95, judgment of 19 June 2003, and three other cases.

⁶ [CM/ResDH \(2016\)332](#), final resolution concerning 196 judgments, adopted on 9 November 2016.

⁷ Application No. 39437/98, judgment of 24 January 2006.

⁸ *Ercep v. Turkey*, Application No. 43965/04, judgment of 22 November 2011; *Demirtas v. Turkey*, Application No. 5260/07, judgment of 17 January 2012, and *Savda v. Turkey*, Application No. 42730/05, judgment of 12 June 2012, *Tarhan v. Turkey*, application No. 9078/06, 17 judgment of 17 January 2012; *Buldu and Others v. Turkey*, application No. 14017/08, judgment of 3 September 2014 and *Enver Aydemir v. Turkey*, application No 26012/11, judgment of 7 September 2016. In some of those cases, the Court also found a violation of Article 6 of the Convention as the applications had been tried and sentence by military courts.

According to the Court, the Turkish authorities' actions at that time had forced the applicant to go into hiding and endure a life equivalent to "civil death."⁹ This group of cases had last been examined at the 1157th meeting (DH) of the Committee of Ministers in December 2012; the Committee of Ministers had noted with concern that further individual measures were still required in the *Erçep* and *Feti Demirtaş* cases, as the applicants were still subject to administrative and criminal convictions. It urged the Turkish authorities 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".¹⁰ In February 2018, the NGO *European Bureau for Conscientious Objection* wrote to the Committee of Ministers stating that the public prosecutor had reopened proceedings against Mr Ülke in November 2017 and the Court's judgment had remained unexecuted for more than 12 years.¹¹ In September 2018, the Turkish authorities provided further information on the situation of the applicants, specifying that the latter were not detained and that no action aimed at instituting criminal proceedings had been taken or envisaged.¹²

2.3. Freedom of expression and information

7. There are over 100 cases against Turkey concerning violations of the right to freedom of expression (violations of Article 10 of the Convention).¹³ A high number of these violations resulted from criminal convictions handed down pursuant to various legislative acts relating to words, articles, books, publications, etc., which were not an incitement to hatred or violence. These violations have been examined in the framework of groups of cases.

8. The *Inçal* and *Gözel and Özer* groups of cases have been under Committee of Ministers supervision since 1998. Having noted that no further individual measure was now necessary, the Committee of Ministers decided on 20 September 2018, at its 1324th meeting (DH) to close 117 cases in these groups.¹⁴ However, it continues to examine the question of general measures in the *Öner and Türk* group of cases. Since 1998, several legislative measures have been taken in order to bring Turkish law into line with the standards established by the case law of the European Court of Human Rights and the high courts have begun delivering judgments more and more in line with the Convention standards.¹⁵ Nonetheless, the Committee of Ministers has commented that they "have not proved sufficient to ensure full compliance with Convention standards".¹⁶ Having welcomed the lifting of the state of emergency, the Committee of Ministers nonetheless noted with concern that the latest action plan submitted by the authorities contained no information on further measures to address these problems and called on them to submit a new action plan. It also asked the authorities to give consideration to other changes to legislation, including Article 301 of the Criminal Code which makes public denigration of the "Turkish nation, Republic of Turkey or the bodies and institutions of the state" a criminal offence.

9. The examination of general measures will therefore be continued in a new group of cases dealing with certain criminal aspects having an impact on freedom of expression,¹⁷ in addition to the two other groups of cases *Nedim Şener*¹⁸ and *Altuğ Taner Akçam*,¹⁹ which were also examined at the 1324th meeting (DH).²⁰ It will be recalled that the *Nedim Şener* group concerns the provisional detention of the applicants, investigative journalists, accused under Articles 314 and 220 of the Criminal Code of having provided aid and assistance to a criminal organisation by assisting in the production of publications critical of the government and/or serving as a propaganda tool for a criminal organisation. The *Altuğ Taner Akçam v. Turkey* group of cases²¹

⁹ *Ülke v. Turkey*, paragraphs 62 and 64.

¹⁰ CM/Del/Dec(2012)1157/27, decision of the Committee of Ministers, paragraph 4.

¹¹ DH-DD(2018)209, 1 March 2018.

¹² DH-DD(2018)938, 28 September 2018.

¹³ See the cases in the *Inçal v. Turkey* group, Application No. 22678/93, judgment of 9 June 1998, and the cases in the *Gözel and Özer v. Turkey* group, Application No. 43453/04, judgment of 6 July 2010.

¹⁴ See Resolution CM/ResDH(2018)356.

¹⁵ See action plan DH-DD(2014)502 of 15 April 2014.

¹⁶ Decision adopted by the Committee of Ministers at its 1324th meeting in this group of cases, H46-22, paragraph 3.

¹⁷ Comprising the cases of *Bayar*, Application No. 55060/07, judgment of 13 June 2017; *Güler and Uğur*, Application No. 31706/10, judgment of 2 December 2014; *Öner and Türk*, Application No. 51962/12, judgment of 31 March 2018; *Döner and Others*, Application No. 29994/02, judgment of 7 March 2017, and *Müdürlük Duman*, Application No. 15450/03, judgment of 6 October 2015.

¹⁸ Application No. 38270/11, judgment of 8 July 2014, and one other case.

¹⁹ Application No. 27520/07, judgment of 25 October 2011, and 13 other cases.

²⁰ See footnote 14.

²¹ Application No. 27520/07, judgment of 25 October 2011.

concerns interference with the exercise of the applicants' right to freedom of expression because of a real risk of criminal prosecution (under Article 301 of the Turkish Criminal Code, in particular).

10. Another case - *Dink v. Turkey*²² - is also under the enhanced supervision of the Committee of Ministers. It concerns the Turkish authorities' failure to protect the right to life of the journalist Firat Dink, murdered in January 2007, insofar as they failed to take measures to prevent his murder despite the fact that they had been reasonably informed of a real and imminent threat to his life (violation of Article 2 of the Convention). At its 1324th meeting (DH), the Committee of Ministers noted with interest that further investigations had led to the opening of criminal proceedings against a number of public officials and called on the authorities to conduct such proceedings promptly to that end, in line with the standards of the Convention. It also called on the authorities to provide information on general measures to protect the right to life of journalists.²³

11. The Committee of Ministers is also examining the case of *Ahmet Yildirim v. Turkey*,²⁴ concerning restriction of access to internet and blocking of access to Google Sites and YouTube (violation of Article 10 of the Convention). This case was last examined at the 1302nd meeting (DH) in December 2017.²⁵ In its decision, the Committee of Ministers noted that no further individual measure was required as the restrictions in question had been lifted. It pointed out that the Court had found that Law No. 5651 (on regulating internet publications and combating internet offences) did not satisfy the requirements of the Convention and called on the authorities to take the necessary steps to rectify the situation.

12. It should be pointed out that the Assembly, for its part, has also expressed concern about the situation of the media in Turkey and the broad interpretation of the anti-terrorism legislation, in particular in its Resolutions 2209 (2018),²⁶ 2156 (2017)²⁷ and 2141 (2017).²⁸ In his Memorandum on freedom of expression and media freedom in Turkey of 15 February 2017,²⁹ the previous Commissioner for Human Rights noted that "the overly wide application of the concepts of terrorist propaganda and support for a terrorist organisation, including to statements and persons that clearly do not incite violence, and its combination with an overuse of defamation, has put Turkey on a very dangerous path. Legitimate dissent and criticism of government policy is vilified and repressed, thus shrinking the scope of democratic public debate and polarising society". He also called on the Turkish authorities to carry out a complete overhaul of the Criminal Code and the Anti-Terrorism Law so as to bring the legislation and practice into line with the case law of the Court and said that it was imperative for judges and prosecutors to modify the way they interpreted and applied laws.

2.4. Questions concerning the northern part of Cyprus

13. In the interstate case of *Cyprus v. Turkey*,³⁰ the Court found multiple violations of the Convention in connection with the situation in the northern part of Cyprus since Turkey's 1974 military intervention in Cyprus. The authorities have remedied to a number of violations (see in particular Interim Resolution CM/Res(2007)25) and the Committee of Ministers supervision focuses on issues concerning mainly Greek-Cypriot missing persons and their relatives and the property rights of Greek Cypriots enclaved in the northern part of Cyprus.

14. Despite the Committee of Ministers' close supervision, the problems at issue in this case have been on its agenda since 2001.³¹ As regards the issue of **Greek-Cypriot missing persons and their relatives** (violations of Articles 2, 3 and 5 of the Convention; see also the judgment in the case of *Varnava and Others v. Turkey*),³² some progress has been noted following the identification of missing persons by the Committee on Missing Persons in Cyprus ("CMP"). The Committee of Ministers examined this question at its 1318th

²² Application No. 2668/07, judgment of 14 September 2010

²³ Decision adopted in this case at the 1324th meeting (DH), H46-21, paragraphs 1, 3 and 4.

²⁴ Application No. 3111/10, judgment of 18 December 2012. See also *Cengiz and Others*, Application No. 48226/10, judgment of 1 December 2015.

²⁵ The latest action plan was submitted on 11 October 2017; see DH-DD(2017)1157.

²⁶ "State of emergency: proportionality issues concerning derogations under Article 15 of the European Convention on Human Rights", 24 April 2018.

²⁷ "The functioning of democratic institutions in Turkey", 25 April 2017.

²⁸ "Attacks against journalists and media freedom in Europe", 24 January 2017.

²⁹ CommDH(2017)5.

³⁰ Application No. 25781/94, judgments of 10 May 2001 (on the merits) and 12 May 2014 (just satisfaction).

³¹ For further information, see [H/Exec \(2014\)8](#) of 25 November 2014, by the Department for the Execution of Judgments of the Court. Between September 2010 and December 2011, the Committee of Ministers interrupted the examination of this issue.

³² Judgment of 18 September 2009 (Grand Chamber), Application No. 16064/90.

meeting (DH) (June 2018); it noted with interest that the CMP would be excavating in eight additional areas in 2018, that the CMP had identified a third missing person from the *Varnava and Others* case, Savvas Apostolides, that the investigation in respect of this person and Andreas Varnava was nearing completion, and that the work of the archives committee established by the Turkish side was ongoing.³³ At the same time, the Committee of Ministers reiterated its previous conclusions on the need, on account of the passage of time, to adopt a proactive approach and called on the Turkish authorities to provide the CMP with all relevant information and to ensure that it had unhindered access to all relevant locations. These questions would be considered once again at the DH meeting in March 2019.

15. Concerning the issue of **homes and other immovable property of displaced Greek Cypriots** (violation of Articles 8 and 13 of the Convention and Article 1 of Protocol No. 1), an “immovable property commission” was set up in the northern part of Cyprus under Law No. 67/2005 “on the compensation, exchange or restitution of immovable property”, following the pilot judgment in the *Xenides-Arestis v. Turkey* case.³⁴ In its inadmissibility decision of 2010 in the *Demopoulos v. Turkey* case,³⁵ the Court concluded that this law provided “an accessible and effective framework of redress in respect of complaints about interference with the property owned by Greek Cypriots”. Nonetheless, in its judgment of 12 May 2014 on just satisfaction in the *Cyprus v. Turkey* case, it said that the decision given in the *Demopoulos* case had not entirely solved the problem. The Cypriot authorities maintained that Turkey must introduce measures to cease all transfers of immovable property belonging to displaced Greek Cypriots and ban all construction activities on such properties without the consent of the owners. The Turkish authorities considered that Turkey had already taken the measures required for the execution of this part of the judgment with the setting-up of the Immovable Property Commission and protective measures prohibiting the sale and improvement of property which had been or which would be returned to its owners by the Commission.³⁶ At its 1324th meeting (DH) (September 2018), the Committee of Ministers expressed regret that no new information had been provided by the Turkish authorities on the effectiveness of the measures adopted and decided to resume consideration of this item in June 2019.³⁷

16. With regard to the **property rights of Greek Cypriots residing in the northern part of Cyprus** (Karpas region) (violations of Article 1 of Protocol No. 1 and of Article 13 of the Convention), the Court criticised the impossibility for Greek Cypriots to retain their property rights if they left the north permanently and the failure to recognise the inheritance rights of persons living in South Cyprus to property in the north belonging to their relatives, deceased Greek Cypriots. The Turkish authorities considered that the situations criticised by the Court had been remedied.³⁸ At its 1236th meeting (DH), the Committee of Ministers welcomed the measures that had been adopted, but wished to further examine the possible consequences on this issue of the judgment *Cyprus v. Turkey* of 12 May 2014 concerning just satisfaction. It planned to resume consideration of this issue at its DH meeting in September 2019.

17. It should also be recalled that in its judgment of 12 May 2014 on **just satisfaction**, the Court ordered Turkey to pay to Cyprus €30 000 000 for non-pecuniary damage suffered by the relatives of the missing persons and €60 000 000 for non-pecuniary damage suffered by the enclaved Greek-Cypriot residents of the Karpas peninsula. The Court indicated that those sums had to be transferred individually to the victims by the Cypriot government, under the Committee of Ministers supervision, within 18 months from the date on which they have been paid or within any other deadline that the Committee of Ministers would deem appropriate. To date, no information has been provided regarding the payment of these sums, despite several reminders from the Committee of Ministers of the unconditional obligation to pay the just satisfaction awarded by the Court; the Committee has issued these reminders at each of its DH meetings since June 2015.

18. The Turkish authorities also refuse to pay just satisfaction in 33 cases of the *Xenides-Arestis v. Turkey* group,³⁹ concerning the property rights of displaced Greek Cypriots, and the *Varnava and Others* cases mentioned above, despite the interim resolutions,⁴⁰ several decisions of the Committee of Ministers, two letters

³³ CM/Del/dec(2018)1318/H46-24, paragraphs 1, 2 and 3.

³⁴ Application No. 46347/99, judgments of 22 December 2005 (pilot judgment) and 7 December 2006 (just satisfaction).

³⁵ Application No. 46113/99, decision of 1 March 2010 (Grand Chamber), paragraph 127.

³⁶ See the respective memorandums submitted by the two parties: DH-DD(2016)688 and DH-DD(2016) 707.

³⁷ CM/Del/dec(2018)1324/H46-20, paragraph 2.

³⁸ See the analysis of these issues made by the Committee of Ministers Secretariat (CM/Inf/DH(2013)23) and the observations of the Turkish authorities (DH-DD(2014)722).

³⁹ Application No. 46347/99, judgments of 22 December 2005 and 7 December 2006.

⁴⁰ CM/ResDH(2008)99 and CM/ResDH(2010)33 adopted in the *Xenides-Arestis* case, CM/ResDH(2013)201 adopted in the *Varnava and Others* case and CM/ResDH(2014)185 adopted in the two groups of cases.

from its Chairman (2009 and 2014) and a letter from the Secretary General of the Council of Europe (2016) to the Turkish Minister for Foreign Affairs. The Turkish authorities maintain that the payment of just satisfaction cannot be dissociated from the substantive measures in these cases. The Committee of Ministers intends to return to these matters as well as to other individual measures concerning the applicants' properties at its March 2019 meeting. Moreover, it decided to resume the consideration of a possible closure of the *Loizidou* case, in which just satisfaction had been paid in 2003. It also instructed its Secretariat to prepare a draft final resolution in two other cases from the *Xenides-Arestis* group, in which Turkey had complied with the terms of friendly settlements concluded with the applicants before the Court in application of Article 41 of the Convention.⁴¹ In the most recent DH meetings of September and December 2018, the Turkish delegation did not participate in the discussions on this question.⁴²

2.5. Excessive use of force by the security forces during peaceful demonstrations

19. The *Oya Ataman v. Turkey* group of cases⁴³ concerns violations of the applicants' right to freedom of peaceful assembly and/or their ill-treatment or the death of their relatives when excessive force was used to disperse peaceful demonstrations. Certain cases also concern the failure to carry out an effective investigation into the applicants' allegations of ill-treatment or lack of an effective remedy in this respect (violations of Articles 2, 3, 11 and 13 of the Convention). In some of these cases, the Court observed that the demonstrations were considered to be unlawful under domestic law, as they had taken place without the statutory notice, but that this could not justify an infringement on freedom of assembly since there was no evidence to suggest that the demonstrators had represented any danger to public order or had engaged in violent acts. This group today comprises more than 50 cases.⁴⁴

20. The structural nature of the problems identified in the procedure before the Committee of Ministers was confirmed by the Court in the context of its examination of the requirements stemming from Article 46 of the Convention in its *Izci v. Turkey*⁴⁵ and *Abdullah Yaşa and Others v. Turkey* judgments⁴⁶. The supervision of the execution of these judgments focuses on clearer rules on the use of tear gas (or pepper spray) and tear-gas grenades in order to minimise the risk of death or injury, ensure adequate training of law-enforcement officers and their control and supervision during demonstrations and provide for an effective after-review of the necessity, proportionality, and reasonableness of any use of force. Still under Article 46 of the Convention, the Court insisted in the *Ataykaya* case,⁴⁷ concerning the death of the applicant's son as a result of a tear-gas grenade fired by the police, on the need to strengthen, without delay, the guarantees on the appropriate use of tear-gas grenades and to undertake a new investigation into the death of the applicant's son. In a fourth judgment referring to Article 46 of the Convention, *Süleyman Çelebi and Others*⁴⁸ of 2016, the Court noted an increase in similar applications and observed that the persistent use of excessive force to disperse peaceful demonstrations and the systematic use of tear-gas grenades could create fear among civil society thereby dissuading them from taking part in peaceful demonstrations.

21. With regard to individual measures, at its 1310th meeting (DH) in March 2018, the Committee of Ministers expressed concern at the lack of progress in the investigations into allegations of ill-treatment, including into the aforementioned *Ataykaya* case. It urged the authorities to speed up and prioritise the investigations to avoid any problems with the limitation period. Given that in the course of its previous consideration of these cases at the 1288th meeting (DH) in June 2017, the Court had called on the authorities to conduct *ex officio* evaluations as to the reopening of investigations, it asked them to draw up an action plan on this subject in co-operation with its Secretariat and drawing on the practice in other member States.

22. Concerning general measures, the Committee of Ministers noted a positive trend that could be discerned from the decisions of the Constitutional Court, which had held that the law in force on demonstrations should not be interpreted too rigidly by the courts, and from statistics on police interventions, showing a reduction in the number of such interventions in the course of the previous three years. Nonetheless, it stressed the need to bring domestic legislation, in particular Law No. 2911 (Meetings and Demonstrations Act), into line with Convention standards; to this end, it encouraged the authorities to ensure that the Inter-ministerial Working Group (whose work had been interrupted for a certain period following the coup attempt

⁴¹ See the decisions adopted at the 1324th and 1331st meetings, H46-24 et H46-31.

⁴² See the decisions adopted at the 1324th and 1331st meetings, H46-20 et H46-31.

⁴³ Application No. 74552/01, judgment of 5 December 2006

⁴⁴ See the list compiled for the 1310th meeting (DH), CM/Notes/1310/H46-21app.

⁴⁵ Application No. 42606/05, judgment of 23 July 2013.

⁴⁶ Application No. 44827/08, judgment of 16 July 2013.

⁴⁷ Application No. 50275/08, judgment of 22 July 2014.

⁴⁸ Application No. 37273/10+, judgment of 24 May 2016.

in July 2016) step up its efforts to put forward concrete proposals and continue their co-operation with the Council of Europe's Informal Working Group (comprising experts from the Council of Europe and the Ministry of Justice). It also emphasised the need to be provided with a copy of the Directive "on Tear Gas, and Defence Rifles, the Use and Storage of Equipment and Ammunitions relating to them and Training of User Personnel" (2016) and requested further clarification on the substance of this Directive. With regard to training activities, the Committee of Ministers encouraged the authorities to take full benefit of the projects run by the Council of Europe and the European Union and their expertise to ensure that investigations into allegations of excessive use of force by law enforcement officials were conducted in compliance with Convention requirements.⁴⁹

2.6. *Actions of the security forces: ill-treatment and ineffective investigations*

23. Besides the "historical" group *Aksoy* concerning actions of security forces during the State of emergency between 1997 and 2002, which is to be closed, more than 100 more recent cases relating to the actions of the Turkish security forces have been pending execution before the Committee of Ministers since 2004 (the *Bati and Others v. Turkey* group of cases);⁵⁰ these cases mainly concern the ineffectiveness of investigations and serious shortcomings in subsequent criminal and/or disciplinary proceedings initiated against members of security forces following the death of the applicants' next-of-kin or torture or ill-treatment of the applicants (violations of Articles 2, 3 and 13 of the Convention).

24. At the last examination of the *Bati* group of cases by the Committee of Ministers at its 1265th meeting (DH) in September 2016,⁵¹ the Committee of Ministers reiterated its position that respondent States have a continuing obligation to conduct effective investigations into alleged abuses by members of the security forces, and encouraged the Turkish authorities to conduct *ex officio* evaluations as to the reopening of investigations in this group. As regards general measures, it noted with interest the setting-up of an inter-institutional group to assess the administrative authorisation requirement and the status of chief police officers in this procedure; this group could produce concrete proposals for legislative amendments. The Committee of Ministers also noted with interest the setting up of two working groups to examine the length of criminal prosecution proceedings, the sentences imposed on members of the security forces, and the initiation of an assessment of the 2015 Circular on the conduct of investigations into human rights violations. Lastly, the Committee of Ministers noted the recent positive trend in judicial practice complying with the procedural requirements of Articles 2 and 3 of the Convention and called on the authorities to provide an action plan by June 2017. A new action plan was forwarded on 31 May 2017.⁵²

25. The Committee of Ministers is also examining some 30 cases relating primarily to the deaths of the applicants' next-of-kin as a result of unjustified and excessive force used by members of the security forces during military and police operations (the *Kasa v. Turkey*⁵³ and *Erdoğan and Others v. Turkey*⁵⁴ group of cases). In the course of the latest examination of this group in December 2017, at the 1302nd meeting (DH),⁵⁵ the Committee of Ministers noted with concern that no significant progress had been achieved with individual measures since the last decision adopted at the 1250th meeting (DH) in March 2016. It also reiterated the obligation highlighted in the examination of the *Bati and Others v. Turkey* group to carry out *ex officio* evaluations as to the reopening of investigations and urged the authorities to intensify their efforts to ensure that all the pending investigations and proceedings were concluded without further delay and in compliance with Convention standards. As regards general measures, the Committee of Ministers also noted that there had been no progress in the review of Article 16 of the Powers and Duties of the Police Act, despite the Court's indication to that effect in the *Ülüfer* judgment,⁵⁶ and called upon the authorities to consider revising the legislative framework, in co-operation with the Council of Europe. However, the Committee of Ministers noted that Article 39 of the Regulation on the Powers and Duties of the Gendarmerie had been abrogated, as called for by the Court in its *Atıman v. Turkey* judgment under Article 46 of the Convention.⁵⁷

⁴⁹ See the decision adopted at the 1310th meeting (DH), H46-21, paragraphs 3-6.

⁵⁰ See the *Bati and Others v. Turkey* group of cases, Applications Nos. 33097/96 and 57834/00, judgment of 3 June 2004.

⁵¹ Decision adopted at the 1265th meeting (DH), H46-27.

⁵² DH-DD(2017)627, 12 June 2017.

⁵³ Application No. 45902/99, judgment of 20 May 2008.

⁵⁴ Application No. 19807/92, judgment of 25 April 2006

⁵⁵ CM/del/Dec(2017)1302/H46-33

⁵⁶ *Ülüfer v. Turkey*, Application No. 23038/07, judgment of 5 June 2012. In the Court's view, this provision contained almost no safeguards to prevent arbitrary shootings resulting in the death of suspects.

⁵⁷ *Atıman v. Turkey*, Application No. 62279/09, judgment of 23 September 2014. In the Court's view, this provision should be amended to stipulate that the use of firearms should be limited to cases of legitimate self-defence where a suspect

2.7. Failure to provide protection against domestic violence

26. The *Opuz v. Turkey* group of cases⁵⁸ concerns the failure of the authorities to protect the applicants or their deceased relatives from domestic violence and to apply effective sanctions on the perpetrators. The Court had found violations of Articles 2 and 3 of the Convention on account of various shortcomings, in particular a legislative framework which failed to offer victims sufficient protection and the fact that the authorities had not taken the necessary preventive/protective measures. The Court found that the violations were also due to general and discriminatory judicial passivity in response to allegations of domestic violence in Turkey.⁵⁹ In some of these cases, the Court also found gender-based discrimination (violation of Article 14 in conjunction with Articles 2 and 3).

27. Since the *Opuz* judgment, several general measures have been taken to prevent domestic violence: Law No. 6284 on “the Protection of the Family and Prevention of Violence against Women”, drafted in line with the principles of the Istanbul Convention, entered into force in March 2012; the Code of Criminal Procedure was amended to enable persons who inflict intentional bodily harm to be taken into custody, regardless of the penalty provided for under the Criminal Code; “Violence prevention and monitoring centres” had been set up and domestic case law had evolved. At the 1280th meeting (DH) in March 2017,⁶⁰ the Committee of Ministers noted with interest the positive trend in the fight against domestic violence but nonetheless expressed concern that a large number of women were still subjected to domestic violence. Accordingly, it urged the authorities to provide information on the measures planned and ensure that existing sanctions were applied. At the last examination of this group of cases at the 1331st meeting (DH) in December 2018,⁶¹ the Committee of Ministers took note of the information provided, but emphasised nevertheless that the measures taken could not be considered sufficient, in the light in particular of the October 2018 report by the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), and that it was imperative for the relatively new case law of the Constitutional Court in this area to become well-established and followed at all levels of the judiciary. It therefore encouraged the authorities to draft a new action plan drawing on the findings of the GREVIO report and to provide it with statistical information on domestic violence. The Committee of Ministers decided to resume consideration of these issues at its December 2020 meeting at the latest. As regards individual measures, it once again examined the conduct of criminal proceedings against the perpetrators of domestic violence in the *Durmaz and M.G.* case and underlined the need to monitor the safety of the applicants in these two cases.⁶²

2.8. Other judgments under the “enhanced supervision” of the Committee of Ministers

28. In his 2017 report, Mr Le Borgn’ referred to the *Söyler v. Turkey* judgment,⁶³ placed under enhanced supervision, which concerned the violation of the applicants’ right to free elections, as they had not been allowed to vote while in detention or following their release on parole (violation of Article 3 of Protocol No. 1). For this case, an action report was received in November 2016.⁶⁴ In November 2015, the Constitutional Court delivered a judgment in which it declared unconstitutional and partially abrogated Article 53 of the Criminal Code on prisoners’ rights. Bilateral consultations are taking place between the Turkish authorities and the Department for the Execution of Judgments of the Court.

29. Other cases revealing structural and/or complex cases were cited in the Committee of Ministers’ 11th annual report.⁶⁵ For example, the *Oyal v. Turkey* group⁶⁶ concerns the failure of the Turkish authorities to protect the lives of the applicants or their next-of-kin on account of medical negligence or medical errors committed by health care providers employed mainly by state-run hospitals (violations of Article 2 of the Convention). The Committee of Ministers continues to consider the question of general measures in this group of cases on the basis of the received action plans.⁶⁷

used firearms.

⁵⁸ Application No. 33401/02, judgment of 9 June 2009, and four other cases.

⁵⁹ *Opuz v. Turkey*, paragraph 198.

⁶⁰ CM/Del/Dec(2017)1280/H46-32.

⁶¹ CM/Del/Dec(2018)1331/H46-29.

⁶² *Ibid*, paragraphs 3, 4 and 5.

⁶³ Application No. 29411/07, judgment of 17 September 2013. See also, in the same group of cases, *Murat Vural v. Turkey*, Application No. 9540/07.

⁶⁴ DH-DD(2016)1345, 1 December 2016.

⁶⁵ See Appendix 2 of that report.

⁶⁶ Application No. 4864/05, judgment of 23 March 2010, and five similar cases.

⁶⁷ See the decision adopted at the 1259th meeting (DH), June 2016.

30. The *Özmen v. Turkey* group of cases⁶⁸ concerns a violation of the right of the applicant, a Turkish national living in Australia at the time of the facts, to respect for family life on account of the inadequacy of measures taken by the Turkish authorities in implementation of an order for the return of his daughter (a minor) to Australia, under the Hague Convention on the Civil Aspects of International Child Abduction (Article 8). The Committee of Ministers continues to examine the question of individual and general measures in this group of cases.⁶⁹

31. Lastly, since 2016 the Committee of Ministers has been considering the case of *Izzetin Doğan and Others v. Turkey*,⁷⁰ which concerns a violation of the applicants' freedom of religion on account of the authorities' refusal to accede to the requests for recognition of the status of the Alevi community, which is discriminated against in relation to the status granted to the majority conception of Islam (violations of Article 9 and 14). In the examination of this case, an action plan was received on 8 February 2017.⁷¹ Other aspects of discrimination in enjoying freedom of religion have been under supervision since 2015 in the framework of the *Cumhuriyetçi Eğitim ve Kültür Merkezi Vakfı*⁷² case, which concerns a violation of the applicant association's right not to be discriminated on religious grounds, due to domestic courts' refusal to grant it some benefits which had been granted to other places of cult (violations of Articles 9 and 14 of the Convention). Action plans have been received in both cases and are now being implemented.

32. In 2016, the *Mergen and Others v. Turkey* group of cases⁷³ was also placed under the Committee of Ministers' enhanced supervision. This group concerns a violation of the right to liberty on account of the arrest, placement in police custody and pre-trial detention of members of the Association for Supporting Contemporary Life on suspicion of belonging to a criminal organisation, whose presumed members were accused of having engaged in activities aimed at overthrowing the government by force and violence, and of planning a military coup (violation of Article 5§1 of the Convention). In the examination of this group, an action report was received on 15 May 2017.⁷⁴

3. Ukraine

3.1. Introductory remarks

32. According to the [Annual Report of the Committee of Ministers on supervision of the execution of judgments and decisions of the European Court of Human Rights 2017](#), at 31 December 2017, there were 1,156 judgments against Ukraine pending before the Committee of Ministers (at various stages of execution), which placed this country third (after the Russian Federation and Turkey) among the States with the highest number of non-executed judgments. As per the most recent data of the Department for the Execution of Judgments of the European Court of Human Rights, in January 2019 the Committee of Ministers was examining 908 cases in respect of Ukraine.⁷⁵

33. In his report on implementation of European Court of Human Rights judgments, Mr Le Borgn' identified eight main cases/groups of cases whose implementation was problematic and still under ongoing enhanced supervision by the Committee of Ministers. These cases related to:

- non-execution of domestic court decisions and absence of an effective remedy,
- excessive length of civil and criminal proceedings,
- poor conditions of detention,
- ill-treatment by police and lack of effective investigations and remedies,
- unlawful and/or lengthy detention on remand,
- lack of independence and impartiality of courts,
- the *Gongadze* case⁷⁶ and
- violations of the right to freedom of peaceful assembly.

⁶⁸ Application No. 28110/08, judgment of 4 December 2012 and two other similar cases.

⁶⁹ See the decision adopted at the 1250th meeting (DH), March 2016.

⁷⁰ Application No. 62649/10, judgment of 26 April 2016

⁷¹ DD-DH(2017)166, March 2017

⁷² Application No. 32093/10, judgment of 12 December 2014.

⁷³ Application No. 46632/13, judgment of 23 February 2016

⁷⁴ DH-DD(2017)556, 16 May 2017.

⁷⁵ <https://hudoc.exec.coe.int>

⁷⁶ *Gongadze v. Ukraine*, application no. [34056/02](#), judgment of 8 November 2005.

34. In February 2018, I wrote to the heads of the national delegations to the Assembly, asking them how the recommendations set out in [Resolution 2178 \(2017\)](#) had been/were being implemented. In particular, I wished to know how the national parliaments of the Council of Europe's member States had responded to recommendations. In a letter dated 20 April 2018, the secretariat of the Ukrainian delegation replied that the issue of the execution of the Court's judgments was governed by the Law of 23 February 2006 "On implementation of the judgments and case-law of the European Court of Human Rights", a Council of Ministers resolution of 31 May 2006 (no. 784) and also the Law on execution procedures of 31 May 2016 (no. 784). In addition, detailed information was provided on the progress made in most of the groups of cases mentioned above.

3.2. *Non-execution of domestic court decisions and absence of an effective remedy*

35. The *Yuriy Nikolayevich Ivanov*⁷⁷ and *Zhovner*⁷⁸ group of cases comprises over 400 cases relating to non-enforcement or delayed enforcement of final domestic judicial decisions, mostly delivered against the State or public enterprises, and the lack of an effective remedy in this respect (violations of Articles 6 § 1, 13 and Article 1 of Protocol no. 1). In the pilot judgment in the case of *Yuriy Nikolayevich Ivanov v. Ukraine* of 2009, the Court observed that Ukraine "has demonstrated an almost complete reluctance" to resolve the structural problems underlying the failure to execute domestic court decisions and a deadline of 15 January 2011 for the introduction of effective domestic remedies; at the same time, it adjourned the examination of similar applications. Having once extended that deadline and finding that the measures called for by the Court in the pilot judgment had still not been adopted by 21 February 2012, the Court decided to resume examination of the applications raising similar issues.

36. In a Grand Chamber judgment of 12 October 2017 - *Burmych and Others v. Ukraine*⁷⁹ - concerning this problem, the Court noted that, despite the significant lapse of time since the delivery of the *Yuriy Nikolayevich Ivanov* judgment, the authorities had still not implemented the requisite general measures to remedy the systemic problem of non-enforcement of final court decisions and the lack of an effective remedy to address it. The Court reiterated that it had been examining this kind of case for over 17 years⁸⁰ and that nothing was to be gained, nor would justice be best served, by the repetition of its findings in a lengthy series of comparable cases; accordingly, it decided to strike 12 143 similar pending applications out of its list, considering that the grievances raised in these applications had to be resolved in the context of general measures adopted at national level, subject to the supervision of the Committee of Ministers, and decided to reassess the situation by 12 October 2019 at the latest.

37. The problem of non-enforcement or delayed enforcement of domestic judicial decisions has not been resolved and the cases in this group have been pending before the Committee of Ministers since 2001. The Committee of Ministers adopted six interim resolutions between 2008 and 2017⁸¹, in which it stressed the need for the authorities to speed up the process of enforcing court decisions, repeatedly urging them to adopt, as a matter of priority, the general measures required in the country's domestic legal system. Indeed, in its last interim resolution⁸² of 7 June 2017 it stressed that this situation represented a danger for the rule of law. The individual and general measures adopted in this group of cases to date have been analysed and summarised by the Secretariat of the Committee of Ministers.⁸³

38. At its 1318th meeting (DH) in June 2018⁸⁴, the Committee of Ministers examined the execution of cases and stressed that the on-going reform of the judicial system in Ukraine could not be considered to be completed until the issue of non-enforcement or delayed enforcement of domestic judicial decisions had been resolved. It encouraged the authorities to rapidly define a common vision of the root causes, establish the solutions required and implement them within the deadline set by the Court.

39. The authorities subsequently submitted an action plan in October 2018⁸⁵. They pointed out that a draft law had been put before Parliament on 27 June 2018; this draft law was aimed not only at resolving the indi-

⁷⁷ *Yuriy Nikolayevich Ivanov v. Ukraine*, application no. 40450/04, judgment of 15 October 2009.

⁷⁸ *Zhovner v. Ukraine*, application no. 56848/00, judgment of 29 June 2004.

⁷⁹ *Burmych v. Ukraine*, application no. 46852/13, judgment of 12 October 2017.

⁸⁰ See decision in the case of *Kaysin and Others v. Ukraine*, application no. 46144/99, delivered on 3 May 2001.

⁸¹ CM/ResDH(2008)1, CM/ResDH(2009)159, CM/ResDH(2010)222, CM/ResDH(2011)184, CM/ResDH(2012)234 and CM/ResDH(2017)184.

⁸² [CM/ResDH\(2017\)184](#).

⁸³ [H/Exec\(2018\)2](#).

⁸⁴ [1318th meeting](#) (DH) June 2018.

⁸⁵ [DH-DD\(2018\)1011](#), 12 October 2018.

vidual situation of the applicants in the *Burmych* case but also at finding a long-term solution, including via the Council of Europe project "Supporting Ukraine in execution of judgments of the European Court of Human Rights" financed by the Human Rights Trust Fund. It should be noted that in its letter of 20 April 2018 the secretariat of the Ukrainian delegation to the Assembly stated that, on 27 March 2018, a round table on the implementation of this group of judgments had been organised in Parliament (*Verkhovna Rada*) under that project with the participation of members of parliament (including members of the Sub-Committee on implementation of the judgments of the European Court of Human Rights of the Committee on legal affairs and justice), the Minister of Justice, the Ombudsman, the members of the Supreme Court and senior officials of the Council of Europe.

40. Following on from the activities organised under this project, the authorities identified three groups of root causes of the non-enforcement of domestic court decisions: 1) *legal reasons and budgetary procedures* (the amounts of social entitlements provided for by different laws were not covered by the amounts allocated by the budget; there was a disconnect between the state authorities which devised and implemented social policy and those involved in the legislative process), 2) *financial reasons* (absence of necessary funds in the state budget) and 3) institutional reasons linked to *moratoriums and the possibility of replacing in-kind enforcement with monetary compensation* (a major problem in inventorying unenforced decisions). According to the Ukrainian Helsinki Human Rights Union NGO, which submitted its observations in October 2018, the major structural problems in this group of cases are linked to legislative blockages in the enforcement of decisions (moratoriums), social debts not covered by public funding and weak enforcement measures (with only 3 to 4% of decisions being enforced), as well as legal obstacles to implementing in-kind obligations. According to this NGO, there is a risk that the draft law put before Parliament will not be passed and the requisite reforms not being implemented.⁸⁶

41. The Committee of Ministers examined these questions at its 1331st meeting (December 2018) (DH). It reiterated that this problem had been outstanding since 2004 and that no effective system of redress had been introduced. The Committee of Ministers said that the situation represented an important danger for the rule of law in Ukraine and required a "strong and continuous political commitment at the highest level to give priority" to resolving the problem⁸⁷. It urged the authorities to adopt the previously mentioned draft law without further delay and to supplement it with further allocations to provide redress to all victims with non-enforced judgments. Even so, the Committee of Ministers found that the draft law and the initial vision of the root causes presented by the authorities "do not make any major contribution to a long-lasting solution but are first steps towards establishing such a solution⁸⁸". The Committee of Ministers once again encouraged the authorities to step up their efforts, including cooperation with the Council of Europe's Human Rights Trust Fund project, to resolve this issue and decided to resume consideration of this group of cases at its 1340th meeting (March 2019) (DH).

3.3. *Excessive length of civil and criminal proceedings*

42. Two groups of cases, relating mainly to the excessive length of civil proceedings (*Svetlana Naumenko* group of cases)⁸⁹ and criminal proceedings (*Merit* group of cases)⁹⁰ and the absence of effective remedies (violations of Articles 6§1 and 13 of the Convention) have been pending before the Committee of Ministers (some 315 cases in total)⁹¹ since 2004.

43. The Committee of Ministers last examined the execution of these cases at its 1179th meeting (September 2013) (DH). As the Ukrainian authorities had not provided the information requested⁹², the Committee of Ministers strongly urged them to provide, by 31 December 2013 at the latest, the required analysis specifying how the measures adopted would remedy all the shortcomings found by the Court, together with an assessment of their impact in practice and relevant statistics on the length of proceedings. The Committee of Minis-

⁸⁶ [DH-DD\(2018\)1095](#), 26 October 2018.

⁸⁷ [CM/Del/Dec\(2018\)1318/H46-34](#), paragraph 3 of the decision adopted at that meeting.

⁸⁸ *Ibid*, paragraph 5.

⁸⁹ *Svetlana Naumenko v. Ukraine*, application no. [41984/98](#), judgment of 9 November 2004.

⁹⁰ *Merit v. Ukraine*, application no. [66561/01](#), judgment of 30 March 2004.

⁹¹ At 10 January 2019, the *Naumenko* group comprised 67 pending cases and the *Merit* group 30, as in 2018 the Committee of Ministers decided to close the examination of individual measures in the majority of the cases from this group.

⁹² The authorities had submitted only statistical information; Communication from Ukraine (*Svetlana Naumenko* group of cases) of 19 July 2013, [DH-DD\(2013\)835](#).

ters furthermore reiterated its previous request with regard to the introduction of effective domestic remedies for a number of similar repetitive applications brought before the Court⁹³.

44. The authorities consequently submitted information on 20 January 2015 and 8 September 2017⁹⁴. In most of the cases in these groups no individual measures were applied. On 30 July 2018, the authorities submitted an updated action plan, which is currently being assessed.⁹⁵ As for general measures, the authorities stated that they had carried out an analysis of the experiences of other Council of Europe member States and there were a number of components of the ongoing judicial reform that should shorten the length of proceedings. They also provided some statistical data on the length of certain procedures and the latest legislative amendments. Regarding the introduction of an effective remedy, a concept paper prepared in the context of cooperation activities with the Council of Europe entitled "Proposals for the Concept for solving the problem of excessive length of judicial proceedings in Ukraine" sets out proposals in this connection, and a copy of this document is awaited.⁹⁶

3.4. Poor conditions of detention

45. In over 50 cases (*Nevmerzhtsky* group), the Court found inhuman and/or degrading treatment (violations of Article 3 of the Convention) chiefly because of overcrowding and poor material conditions in police establishments, pre-trial detention centres and prisons. Some also concerned unacceptable conditions for detainees during transport as well as the inadequacy of medical care, particularly for infectious diseases and/or a lack of effective remedies against violations of Article 3 of the Convention (violations of Article 13)⁹⁷. The *Nevmerzhtsky* case also concerned a violation of Article 3 on account of the force-feeding of the applicant, amounting to torture.

46. Since the Committee of Ministers began examining this group of cases in 2005, the Ukrainian authorities have attempted to find solutions for these complex structural problems, with little in the way of tangible results. Following requests made by the Committee of Ministers at its 1302nd meeting (DH) in December 2017⁹⁸, the authorities submitted updated action plans on 5 January and 12 October 2018.⁹⁹

47. Where individual measures are concerned, most of the applicants have been provided with adequate detention conditions or released. Information is still awaited regarding the detention conditions and medical care of certain applicants.¹⁰⁰

48. With regard to general measures, given the complexity of the issues, the measures taken remain inadequate despite the authorities' commitment to reform the penitentiary system and their recent efforts to more evenly distribute detainees, renovate prisons and improve the legal framework for medical care.¹⁰¹ In particular, the information provided by the authorities on the number and distribution of detainees is not sufficiently comprehensive to assess the current situation and does not demonstrate a real reduction in prison overcrowding. Concerning medical care, this appears to be largely funded from outside sources, with national budget allocations seemingly very low, and the information is not sufficient for an overall assessment of how they are guaranteed. In its last report on Ukraine, published in June 2017, the European Committee for the Prevention of Torture (CPT)¹⁰² reiterated that health care in prisons was a longstanding concern, pointing out that healthcare staff levels were still inadequate, premises and equipment were dilapidated, obsolete (some dating from the soviet era) and incomplete, supplies of medicines were problematic, the assistance provided by the Global Fund and the World Health Organisation had slightly improved the situation more recently and the quality of care left much to be desired. With regard to the introduction of domestic remedies against violations of Article 3 of the Convention, a letter from the secretariat of the Ukrainian delegation of 20 April 2018

⁹³ CM/Del/Dec(2013)1179/22.

⁹⁴ DH-DD(2015)112 of 22 January 2015 and DH-DD(2017)975 of 11 September 2017.

⁹⁵ DH-DD(2018)760 of 2 August 2018. For the individual measures, information was submitted in document DH-DD(2018)979 of 9 October 2018.

⁹⁶ See status of execution of these cases, HUDOC-EXEC, at 19 December 2018.

⁹⁷ See the cases grouped under the following judgments: *Nevmerzhtsky v. Ukraine*, application no. 54825/00, judgment of 5 April 2005, *Yakovenko v. Ukraine*, application no. 15825/06, judgment of 25 October 2007; *Melnik v. Ukraine*, application no. 72286/01, judgment of 28 March 2006; *Logvinenko v. Ukraine*, application no. 13448/07, judgment of 14 October 2010 and *Isayev v. Ukraine*, application no. 28827/02, judgment of 28 May 2009.

⁹⁸ CM/Del/Dec(2017)1302/H46-37.

⁹⁹ DH-DD(2018)32, 12 January 2018, and DH-DD(2018)1020, 17 October 2018.

¹⁰⁰ See 1331st meeting (4-6 December 2018) – Notes, HUDOC-EXEC, on 7 January 2019.

¹⁰¹ *Ibid.*

¹⁰² CPT/Inf(2017)15, page 26.

indicated that the *Verkhovna Rada* Committee on legislative support for the rule of law had examined a draft law in this connection (no. 4936) and recommended that it be passed by parliament. However, according to the information held by the Committee of Ministers, this process appears to have come to a halt, despite the expert input provided in the context of cooperation activities with the Council of Europe (notably the "Further Support for the Penitentiary Reform in Ukraine" project).

49. Accordingly, at its 1331st meeting (DH) in December 2018, the Committee of Ministers adopted Interim Resolution CM/ResDH(2018)472, underlining that it is of paramount importance that the authorities now take concrete and decisive steps to address all the shortcomings highlighted in the judgments of this group, given the structural nature of the problems. It called on the authorities to follow up on their "Passport for Reform", a strategy paper in which the authorities seem to have identified the main obstacles to the improvement of conditions of detention, and to establish effective domestic remedies for allegations of ill-treatment. The Committee of Ministers pointed out that the lack of such remedies also places an additional burden on the Court, which had to deal with an increasing number of applications relating to these problems.

3.5. *Ill-treatment by police and lack of effective investigations and remedies*

50. There are over sixty cases currently pending in this area, chiefly relating to violations of Articles 3 and 13 of the Convention¹⁰³. In the judgment in the case of *Kaverzin v. Ukraine*, which also found against the systematic handcuffing of the (blind) applicant when outside his prison cell, the Court concluded, pursuant to Article 46 of the Convention, that ill-treatment during detention and the lack of effective investigations into complaints of this kind was a systemic problem. In the Court's view, this problem called for the prompt implementation of comprehensive and complex measures.¹⁰⁴ In addition, the judgment in the case of *Karabet and Others v. Ukraine* concerned torture inflicted on prisoners by special forces staff during a hunger strike.

51. In response to the decision adopted by the Committee of Ministers at its 1302nd meeting (December 2017) (DH), the authorities sent information on 18 January, 3 April and 28 June 2018.¹⁰⁵ This included information on the progress of investigations and/or criminal proceedings in all the cases in the group. With regard to general measures, they pointed out that the adoption of the new Code of Criminal Procedure in 2012 had transformed Ukraine's criminal justice system, introducing several procedural guarantees against ill-treatment during arrest and detention as well as provisions aimed at enhancing the effectiveness of investigations into allegations of ill-treatment. The authorities also provided information on the setting up of the State Bureau of Investigations in 2017, the launch of the reform of the prosecutor's service in 2014, the ongoing reform of the police, the setting up of the national preventive mechanism (NPM) in 2012, awareness-raising measures and cooperation activities with the Council of Europe in this field.

52. When last examining this group of cases at the 1324th meeting (September 2018) (DH)¹⁰⁶, the Committee of Ministers looked at the question of individual measures and noted with interest the information provided by the authorities on the resumption of investigations but regretted nevertheless that, thirteen years after the first judgment in these groups had become final, the information provided remained insufficient to ascertain whether all measures had been taken to remedy the shortcomings in the original investigations. It therefore invited the authorities to explore the necessity of adopting specific measures to enable a competent independent body to carry out a comprehensive review of all the cases in these groups.

53. Regarding general measures, the Committee of Ministers reiterated that the adoption of the Code of Criminal Procedure remained a fundamental element in the execution of these groups of cases but it was nevertheless concerned that, despite several calls from the Committee, the authorities had not submitted a comprehensive analysis of its practical effect on the eradication of all forms of ill-treatment in custody and the conduct of investigations. It therefore called on the authorities to develop relevant assessment tools in order to evaluate the impact of these legislative changes. It also noted with satisfaction that the State Bureau of Investigations had been established and called on the authorities to intensify their efforts to ensure its full staffing and effective functioning without further delay. It further encouraged the authorities to continue their awareness-raising activities and to make use of the Council of Europe projects.

¹⁰³ See the groups *Kaverzin v. Ukraine*, application no. 23893/03, judgment of 15 May 2012 (17 cases), and *Afanasyev v. Ukraine*, application no. 38722/02, judgment of 5 April 2005, (44 cases) as well as the judgments in the cases of *Karabet and Others v. Ukraine*, application no. 38906/07+, of 17 January 2013, and *Belousov v. Ukraine*, application no. 4494/07, judgment of 7 November 2013.

¹⁰⁴ *Kaverzin v. Ukraine*, paragraph 180.

¹⁰⁵ See [DH-DD\(2018\)63](#), [DH-DD\(2018\)473](#) and [DH-DD\(2018\)678](#).

¹⁰⁶ CM/Del/Dec(2018)1324/H46-27.

3.6. Unlawful and/or lengthy detention on remand

54. At least 69 judgments have been delivered by the Court on the issue of unlawful and/or lengthy detention on remand and inadequate examination of the procedure owing to shortcomings in legislation and its application (violations of Article 5 §§ 1, 3 and 4 of the Convention). The Court delivered a "quasi-pilot" judgment in February 2011 in the case of *Kharchenko v. Ukraine*¹⁰⁷, highlighting the structural nature of this problem, which hinged on the legal framework governing provisional detention in Ukraine. The Court stressed that specific reforms of legislation and administrative practice should be urgently implemented in order to bring them into line with the requirements of Article 5 of the Convention.

55. In 2012, a new Code of Criminal Procedure was adopted with a view to remedying the shortcomings found by the Court in its judgments. However, on 9 October 2014, the Court delivered another judgment concerning detention without a court order in 2013 (violation of Article 5§1 of the Convention) in the case of *Chanyev v. Ukraine*¹⁰⁸ and stated that, pursuant to Article 46 of the Convention, further amendments had to be made to legislation, including the Code of Criminal Procedure of 2012¹⁰⁹.

56. The Committee of Ministers decided to close the examination of individual measures in *Kharchenko* and 35 other cases¹¹⁰ at its 1294th meeting (DH)¹¹¹ in September 2017, on grounds, inter alia, of the progress made thanks to the entry into force of the Code of Criminal Procedure and measures to raise awareness and build capacity. In addition, two draft laws had been drawn up to remedy the shortcomings in the *Chanyev* judgment. There was also a case pending before the Constitutional Court concerning the problem of detention without a court order between the end of the investigation and the beginning of the trial. Finally, the High Specialised Court for Civil and Criminal Cases sent recommendations to the presidents of appeal courts to ensure that no one would be placed in detention without a court decision.¹¹² Notwithstanding these positive developments, the Committee of Ministers decided to continue to supervise the outstanding questions concerning general measures¹¹³ in the context of the *Ignatov* group of cases¹¹⁴. In the latter judgment, pursuant to Article 46 of the Convention, the Court stated that it was not convinced that the new legislation was sufficient to prevent further violations of Article 5 of the Convention.

57. In response to the decision adopted by the Committee of Ministers at its 1294th meeting (DH), the authorities submitted a new action plan in April 2018¹¹⁵ and provided information on individual measures and the situation of the applicants. Regarding general measures, they supplied examples of case-law as well as a new draft law (no. 7089) which stipulated *inter alia* that if the parties to the criminal proceedings had not applied for preventive measures, such as provisional detention, or an extension thereof, the accused had to be released immediately. They also reported that, in a judgment of 23 November 2017, the Constitutional Court had concluded that the possibility of provisional detention being extended automatically without there being any application from the parties in preparatory hearings was unconstitutional (Article 315§3 of the Code of Criminal Procedure).

58. In a decision adopted at the 1318th meeting DH (June 2018), the Committee of Ministers noted with interest the ongoing efforts made by the authorities aimed at aligning legislation and practice with the requirements of Articles 5 §§ 1 and 3 of the Convention, in particular the Constitutional Court judgment and draft law no. 7089. It invited the authorities to provide further information on the practical impact of the measures taken and the effective implementation of the Code of Criminal Procedure and also to accelerate the legislative process for that draft law. A comprehensive action plan was requested by 1 February 2019 at the latest.¹¹⁶ The Committee of Ministers also decided to close six cases in this group for which no further individual measures were required.¹¹⁷

¹⁰⁷ *Kharchenko v. Ukraine*, application no. 40107/02, judgment of 10 February 2011.

¹⁰⁸ Application no. 46193/13, judgment of 9 October 2014.

¹⁰⁹ *Ibid.*, paragraphs 34 and 35.

¹¹⁰ *Korneykova v. Ukraine*, application no. 39884/05, judgment of 19 January 2012.

¹¹¹ [Resolution CM/ResDH\(2017\)296](#), concerning 36 cases in this group.

¹¹² *Kharchenko v. Ukraine*, status of execution, HUDOC-EXEC, at 7 January 2019.

¹¹³ CM/Del/Dec(2017)1294/H46-35.

¹¹⁴ *Ignatov v. Ukraine*, application no. 40583/15, judgment of 15 December 2016.

¹¹⁵ DH-DD(2018)374, 3 April 2018.

¹¹⁶ CM/Del/Dec(2018)1318/H46-27; paragraphs 3, 4 and 6.

¹¹⁷ CM/ResDH(2018)231.

59. The Committee of Ministers is also supervising the execution of the judgments in the cases of *Lutsenko v. Ukraine*¹¹⁸ and *Tymoshenko v. Ukraine*¹¹⁹ concerning pre-trial detention on grounds other than those authorised by Article 5 of the Convention (violations of Articles 5§1, 5§4, 5§5 and Article 18 taken together with Article 5 of the Convention). Although both applicants had been released,¹²⁰ the Committee of Ministers is still examining the question of general measures. This issue was also broached by our fellow committee member Mr Pieter Omtzigt (Netherlands, EPP/CD) in his report on "Keeping political and criminal responsibility separate"¹²¹.

3.7. Lack of independence and impartiality of courts

60. Issues relating to the independence of the judiciary and protection against interference from the executive and legislative branches have long been under supervision (beginning with the case of *Sovtransavto Holding*¹²² in 2002). Several judgments are pending before the Committee of Ministers in this connection (violations of Article 6§1 of the Convention)¹²³. In the *Oleksandr Volkov v. Ukraine* case¹²⁴, the Court found other serious systemic problems in the functioning of Ukraine's judicial system. This case involved four violations of the right to a fair trial of the applicant who had been illegally dismissed from his post of judge in the Supreme Court of Ukraine; the Court also found a violation of the applicant's right to respect for private life (violation of Article 8 of the Convention). Pursuant to Article 46 of the Convention, the Court called for urgent legislative reform as well as the reinstatement of the applicant in their post of Supreme Court judge as swiftly as possible. Similar violations were found in the case of *Kulykov and Others v. Ukraine*.¹²⁵

61. The Committee of Ministers last examined the execution of these judgments at its 1318th meeting (DH) in June 2018. With regard to individual measures, the Committee of Ministers decided to close the *Salov*, *Belukha* and *Feldman* cases (in which the Supreme Court had quashed the domestic court decisions criticised by the Court) and continue to examine the outstanding issues concerning general measures within the framework of the *Oleksandr Volkov* group.¹²⁶ It also invited the authorities to provide updated information as regards the reopening of proceedings in the case of *Kulykov and Others*, and encouraged them to complete this process with the aim of "fully achieving *restitutio in integrum* as regards the applicants".¹²⁷ In the *Volkov* case, applicant was reinstated as a Supreme Court judge as of 2 February 2015, following repeated pressure from the Committee of Ministers.¹²⁸

62. Where the general measures in this group of cases are concerned, institutional and legislative reforms have been undertaken with a view to defining a new legal framework for the judiciary, clarifying judicial discipline and careers¹²⁹; these reforms included an amendment of the Constitution and the passing of two major laws on the functioning of the judicial system and were assessed in Committee of Ministers Secretariat document H/Exec(2017)1, which also identified the outstanding issues. At its 1280th meeting (March 2017) (DH), the Committee of Ministers welcomed the progress achieved and urged the authorities to address the outstanding issues identified in document H/Exec(2017)1 without undue delay. Consequently, the authorities submitted a revised action plan.¹³⁰

63. In its last examination of these cases at its 1318th meeting (June 2018) (DH), the Committee of Ministers noted with satisfaction the progress achieved on the issues concerning judicial discipline and careers previously identified by the Committee as outstanding. It welcomed the fact that the High Council of Justice was now fully operational under the new regulations and that these bodies had developed consistent practice on the application of disciplinary sanctions to judges in line with the Convention, the Court's case-law and Council of Europe recommendations. There are several issues yet to be clarified, including the appeal pro-

¹¹⁸ Application no. 6492/11, judgment of 3 July 2012.

¹¹⁹ Application no. 49872/11, judgment of 30 April 2013.

¹²⁰ CM/Del/Dec(2014)1193/25.

¹²¹ Doc. 13214. See also Assembly Resolution 1950(2013) of 28 June 2013.

¹²² *Sovtransavto Holding v. Ukraine*, application no. 48553/99, judgment of 25 July 2002.

¹²³ See *inter alia* the four *Salov* group judgments: *Salov v. Ukraine*, application no. 65518/01, judgment of 6 September 2005, *Sovtransavto Holding v. Ukraine*, see footnote above; *Belukha v. Ukraine*, application no. 33949/02, judgment of 9 November 2007 and *Feldman v. Ukraine*, application no. 76556/01+, judgment of 8 April 2010.

¹²⁴ Application no. 21722/11, judgment of 9 January 2013.

¹²⁵ Application no. 5114/09+, judgment of 19 January 2017.

¹²⁶ Final Resolution CM/ResDH(2018)232.

¹²⁷ CM/Del/Dec(2018)1318/H46-28, paragraph 2.

¹²⁸ See *inter alia* Interim Resolution CM/ ResDH (2014) 275 of 4 December 2014.

¹²⁹ *Oleksandr Volkov*, see above..

¹³⁰ DH-DD(2018)275 of 7 March 2018 and addendum DH-DD(2018)437 of 24 April 2018.

cedure against decisions on the careers or promotions of judges or appeals by judges against their dismissal by Parliament in the transitional period.¹³¹

64. Similar questions have been examined in the context of the *Agrokompleks* case¹³² relating to the unfairness of the insolvency proceedings lodged by the applicant company against what was, at the time of the events, the country's biggest oil refining company (LyNOS).

3.8. *Gongadze case*

65. In the case of *Gongadze v. Ukraine*¹³³, the Court found, among other things, violations of Article 2 of the Convention following the death in 2000 of a journalist known for his criticism of people in power and the lack of an effective investigation. This was a highly politically sensitive case, in which a number of senior state officials, including the former President L. Kuchma, were alleged to have been involved¹³⁴. The investigation into the instigation and organisation of G. Gongadze's disappearance and murder has been pending for over 17 years before the Prosecutor General's office. Three police officers were convicted in 2008 for his abduction and assassination.

66. In January 2013, General Oleksiy Pukach, the hierarchical superior of the three police officials, was sentenced to life imprisonment for abuse of power and official authority and premeditated murder. O. Pukach, and also the applicant (the journalist's widow), appealed against the judgment and the procedure is pending before the Court of Cassation. At its 1157th meeting (DH) in December 2012, the CM took note of the quashing of the prosecutor's decision to institute criminal proceedings against the former Ukrainian President on grounds that the evidence submitted had been declared inadmissible. At its 1324th meeting (September 2018) (DH), it asked the authorities to provide information on the outcome of the cassation proceedings concerning O. Pukach and to ensure that this procedure was rapidly completed. It also deplored the fact that, after almost 18 years, the investigation into the murder of G. Gongadze was yet to be fully completed and urged the authorities to do so swiftly.

67. A number of general measures have been taken by the authorities, notably relating to the independence and effectiveness of criminal investigations into deaths (*Khaylo* group¹³⁵). These measures have already been examined by the Committee of Ministers, recently and exhaustively at the 1294th meeting (September 2017) (DH) on the basis of the August 2017 action plan.¹³⁶ With regard to the protection of journalists, the Committee of Ministers requires two categories of measures to be taken: 1) measures to improve the independence and effectiveness of investigations into crimes against journalists; and 2) measures to ensure that journalists have immediate access to protective measures, in the light of its Recommendation to member States on the protection of journalism and safety of journalists and other media actors ([CM/Rec\(2016\)4](#)¹³⁷). At its 1294th meeting (September 2017) (DH), the Committee of Ministers welcomed the strengthening of the legislative and institutional framework to enhance the safety of journalists, as well as measures to improve the independence and effectiveness of investigations into crimes against them, and training and dissemination activities.¹³⁸

68. At its 1324th meeting (September 2018) (DH), the Committee of Ministers noted with concern that the definition of journalist in the Criminal Code is restrictive and might lend itself to a formalistic interpretation, and stressed that the Ukrainian authorities have an obligation to take a proactive approach when dealing with threats and crimes against persons exercising their freedom of expression, regardless of their formal professional status. With regard to establishing a system of effective protection for the safety of journalists and other media actors in Ukraine, it noted the ongoing work and reiterated the readiness of the Council of Europe to provide assistance in the further implementation of the reforms. Finally, it invited the authorities to submit a consolidated action plan or report by the end of March 2019 at the latest.

¹³¹ CM/Del/Dec(2018)1318/H46-28, paragraphs 3-6.

¹³² *Agrokompleks v. Ukraine*, application no. 23465/03, judgment of 6 October 2011.

¹³³ *Gongadze v. Ukraine*, application no. [34056/02](#), judgment of 8 November 2005.

¹³⁴ See *inter alia* the most recent Committee of Ministers decision on this case, taken at its 1157th meeting in December 2012.

¹³⁵ *Khaylo v. Ukraine*, application no. 39964/02, judgment of 13 November 2008. This case concerns the lack of an effective investigation following a death (violation of Article 2 in its procedural aspect).

¹³⁶ [DH-DD\(2017\)927](#), 28 August 2017. For further details, see the Notes of the 1294th meeting, [CM/Notes/1294/H46-37](#)

¹³⁷ Adopted by the Committee of Ministers on 13 April 2016.

¹³⁸ [1294th meeting of the Committee of Ministers](#), September 2017.

69. It should be borne in mind that the murder of G. Gongadze and the lack of an effective investigation were examined by the Assembly in 2009¹³⁹ and more recently in March 2015 following a report on "Threats to the rule of law in Council of Europe member States: asserting the Parliamentary Assembly's authority" by former committee member Ms Marieluise Beck (Germany, ALDE)¹⁴⁰. In its resolution 2040 (2015), the Assembly noted that its previous recommendations on this case had been only partially implemented. Although three interior ministry officials and their commander, General Pukach, had been found guilty of the murder, their former minister had committed suicide in suspicious circumstances and the accusations launched by General Pukach against the former president and the former head of the presidential administration had not been followed up effectively¹⁴¹.

3.9. Violations of the right to freedom of assembly

70. In the case of *Vyerentsov v. Ukraine*¹⁴², the Court found violations of Articles 11 (right to freedom of assembly) and 7 ("no punishment without law" principle) of the Convention owing to the sentencing of the applicant to administrative detention for organising a peaceful demonstration on behalf of a human rights NGO in October 2010. The Court held that there was a legislative lacuna in the country concerning the procedure applicable to the holding of demonstrations and, under Article 46 of the Convention, called for the urgent reform of this legislation and administrative practice.¹⁴³

71. The individual measures are linked to the general measures in this case. Two draft laws on "guarantees for the right to freedom of peaceful assembly" (initial and alternative drafts, nos. 3587 and 3587-1 respectively) were scheduled for presentation to the competent parliamentary committee in May 2017¹⁴⁴. At its 1273rd meeting (December 2016) (DH)¹⁴⁵, the Committee of Ministers noted that the two draft laws had been positively assessed by the Venice Commission, the Directorate of Human Rights of the Directorate General of Human Rights and the Rule of Law (DGI) of the Council of Europe and the OSCE/ODIHR. It also welcomed the Constitutional Court judgment of 8 September 2016 declaring the Decree of the Presidium of the Supreme Soviet of the USSR of 28 July 1988 on the procedure for organising and holding meetings, rallies, street marches and demonstrations unconstitutional. In March 2017, the Ukrainian authorities supplied an action plan¹⁴⁶. When it last examined the case in June 2017 (1288th meeting DH), the Committee of Ministers noted with interest the efforts made by the authorities to accelerate the legislative process and the examination of two draft laws by a parliamentary committee in May 2017. It urged them to ensure that the legislative process was concluded without further delay, to keep it informed of any developments in this connection and to benefit from the cooperation activities offered by the Council of Europe. As the Committee of Ministers had insisted in its previous decisions that, pending the new legislation, the practice of the domestic courts, municipal authorities and the police must conform to the Convention, it noted the latest information supplied by the authorities and encouraged them to continue their efforts to ensure such conformity.

72. The 11th annual report of the Committee of Ministers also mentioned other main cases or groups of cases pending, namely:

- *Balitskiy v. Ukraine*¹⁴⁷, concerning unfair criminal convictions based on confessions given under duress (violation of Article 6§§ 1 and 3c) of the Convention);
- *East/West Alliance Limited v. Ukraine*¹⁴⁸, concerning disrespect of property rights in the context of tax evasion investigations (violations of Article 1 of Protocol no. 1 and Article 13 of the Convention);

¹³⁹ Doc. 11686 (2008) of 11 July 2008 ; Committee on Legal Affairs and Human Rights, rapporteur: Sabine Leutheusser-Schnarrenberger (Germany, ALDE); see Resolution 1645 (2009) and Recommendation 1856 (2009) of 27 January 2009.

¹⁴⁰ Doc. 13713 of 18 February 2015.

¹⁴¹ Resolution 2040 (2015) adopted on 6 March 2015 by the Standing Committee, paragraph 3.2.

¹⁴² *Vyerentsov v. Ukraine*, application no. [20372/11](#), judgment of 11 April 2013.

¹⁴³ *Ibid.* See also, in the same group, *Shmushkovych v. Ukraine*, application no. 3276/10, judgment of 14 November 2013.

¹⁴⁴ 11th Annual Report of the Committee of Ministers on supervision of the execution of judgments and decisions of the European Court of Human Rights, 2017, p. 235.

¹⁴⁵ CM/Del/Dec(2016)1273/H46-3.

¹⁴⁶ [1288th meeting 6-7 June 2017 \(DH\) - Action plan \(16/03/2017\)](#).

¹⁴⁷ *Balitskiy v. Ukraine* (group), application no. [12793/03](#), judgment of 3 November 2011.

¹⁴⁸ *East/West Alliance Limited v. Ukraine*, application no. 19336/04, judgment of 23 January 2014.

- *Fedorchenko and Lozenko (group) v. Ukraine*¹⁴⁹, concerning the lack of effective investigation into the death of persons of Roma origin (violation of Article 14 taken together with Article 2 of the Convention);
- *Kebe and Others v. Ukraine*¹⁵⁰, concerning the lack of an effective remedy with automatic suspensive effect against border guard decisions (violation of Article 13 taken together with Article 3 of the Convention);
- *Khaylo v. Ukraine*¹⁵¹ and other cases, concerning the lack of effective investigations into criminal acts alleged to have been committed by private individuals (violations of Article 2 of the Convention);
- *Naydyon v. Ukraine*¹⁵² and other cases, concerning the lack of a clear procedure allowing prisoners' access to documents necessary to substantiate their complaints to the Court (violation of Article 34 of the Convention);
- *Veniamin Tymoshenko and Others*¹⁵³, concerning the unlawful banning of a strike (violation of Article 11 of the Convention).

¹⁴⁹ *Fedorchenko and Lozenko v. Ukraine* (group), application no. [387/03](#), judgment of 20 September 2012.

¹⁵⁰ *Kebe and Others v. Ukraine*, application no. 12552/12, judgment of 12 January 2017.

¹⁵¹ *Khaylo v. Ukraine* (group), see above.

¹⁵² *Naydyon v. Ukraine* (group), application no. 16474/03, judgment of 14 October 2010.

¹⁵³ *Veniamin Tymoshenko and Others v. Ukraine*, application no. 48408/12, judgment of 2 October 2014.