



**Provisional version
Addendum**

Committee on Legal Affairs and Human Rights

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

Addendum to the report

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I. Introductory remarks

1. This Addendum contains updated information that was originally provided in background memoranda prepared for hearings that the Parliamentary Assembly's Committee on Legal Affairs and Human Rights ("the LAHR Committee" / "the Committee") held between April 2012 and January 2013. It also takes into account information provided by some delegations in response to my letters of 7 June 2013 requesting comments on the Addendum to my previous document on "Implementation of judgments of the European Court of Human Rights: preparation of the 8th report. Stock-taking and proposals by the Rapporteur" of May 2013.¹ In the second half of 2013, the following delegations provided replies to my query: Bulgaria, Greece, Italy, Poland, Romania, Turkey, Ukraine and the United Kingdom.

2. The purpose of this Addendum is to provide insight into the main issues concerning implementation of judgments of the European Court of Human Rights ("the Court" or "ECtHR") faced by the nine states that are the focus of the 8th report: Italy, Turkey, the Russian Federation, Ukraine, Romania, Greece, Poland, Hungary - not included in the 2013 Addendum - and Bulgaria. Among the issues assessed are: excessive length of judicial proceedings (endemic notably in Italy, but also existing in Bulgaria, Greece, Hungary, Poland, Romania and Ukraine), 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), poor conditions in detention facilities (in particular in Bulgaria, Romania, the Russian Federation and Ukraine), unlawful or over-long detention on remand (notably in the Russian Federation, Turkey and Ukraine) and various violations of the Convention concerning foreigners who face expulsion or seek asylum (especially in Greece and Italy). The Addendum takes stock of the progress that has been accomplished since the 7th report on this subject by Mr Pourgourides² ("Pourgourides report") and focuses on cases that are under the enhanced supervision of the Committee of Ministers (CM) and which involve structural and/or complex problems according to the CM 2014 (8th) Annual Report on the supervision of the execution of judgments and decisions of the European Court of Human Rights ("CM 2014 Annual Report").³ I have not been able to include in this Addendum issues raised at the most recent 1230th CM (DH) meeting (9-11 June 2015).⁴

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

¹ As/Jur (2013)14 Addendum declassified, 10 May 2013.

² Doc. 12455 of 20 December 2010.

³ Available at: http://www.coe.int/t/dghl/monitoring/execution/Source/Publications/CM_annreport2014_en.pdf, pp. 59-76

⁴ See decisions adopted at the 1230th (DH) meeting.

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.⁵

5. The report also dealt with an issue of "indirect expropriation".⁶ On 22-23 October 2014, I carried out a fact-finding visit to Rome, where I discussed these problems with the authorities and representatives of civil society (Amnesty International, *Associazione Antigone*, focusing on detainees'

1.1. Excessive length of judicial proceedings

6. This issue has plagued the Italian justice system for decades, the backlog of cases having increased steadily each year. Currently, the Committee of Ministers (CM) is examining more than 2,000 cases concerning this issue. Most of these cases relate to the situation before 2001, when a compensatory remedy was introduced in Italy, while the more recent cases concern issues related to the functioning of this remedy.

7. In its Interim Resolution (2010)224 of 2 December 2010⁷ 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 their action plan of 25 October 2011,⁸ an important development can be noted. By the end of 2010, the number of pending civil cases in the Italian courts had decreased by roughly 360,000 to 5,466,346 (i.e. by 4%). Furthermore, at the date of the action plan, and the number of new civil cases had declined in comparison with previous years mainly due to a new procedure of compulsory preliminary mediation in certain civil law matters.

8. The said action plan mentions other measures taken: introducing a simplified procedure for less complex civil disputes and 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 procedures to three.⁹ 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 of honorary judges were appointed to clear the backlog of cases.

9. At the 1136th meeting in March 2012, the CM welcomed the renewed commitment expressed by the Italian authorities towards adopting further measures and monitoring the effects of those already adopted, 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*",¹⁰ 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.¹¹

10. Despite repeated calls from the Committee of Ministers (see the decision adopted at the 1144th meeting (DH) (June 2012),¹² 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. As regards the

⁵ Supra note 2, paragraphs 46-59.

⁶ Supra note 2, paragraph 59.

⁷ CM/ResDH(2010)224 adopted at 1100th DH meeting of the Minister's Deputies on 2 December 2010.

⁸ *Action report on Ceteroni group*, DH-DD(2011)898F (available in French only), 25 October 2011.

⁹ Decree No. 50 entered into force, along with Law No. 69.

¹⁰ 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, Items 1 and 2.

¹¹ Supra note 8, item 3 of the decision.

¹² 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.

administrative proceedings, the last information was submitted on 30 July 2012.¹³ 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 be,¹⁴ of which the CM took note in its decision taken at its 1157th (DH) meeting in December 2012.¹⁵

11. 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.¹⁶ 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”.¹⁷

12. In April 2013, the Italian authorities presented an update about the measures taken or planned,¹⁸ which was carefully examined by the Department for the Execution of judgments and decisions of the ECtHR in an information document CM/Inf(2013)21 of May 2013.¹⁹ The authorities announced some measures aimed at improving the efficiency of the judicial system, such as specialization of judges, some organizational measures to be taken by the heads of the judicial offices (such as preparing annual action plans for the handling of cases) and, in civil cases, by judges (such as setting a “trial timetable”), dissemination of best practices and wider use of information technology. As regards civil cases, as of 11 September 2012, new procedural rules on appeals, allowing judges to filter more quickly manifestly ill-founded appeals, entered into force. The obligatory mediation in civil and commercial cases introduced in 2010 was declared unconstitutional by the Constitutional Court in 2012. The authorities also provided statistical data, but only concerning the first instance courts. These data showed an increase in the average length of civil proceedings (1,139 days in 2012) and a decreasing trend as regards the backlog of cases. As regards criminal cases, the authorities informed about their intention to decriminalize some minor offences, but failed to provide updated statistical data. Concerning administrative courts, they registered an overall decrease of their backlog in 2012. The authorities also showed that the average length of bankruptcy proceedings had decreased in 2012.

13. At its 1172nd DH meeting in June 2013,²⁰ the CM stressed again the need to set up a domestic monitoring mechanism in order to evaluate the impact of the reforms. It also invited the Italian authorities to finalise the “consolidated action plan”, in close cooperation with the Department for the Execution of judgments and decisions of the ECtHR and by taking into account its comments included in document CM/Inf(2013)21. It welcomed the determination expressed by the Italian authorities in order to adopt the necessary measures to effectively solve the problem of the excessive length of judicial proceedings. The CM recalled some encouraging trends for the bankruptcy and administrative proceedings and noted that most of the reforms announced for the civil proceedings had been adopted. However, it observed that additional information (in particular concerning criminal proceedings) and precise and updated data were necessary in order to properly assess the situation.²¹

¹³ Communication from the Italian authorities concerning the Ceteroni, Luordo and Mostacciolo cases, DH-DD(2012)718F.

¹⁴ See comments made by the secretariat of the Department of Execution in “Pending cases: status of execution” for the Ceteroni group.

¹⁵ Decisions of the Committee of Ministers concerning the Ceteroni group of cases, 1157th (DH) meeting, 4-6 December 2012, CM/Del/Dec(2012)1157/14 of 3 December 2012, Item 4.

¹⁶ DD(2012)4add2E.

¹⁷ Items 6-8 of the decision, *supra* note 15.

¹⁸ DH-DD(2013)415 of 16 April 2013 (in French).

¹⁹ CM/Inf(2013)21 of 8 May 2013.

²⁰ Decisions of the Committee of Ministers concerning the Ceteroni group of cases, 1172nd DH meeting, 4-6 June 2013, CM/Del/OJ/DH(2013)1172/14 / 03 June 2013.

²¹ Items 3 and 4 of the decision, *ibid*.

14. During and following my visit to Rome, I was provided additional information concerning the measures taken by the Italian authorities to reduce the length of civil proceedings between 2013 and 2014 (including those introduced by Decree Laws 69/2013, 132/2014 and 90/2014): “assisted negotiation” (out-of-court dispute resolution procedure, with the help of lawyers), transfer to an arbitrator (who must be a lawyer), new rules on mediation, more frequent use of the summary procedure, streamlining and acceleration of forced execution, further computerization (making obligatory the submission of documents in electronic form in some cases), hiring of additional qualified staff to assist judges (*ufficio per il processo*), hiring 400 “auxiliary judges” at courts of appeal and appointing judges as law clerks at the Court of Cassation (*magistrato assistente di studio*). According to the Ministry of Justice, the delays in civil proceedings were mainly due to the backlog of cases at appeal courts and/or the Court of Cassation. During my meeting with the President of Cassation, he raised the issue of access to this jurisdiction, stressing that the cassation appeal should be excluded for small claims. As of 31 December 2013, there were 5.16 million civil cases pending (compared with 6 million at the end of 2009, this shows a decreasing trend). Interestingly, according to the European Commission for the Efficiency of Justice (CEPEJ) report of 2014 (based on data from 2012),²² the Italian judges are ones of the most productive in Europe. As regards criminal cases, I was informed at my meeting in the Chamber of Deputies that the initiative to decriminalize some (petty) offences, the reform of statutory limitations and other structural measures were in the pipeline. Concerning administrative court proceedings, they usually lasted 5 years (for two instances), which was not a good result, according to the legal advisors of the Council of Ministers’ office.

1.2. Lack of effective remedy

15. The *Mostacciolo Giuseppe (I)*²³ group of cases deals with over 160 such cases. The 2010 quasi-pilot judgment *Gaglione and others*²⁴ 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”²⁵ ranged from 9 to 49 months, and that in 65% or more of the cases there was a 19-month delay.²⁶ 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.²⁷ It also noted that almost 4,000 cases concerning, amongst others, delays in paying “Pinto compensation”, were pending before it.

16. In its Interim Resolutions (2009) 42 of 19 March 2009²⁸ and (2010) 224 of 2 December 2010²⁹ the CM requested Italy to amend the “Pinto Law” providing compensation for victims of unreasonably long judicial proceedings.³⁰ While domestic case law developments showed compliance with the criteria set by the Court as regards determination of compensatory amounts, the delays in paying out the compensation awarded by national courts were still a serious problem.³¹ 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.³²

17. At its 1136th meeting (DH) in March 2012, the CM welcomed the Italian authorities’ commitment towards finding a solution to delays in payment of amounts awarded under the Pinto Act, and invited the authorities to submit concrete proposals in this respect, along with a calendar for the implementation of proposals.³³ Despite the submission of an updated action plan of 30 March 2012, in accordance with the decision adopted at the 1144th meeting (DH) (June 2012), the Italian authorities still had to provide the CM with a detailed explanation on the announced plan for payment of arrears under the Pinto proceedings. They

²² CEPEJ, Report on “European judicial systems – Edition 2014 (2012 data): the efficiency and quality of justice”.

²³ *Mostacciolo Giuseppe v. Italy*, application No. 64705/01, Judgment of 29 March 2006, see list of cases

²⁴ *Gaglione and others v. Italy*, application no. 45867/07, Judgment of 21 December 2010.

²⁵ It means national courts’ decisions awarding, under the Pinto Act, compensation for protracted civil proceedings.

²⁶ *Supra* note 24, paragraphs 38 and 8.

²⁷ *Ibid*, paragraph 55.

²⁸ Interim Resolution CM/ResDH(2009)42.

²⁹ *Supra* note 7.

³⁰ Act No. 89/2001.

³¹ According to Article 3, paragraph 7 of the Pinto Act domestic compensations are paid within the limits of the available funds.

³² DH-DD(2011)899F (available in French only) of 18 October 2011.

³³ Items 4-6 of the decision, *supra* note 10.

have only confirmed that on 30 October 2012, the Ministry of Justice had begun paying these arrears for the period 2005 – 2008.³⁴

18. 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.³⁵ 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 in December 2012, the CM noted with concern that the said amendments might raise issues as to their compatibility with the Convention and the Court's case-law.³⁶

19. In November 2012, the authorities announced that they envisaged changing the system of financing the "Pinto law" compensation,³⁷ that they exempted from seizure the funds allocated for such payments and that they allocated 50 million euro for them in the budget for 2013. However, no timetable for the adoption of the reform of the financial system set by the Pinto law was presented.³⁸

20. In its decision taken at its 1172nd (DH) meeting in June 2013,³⁹ the CM invited again the Italian authorities to provide information on lifting budgetary limitations on the payment of the compensation stemming from the Pinto law application and on allocating funds for the payment of arrears in this compensation. It stressed the urgency to stop the flow of repetitive applications before the European Court caused by the deficiencies in the "Pinto law".

21. On 5 September 2013, Italy provided new information pertaining to the progress made to address the issue of repetitive cases before the ECtHR concerning the functioning of the Pinto mechanism.⁴⁰ According to an action plan established for 2012-2014, agreed with the Registry of the ECtHR, the authorities aimed at closing over 7,000 cases pending before the Court by proposing friendly settlements or unilateral declarations.

22. Following my visit to Rome, I was informed that funds for the payment of Pinto compensations had increased and that the Ministry of Justice disposed of 100 million euros (55 million attributed for 2013-2015 plus 45 million added in 2014) for this purpose. In 2013, the State's General Accounting Officer authorized the Ministry of Justice to pay such compensations, even if there were no funds in the relevant budgetary chapter, by using the "suspended account" procedure (i.e. using money advanced by the Bank of Italy). This meant that, in practice, Article 3 §7 of the Pinto law was irrelevant.

1.3. *The expulsion of foreign nationals*

23. The *Saadi* group of cases concerned potential violations of Article 3 if the applicants had been expelled to their country of origin (in these cases, Tunisia), where there is a real risk of them being subjected to ill-treatment.⁴¹ The *Ben Khemais* group of cases,⁴² (which includes also the *Mannai*,⁴³ *Toumi*,⁴⁴ and *Trabelsi*⁴⁵ judgments), concerns violations of Articles 3 and 34 due to the applicants' expulsion to Tunisia, notwithstanding the real risk of ill-treatment they faced in this country and in disregard of the Court's interim measures requiring Italy that the applicants not be expelled until further notice.⁴⁶

³⁴ Communication from the Italian authorities concerning the Ceteroni, Luordo and Mostacciolo cases, [DH-DD\(2012\)1043add](#).

³⁵ 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"; and [DH-DD\(2012\)1001](#).

³⁶ Items 2 and 3 of the decision, *supra* note 15.

³⁷ [CM/Inf/DH\(2013\)21](#), §§ 80, 83 and 85.

³⁸ *Ibid.*, §§ 87-92.

³⁹ *Supra* note 20.⁴⁰ [DH-DD\(2013\)1016](#) (in French).

⁴⁰ [DH-DD\(2013\)1016](#) (in French).

⁴¹ *Saadi v. Italy*, application no. 37201/06, judgment of 28 February 2008.

⁴² *Ben Khemais v. Italy*, application no. 246/07, judgment of 6 July 2009, and 9 other cases.

⁴³ *Mannai v. Italy* (no. 9961/10), judgment of 27 March 2012.

⁴⁴ *Toumi v. Italy* (no. 25716/09), judgment of 5 April 2011.

⁴⁵ *Trabelsi v. Italy*, application no. 50163/08, judgment of 13 April 2010.

⁴⁶ Interim Resolution CM/ResDH(2010)83 adopted on 3 June 2010.

24. In a series of inadmissibility decisions against Italy of 2012, the Court confirmed its new position,⁴⁷ according to which there were no substantial grounds to believe that applicants would face a real risk of being ill-treated in Tunisia, due to the recent democratic transition in this country. Following these decisions and the individual and general measures taken by the Italian authorities to implement the judgments from the *Saadi* group, at its 1211th DH meeting in November 2014, the CM declared the cases closed.⁴⁸

25. As regards more specifically the *Ben Khemais* group of cases, at its 1108th DH meeting in March 2011, the CM again requested the authorities to provide examples showing that interim measures indicated by the ECtHR were respected in practice, “in particular when Justices of Peace are required to validate expulsions ordered by the Ministry of Interior and Prefects”, and to provide information on “the feedback requested from courts of appeal by the Ministry of Justice on the implementation of the requirements of the Convention and on measures envisaged to create a mechanism to ensure that all relevant authorities are rapidly informed when an interim measure is indicated by the European Court”.⁴⁹ Subsequently, the Italian authorities have provided an action report;⁵⁰ however, it appears that the authorities are still expected to clarify some aspects related to the individual and general measures taken in this group⁵¹.

26. Interestingly, the CM is also now examining the *Hirsi Jamaa and others*⁵² case, which concerns the interception at sea and transfer to Libya by the Italian military authorities of 11 Somali and 13 Eritrean nationals in May 2009. According to the Court, the applicants were exposed to the risk of being subject to ill-treatment in Libya and to the risk of being arbitrarily returned to their countries of origin (two violations of Article 3 of the Convention). Their removal to Libya was of collective nature (violation of Article 4 of Protocol No. 4) and they did not dispose of an effective remedy (violation of Article 13 taken together with Article 3 of the Convention and Article 4 of Protocol No. 4). The CM received a number of submissions from civil society⁵³ and from the UNHCR⁵⁴, calling upon the Italian authorities to prevent similar cases of *refoulement* in the future. The Italian authorities provided an action plan on 06 July 2012.⁵⁵ On 25 June 2014, the Italian authorities submitted an action report⁵⁶, in which, they assured that since the judgment became final in 2012, pushbacks such as those at the root of the violations in this case did no longer take place. The authorities also confirmed that migrants intercepted at sea enjoyed today the full protection of Italian legislation and they could lodge their complaints with a competent authority to obtain an assessment of their asylum request before any removal measure was enforced. Moreover, procedures adopted by the Italian Navy were in conformity with international and domestic legislation, including those on fundamental rights.

27. At its 1208th DH meeting in September 2014,⁵⁷ the CM noted with interest the efforts made by Italian authorities to obtain assurances that the applicants would not be subjected to treatment incompatible with Article 3 of the Convention in Libya or arbitrarily repatriated to Somalia or Eritrea. The CM, furthermore, recalled the firm assurances given by the authorities about the incorporation in the Italian law of the clarifications given in the said judgment as to the requirements of the Convention and practice to prevent similar pushbacks or expulsions of foreign nationals in the future. It requested the authorities to provide by 1 December 2014 more detailed information on the practical measures of implementation taken, including instructions, guidelines and training, in order to examine the possibility of closing the case. As stressed by my interlocutors in Rome, both the authorities and NGOs, Italy has been making major efforts to rescue human lives at sea, namely through the *Mare Nostrum* operation, which had saved more than 140,000

⁴⁷ Judgment *Al Hanchi v. Bosnia and Herzegovina*, Application 48205/09.

⁴⁸ Resolution CM/ResDH(2014)215 adopted on 12 November 2014.

⁴⁹ Item 4 of the decision.

⁵⁰ For *Ben Khemais*, DH-DD (2014) 596 of 29 April 2014.

⁵¹ Cf. information available on the website of the Department for the Execution of judgments, http://www.coe.int/t/dghl/monitoring/execution/Reports/pendingCases_en.asp?CaseTitleOrNumber=ben+khemais&StateCode=&SectionCode=.

⁵² *Hirsi Jamaa and Others v. Italy*, Application no. 27765/09, Judgment of 23 February 2012.

⁵³ See, in particular, Communication DH-DD(2014)320 submitted by Amnesty International on 11.02.2014 and Communication DH-DD(2012)744 submitted on 16.08.2012 and DH-DD(2013)1289 - Submission by the United Nations Special Rapporteur on the human rights of migrants.

⁵⁴ See the Communication DH-DD(2012)811 submitted by UNHCR on 07.09.2012.

⁵⁵ See DH-DD(2012)671 - Action plan provided by Italian authorities on 06.07.2012.

⁵⁶ See DD(2014)849 – Action report provided by Italian authorities on 25.06.2015.

⁵⁷ Decisions of the Committee of Ministers, 1208th DH meeting, 23 – 25 September 2014. CM/Del/OJ/DH(2014)1208/9 / 26 September 2014.

people since October 2013 and had been replaced by the Frontex operation Triton as of 1 November 2014.⁵⁸ However, more support from the European Union and other states was needed to tackle this problem.⁵⁹

1.4. Other issues

a) "Indirect expropriation"

28. The issue of the practice known as "indirect expropriation" (violations of Article 1 of Protocol No. 1)⁶⁰ still needs to be tackled.⁶¹ The CM is currently examining the *Belvedere Alberghiera SRL* group,⁶² which consists of more than 80 cases.⁶³ The Italian authorities have introduced several legislative measures, which the CM welcomed in its Interim Resolution CM/ResDH(2007)3. In October 2007, the Constitutional Court declared unconstitutional some provisions on expropriations in the public interest. However, the CM is still awaiting information concerning further general measures (in particular, 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).

b) Prison conditions

29. Since 2009, the CM has also been examining issues of prisons overcrowding and detention conditions in Italy. The matter already appeared with the *Sulejmanovic*⁶⁴ case, in which the Court found a violation of Article 3 of the Convention in relation to the detention conditions of the applicant. Moreover, in the case of *Cirillo v. Italy*, the Court found a violation of Article 3 of the Convention on account of the inadequacy of the medical care provided in prison.⁶⁵ In consideration of the entity of the problem of the inhuman and degrading detention conditions deriving mainly from a structural problem of overcrowding in Italian prison facilities,⁶⁶ the Court delivered a pilot judgment in *Torreggiani and others v. Italy*,⁶⁷ in which it requested Italy to put in place, by 27 May 2014, a remedy or combination of remedies providing redress in respect of violations of the Convention resulting from overcrowding in prison. The Court also stressed that long-term measures were needed to resolve the problem and noted that at 13 April 2012, the rate of overpopulation in Italian prisons was at 148%, of which 42% of prisoners were detained on remand.

30. The authorities provided an action plan⁶⁸ on 29 November 2013, followed by additional information and then by a revised action plan on 15 September 2014.⁶⁹ At its 1201st DH meeting (June 2014), the CM welcomed the authorities' commitment to resolve the problem of prison overcrowding and the progress made in this area, including a significant drop in the prison population and an increase in living space to at least 3m² per detainee. It also welcomed the introduction of a preventive remedy and the steps taken to introduce a compensatory remedy. Following the adoption of a law-decree providing for the latter remedy, in September 2014, the Court found that the remedies introduced by Italy and allowing detainees to complain about possible violations of Article 3 of the Convention were in principle effective.⁷⁰ At its 1214 DH meeting (2-4 December 2014), the CM welcomed the new remedies and underlined the importance of monitoring their implementation. It noted with interest the latest statistics provided by the authorities, which continue to show a reduction of prison overcrowding, and invited the authorities to provide a consolidated action plan by

⁵⁸ See, for example, Amnesty International, *Lives adrift: refugees and migrants in peril in the central Mediterranean*, report of 30 September 2014.

⁵⁹ See, for example, Assembly's Resolution 2050 (2015) on "The human tragedy in the Mediterranean: immediate action needed", adopted on 23 April 2015.

⁶⁰ 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.

⁶¹ *Supra* note 2, at paragraph 59.

⁶² *Belvedere Alberghiera SRL v. Italy*, application no. 31524/96, Judgment of 30 August 2000.

⁶³ See Appendix II to Interim Resolution CM/ResDH(2007)3 of 14 February 2007.

⁶⁴ *Sulejmanovic v. Italy*, Application 22635/03, Judgment of 16 July 2009.

⁶⁵ *Cirillo v. Italy*, Application 36276/10, Judgment of 29 January 2013. See the decision on this case taken by the CM at its 1179th DH meeting in September 2013.

⁶⁶ See at this regard the Report on the visit to Italy carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in 2012, especially Section C – "Prisons".

⁶⁷ *Torreggiani and Others v. Italy*, Application 43517/09, 46882/09, 55400/09, 57875/09, 61535/09, 35315/10 et 37818/10, Judgment of 8 January 2013, final on 27 May 2013.

⁶⁸ See Communication DH-DD(2013)1368 - Action plan, presented on 29.11.2013.

⁶⁹ See Communication DH-DD(2014)1143 - Revised action plan, submitted by the Italian authorities on 15.09.2014.

⁷⁰ See Decision on inadmissibility, *Stella and Others*, 16 September 2014, Application 49169/09, 54908/09, 55156/09 and others. However, an NGO – Radicali Italiani, did not agree with this finding; DH-DD(2014)1143 - Communication from a NGO (Radicali Italiani (RI)) - 24.10.2014.

1 December 2015. In light of the progress made in executing these judgments, the CM transferred these cases to the standard procedure.

31. During my visit in Rome, the authorities informed me that efforts were being made to reduce the problem of overcrowding. Representatives of NGOs agreed that some improvements have been visible, but complained about very poor conditions of detention of migrants in temporary centres.

c) The M. C and others case

32. Another case - *M.C. and others*,⁷¹ - is being examined by the CM under its enhanced supervision procedure. It concerns a systemic problem stemming from a legislative intervention which cancelled retrospectively and in a discriminatory manner the benefit of an annual adjustment of a compensation allowance paid to the applicants or to their deceased relatives for having suffered accidental viral contamination (violations of Article 6§1 and of Article 1 of Protocol No. 1 taken alone or in conjunction with Article 14). The Court invited the authorities to set, by 3 June 2014, a binding time-limit for guaranteeing the realization of the entitlement to the annual adjustment. The Italian authorities submitted a communication regarding general measures on 22 September 2014.⁷² In December 2014, the CM decided to resume consideration of the case at the latest at its 1242nd meeting (December 2015), with a view to examining the status of the adoption.⁷³

2. Turkey

33. 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.⁷⁴

34. The examination of the issues of excessive length of judicial proceedings and lack of an effective remedy in respect thereof, listed in my previous information document – AS/Jur (2013) 14 Addendum – (see cases *Ormanci and Others v. Turkey*⁷⁵ and *Ümmühan Kaplan v. Turkey*⁷⁶), was closed by the Committee of Ministers in December 2014⁷⁷ following the adoption of individual and general measures by Turkey. On 24-25 April 2014, I visited Ankara, where I met the competent authorities and representatives of civil society (from the IHOP – Human Rights Join Platform).

2.1. Failure to re-open proceedings

35. In the *Hulki Günes v. Turkey*⁷⁸ group of cases, the Court found that the applicants were convicted in unfair criminal proceedings on the basis of testimony of witnesses who 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).⁷⁹ The Court requested the reopening of proceedings,⁸⁰ but the Turkish Code of Criminal Procedure only provided for the reopening of judgments finalised before 4 February 2003 and those applications lodged with the Court after that date.⁸¹

⁷¹ *M.C. and others v. Italy*, Application 5376/11, Judgment of 3 September 2013, final on 3 December 2013.

⁷² See Communication [DH-DD\(2014\)1112](#) - General measures – submitted by the Italian authorities on 22.09.2014.

⁷³ See [Decision adopted at its 1214th meeting](#).

⁷⁴ *Supra* note 2, paragraph 128.

⁷⁵ Application no. 43647/98, judgment of 21 December 2004.

⁷⁶ Application no. 24240/07, judgment of 20 March 2012.

⁷⁷ Resolution CM/ResDH(2014)298, adopted on 17 December 2014. Execution of the judgments of the European Court of Human Rights in 282 cases against Turkey.

⁷⁸ 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.

⁷⁹ *Ibid*, paragraph 130.

⁸⁰ See *Göçmen v. Turkey*, application no. 72000/01, judgment of 17 October 2006, paragraph 87.

⁸¹ 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.

36. 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.⁸² The Turkish authorities prepared a number of draft laws in order to implement these judgments, but all attempts at their adoption failed. An alternative draft law had been prepared within the context of “Third Reform Package,” but it was not adopted in July 2012. It was subsequently included in the “Fourth Reform package,” which the Turkish Parliament adopted on 11 April 2013 (Law No. 6459). The provision concerning reopening of proceedings allows it in cases under the supervision of the Committee of Ministers as of 15 June 2012; the requests for reopening could be lodged within three months after the entry into force of Law No. 6459.

37. On 30 April 2013 the aforesaid law entered into force. Following this, the applicant in the case of *Hulki Günes*⁸³ lodged a request for reopening of proceedings, which was accepted by the competent domestic court and a retrial started. At their 1172nd (DH) meeting (4-6 June 2013)⁸⁴, the CM invited the Turkish authorities to provide further information with respect to the progress in the reopening of proceedings by the other applicants in this group and decided to continue the supervision of the cases under this group under the standard procedure. On 31 March 2015, the Turkish authorities provided an action report concerning individual and general measures⁸⁵. According to this document, the conviction of Mr Hulki Günes was upheld and the other applicants either did not request the reopening of proceedings or requested it after the three-month deadline.

2.2. Repeated imprisonment for conscientious objection

38. In the case of *Ülke v. Turkey*,⁸⁶ the Court found that Turkey violated Article 3 of the Convention by repeatedly convicting and imprisoning the applicant for conscientious objection.⁸⁷ According to the Court, the Turkish authorities’ actions forced the applicant to go into hiding and endure a life equivalent to “civil death.”⁸⁸

39. After a number of years of inaction and failure to communicate on the side of the Turkish authorities,⁸⁹ 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.⁹⁰ Nevertheless, it remained unclear to the CM, “whether the applicant is still subject to further prosecution or conviction and whether he can exercise his civil rights without hindrance.”⁹¹ As stressed by the applicant’s representative, “the withdrawal of the arrest warrant is important,” but “it will only eliminate the problem partially.”⁹² The CM requested that the Turkish authorities keep it informed of the applicant’s situation, and provide a precise timeline for the

⁸² Supra note 2, paragraph 131. See also “Cases of unfair proceedings requiring reopening of domestic proceedings,” Information document, CM/Inf/DH(2009)5rev14 of 28 September 2009; 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;

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

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

- Decisions of the Committee of Ministers concerning the *HulkiGünes* group of cases, 1035th (DH) meeting, 17-18 September 2008, CM/Del/Dec(2008)1035 of 18 September 2008.

⁸³ Supra note 78.

⁸⁴ 1172nd (DH) meeting (4-6 June 2013).

⁸⁵ DH-DD(2015)386 of 9 April 2015.

⁸⁶ Application no. 39437/98, judgment of 24 January 2006.

⁸⁷ Ibid, paragraph 64.

⁸⁸ Ibid, paragraph 62.

⁸⁹ 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;

- 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

- 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.

⁹⁰ 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.

⁹¹ Ibid.

⁹² 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.

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

adoption of the required general measures, on which consultations were on-going among relevant Turkish authorities.⁹³

40. At its 1150th (DH) meeting (September 2012), the CM noted with interest the assurances given by the Turkish authorities⁹⁴ that the applicant could exercise his civil rights without any hindrance, obtain a passport, and travel abroad.⁹⁵ 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.⁹⁶ At its 1157th meeting in December 2012, the CM noted with concern that further individual measures were still needed in the cases of *Erçep* and *FetiDemirtaş*.⁹⁷ It urged the Turkish authorities to erase the consequences of the violations for the applicants⁹⁸ 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.”⁹⁹ Since then, the applicant has lodged a complaint before the Constitutional Court on 2 June 2014 and the proceedings are now pending.¹⁰⁰ In the meantime, the Government submitted another communication on this group of cases.¹⁰¹ During my visit in Ankara (24-25 April 2014), I raised this issue with my interlocutors in the Grand National Assembly and was informed that the initiative aimed at establishing an alternative military service had been postponed for the moment, mainly due to geopolitical considerations.

2.3. Freedom of expression

41. There are over 100 cases against Turkey concerning violation of the right of freedom of expression, which are pending execution before the CM.¹⁰²

42. Although Turkey has enacted a number of reforms aimed at adequately protecting freedom of speech and pluralism since 1998,¹⁰³ 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.”¹⁰⁴ 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. The project was carried out between January 2012 and April 2014: a number of awareness raising activities, in particular training sessions for judges and prosecutors, were organised in its framework. Consequently, numerous legislative measures were taken in order to bring the Turkish law in line with the ECtHR standards and the high courts started delivering judgments more and more in line with the Convention standards.¹⁰⁵

43. In his report of 2011 the then Council of Europe Commissioner for Human Rights, Mr Thomas Hammarberg,¹⁰⁶ echoed the Pourgourides report’s 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.”¹⁰⁷ 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

⁹³ Supra note 90.

⁹⁴ DH-DD(2012)791 of 11 September 2012.

⁹⁵ 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, supra note.

⁹⁶ Ibid, item 3. See also DH-DD(2012)1014 of 30 October 2012.

⁹⁷ Item 2, Decisions of the Committee of Ministers concerning the Ulke case, 1157th (DH) meeting (4-6 December 2012), supra note.

⁹⁸ Ibid, item 3.

⁹⁹ Ibid, item 4.

¹⁰⁰ DH-DD(2015)320, communication from the applicant’s representative of 06.03.2015.

¹⁰¹ DH-DD(2015)627 of 07.05.2015.

¹⁰² Pending cases: current state of execution, *Inçal v. Turkey*, 97 cases mainly concerning freedom of expression. According to the CM 2014 Annual Report, there were 111 cases in this group.

¹⁰³ Supra note 2, paragraphs 134-136.

¹⁰⁴ Ibid.

¹⁰⁵ See action plan DH-DD (2014)502 of 15 April 2014.

¹⁰⁶ 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.

¹⁰⁷ Ibid, p. 2.

authorities to address these problems through legislative and practical measures, as well as through systematic training and awareness raising activities within the justice system.”¹⁰⁸ Notwithstanding the above mentioned project on freedom of expression, the incumbent Commissioner for Human Rights, Mr Nils Muižnieks, also raised concerns about the state of media freedom in Turkey, particularly in the context of arrests of journalists and media workers in December 2014.¹⁰⁹

44. During its 1201st (DH) meeting (3-5 June 2014), the CM welcomed that “the recent legislative amendments made to the Anti-Terrorism Law and the Criminal Code restrict the scope of certain crimes to expression containing incitement to hatred and violence.” Although the CM “welcomed the positive developments in domestic case law,” it also stressed the need to “incorporate fully the case law of the Court” into the domestic courts’ assessment and reasoning and decided to review the progress made at the latest at its DH meeting in June 2015.¹¹⁰ The above-mentioned “Project on Freedom of Expression and Media in Turkey” seems to have played a triggering role in the adoption of legislative amendments and to be a good example of cooperation between the Council of Europe and the Turkish authorities.¹¹¹ In April 2015, the Turkish authorities provided to the CM an updated action plan,¹¹² including information on legislative changes that had come into force between 2012 and 2013 and new trends in judicial practice. The CM recently examined this group of cases at its 1230th meeting (DH) in June 2015.

45. The CM is also examining the case of *Ahmet Yildirim v. Turkey*¹¹³, concerning restriction of access to Internet and blocking of Internet sites (last examined at its 1208th meeting in September 2014¹¹⁴). In April 2014, our Committee adopted a statement condemning restrictions of access to internet services by Google, Twitter and YouTube, during election time in Turkey¹¹⁵. During my visit to Ankara (April 2014), I pointed out the necessity to protect the freedom of expression, including on the Internet, with my interlocutors in the Ministry of Justice, the Constitutional Court and the Court of Cassation, and was informed of various training activities organised to this effect.

2.4. Excessive length of detention on remand

46. There are currently nearly 170 excessive length of detention on remand cases against Turkey pending execution before the CM (concerning primarily violations of Article 5 §§§ 3, 4 and 5 of the Convention).¹¹⁶

47. In his report, Mr Pourgourides welcomed the changes introduced by the Code of Criminal Procedure, which came into force in 2005 and was aimed at improving the reasons given for detention on remand, and urged Turkey to introduce “an effective remedy to challenge the lawfulness of detention on remand.”¹¹⁷ 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.¹¹⁸ Since the Code of Criminal Procedure came into force, there has been gradual progress in the execution of these judgments, in particular concerning the decrease in the length of detention on remand¹¹⁹.

48. 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.¹²⁰ On 3 May 2013 the Government submitted a second action plan.¹²¹

¹⁰⁸ Ibid.

¹⁰⁹ Commissioner concerned about arrest of journalists in Turkey, statement of 15 December 2014.

¹¹⁰ Cases no. 21, 1201st meeting – 5 June 2014.

¹¹¹ Pending cases: current state of execution, Inçal v. Turkey, 97 cases mainly concerning freedom of expression.

¹¹² DH-DD(2015)447rev of 5 May 2015.

¹¹³ Application no. 3111/10, judgment of 18 December 2012.

¹¹⁴ An action plan was submitted on 31 July 2014 ; see DH-DD(2014)916.

¹¹⁵ CLAHR, statement of 10 April 2014.

¹¹⁶ See the *Halise Demirel v. Turkey* (Application no. 39324/98, judgment of 28 January 2003) group of cases. See also the Government’s action plan DH-DD(2013)513.

¹¹⁷ Supra note 2, paragraphs 138-139.

¹¹⁸ “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.

¹¹⁹ Supra note 116 (group of cases).

¹²⁰ DH-DD(2011)578E of 5 August 2011.

¹²¹ DH-DD(2013)513.

49. At its 1172nd (DH) meeting (4-6 June 2013)¹²², having recalled the structural nature of the problem at stake, the CM welcomed the recent efforts made by the Turkish authorities, in particular within the context of the so called “Third and Fourth Reform Packages,” aimed at aligning Turkish legislation and practice with Convention requirements, and noted with satisfaction a significant decrease in the length of detention on remand and an increase in the use of alternative measures. At the same time having noted that the Turkish legislation still allowed for the possibility of extension of detention on remand up to 10 years for certain crimes, including terrorism, the CM invited the authorities to provide further statistical information in this respect as well as with respect to judicial practice following the legislative reform. The CM further welcomed the introduction of a remedy to challenge the lawfulness of detention on remand and the extension of the scope of the right to compensation. It asked the Turkish authorities to clarify whether the right to compensation can be exercised while detention on remand was continuing and proceedings were pending.

2.5. Actions of security forces

50. Despite the positive changes made to the Turkish legislative framework governing the security forces’ behaviour and the training of law enforcement officers,¹²³ there are over 60 cases regarding the lack of effective investigation into the actions of Turkish security forces currently pending execution before the CM.¹²⁴

51. According to the Turkish authorities’ action plan of 29 July 2011 for the execution of the *Bati and others v. Turkey* group of cases,¹²⁵ 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.¹²⁶ In its letter of 19 August 2013¹²⁷, the then head of the Turkish delegation to the PACE Ms Nursuna Memecan, specified that following the adoption of the “Fourth Reform Package,” the statute of limitations with respect to the offence of torture had been removed from the Criminal Code and that it was now possible to reopen, after a judgment of the ECtHR, an investigation which had led to the non-prosecution of the alleged perpetrators of such offence. According to the CM 2014 Annual Report, bilateral contacts are under way concerning an action plan under preparation by the Turkish authorities.¹²⁸

2.6. Issues concerning Cyprus

52. In the interstate case of *Cyprus v. Turkey*,¹²⁹ the Court found multiple violations of the Convention in connection with Turkey’s 1974 military intervention in Cyprus concerning mainly Greek-Cypriot missing persons and their relatives, the property rights of displaced Greek Cypriots, as well as the living conditions 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.¹³⁰

53. Despite the CM’s close supervision, issues concerning Cyprus have been on its agenda since 2001¹³¹. As regards the issue of Greek-Cypriot missing persons and their relatives (violations of Articles 2, 3 and 5; see also the judgment in the case of *Varnava and Others v. Turkey*¹³²), some progress has been noted following the identification of missing persons by the Committee on Missing Persons in Cyprus (“CMP”). The CM examined this question at its 1186th (DH)¹³³ meeting (in December 2013), when it took note of the exchange of views with the members of the CMP and the new information provided by the Turkish authorities and permissions granted to the CMP to access military zones. At the same time the CM recalled its previous

¹²² 1172nd (DH) meeting (4-6 June 2013).

¹²³ See supra note 2, paragraphs 140-141.

¹²⁴ 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 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.

¹²⁵ Action plan (available in French only), DH-DD(2011)559F of 1 August 2011.

¹²⁶ Pending cases: current state of execution, *Bati and others v. Turkey*.

¹²⁷ In file with the Secretariat of the CLAHR.

¹²⁸ Supra note 3, p. 104.

¹²⁹ Application no. 25781/94, judgment of 10 May 2001.

¹³⁰ Supra note 2, paragraphs 144-147.

¹³¹ For more information see H/Exec (2014)8 of 25 November 2014 prepared by the CM Secretariat.

¹³² Judgment of 18 September 2009 (Grand Chamber), Application No. 16064/90+.

¹³³ 1186th meeting – 5 December 2013.

conclusions on the necessity of adopting a proactive approach and called on the Turkish authorities to continue providing the CMP with all relevant information and giving it access to all relevant places. As regards identified persons, the CM took note of the progress of the investigations into their deaths. In April 2015, the Turkish authorities provided new information.¹³⁴

54. Concerning 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), following the ECtHR's 2010 inadmissibility decision in the case of *Demopoulos v. Turkey*, the Committee of Ministers was in the process of analysing its impact on the implementation of this cluster of the judgment¹³⁵. In December 2011, the delegation of Cyprus requested the CM to postpone its examination since the ECtHR has pronounced itself on a request filed by its government under Article 41¹³⁶. On 12 May 2014, the Court (Grand Chamber) delivered its judgment on just satisfaction, ordering Turkey to pay to Cyprus 30,000,000 Euros for non-pecuniary damage suffered by the relatives of the missing persons and 60,000,000 Euros for non-pecuniary damage suffered by the enclaved Greek-Cypriot residents of the Karpas peninsula.¹³⁷

55. As regards the living conditions of Greek Cypriots residing in the northern part of Cyprus (Karpas region), the CM continues to examine the issue of their property rights and the effective remedies in this respect (violations of Article 1 of Protocol No. 1 and Article 13 of the Convention). An assessment of these questions has been prepared by the CM Secretariat for the 1172nd (DH) meeting (June 2013)¹³⁸ and, subsequently, both the Turkish and the Cypriots submitted their comments on the outstanding issues.¹³⁹

56. In his report, Mr Pourgourides¹⁴⁰ expressed concern about the case of *Xenides-Arestis v. Turkey*¹⁴¹ (also concerning the property rights of the displaced Greek Cypriots), 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." At its 1208th (DH) meeting (September 2014), the CM adopted Interim Resolution CM/ResDH(2014)185 concerning the *Varnava and Others* case and 33 cases from the group of *Xenides-Arestis*. It deplored that "the Turkish authorities have not complied with their obligation to pay the amounts awarded by the Court to the applicants in those cases, (...), on the grounds that this payment cannot be dissociated from the measures of substance in these cases." Further on, the CM declared that "the continued refusal by Turkey was in violation with its international obligations, both as a High Contracting Party to the Convention and as a member State of the Council of Europe" and exhorted "Turkey to review its position and to pay without any further delay the just satisfaction awarded to the applicants by the Court, as well as the default interest due." The CM examined again these cases, as well as the *Cyprus v. Turkey* case, at its 1230th meeting (DH) in June 2015.

57. During my visit to Ankara (April 2014), my interlocutors in the Ministry of Foreign Affairs reaffirmed the Turkish authorities' position, according to which the last two clusters of the judgment – the issue of property rights of displaced Greek Cypriots and the property rights of Greek Cypriots in the Karpas region – should be closed by the CM, as the required general measures have been adopted. I was informed that the authorities intended to pay the just satisfaction in the *Xenides Arestis* cases, once the CM would have closed the issue of general measures.

2.7. A new issue: ill-treatment and excessive force used to disperse peaceful demonstrations

58. In *Oya Ataman*¹⁴² group of cases, the ECtHR found violations of the applicants' right to freedom of peaceful assembly and/or ill-treatment of the applicants on account of excessive force used to disperse peaceful demonstrations; certain cases also concerned failure to carry out an effective investigation into the applicants' allegations of ill-treatment or lack of an effective remedy (violations of Articles 3, 11 and 13 of the

¹³⁴ DH-DD(2015)395 of 10 April 2015.

¹³⁵ As regards the consequences of the Grand Chamber's inadmissibility decision in the *Demopoulos* case (Application No 46113/99+, decision of 1 March 2010), concerning the functioning of the Immovable Property Commission set up in the northern part of Cyprus, see two information documents of the CM Secretariat CM/Inf/DH(2010)21 and CM/Inf/DH(2010)36.

¹³⁶ Decisions of the Committee of Ministers concerning the cases *Cyprus v. Turkey* and *Varnava and Others v. Turkey*, 1157th (DH) meeting, 4-6 December 2012, CM/Del/Dec(2012)1157 of 10 December 2012, *supra* note, and 1164th (DH) meeting, 5-7 March 2013, CM/Del/Dec(2013)1164/29 of 4 March 2013.

¹³⁷ As regards the assessment of the consequences of this judgment, see H/Exec (2014)8 of 25 November 2014.

¹³⁸ CM/Inf/DH(2013)23.

¹³⁹ DH-DD(2013)741, DH-DD(2014)697 and DH-DD(2014)457.

¹⁴⁰ *Supra* note 2, paragraph 147.

¹⁴¹ Application no. 46347/99, judgments of 22 December 2005 and 7 December 2006.

¹⁴² *Oya Ataman v. Turkey*, no. 74552/01, judgment of 5 December 2006.

Convention). This group concerns at present 46 cases under the supervision of the CM.¹⁴³ In particular, in the cases of *Izci*¹⁴⁴ and *Abdullah Yasa*¹⁴⁵ of July 2013, the Court observed under Article 46 of the Convention that the problems at the origin of the violations were systemic and that Turkey had to adopt general measures to prevent similar violations in the future. Accordingly, it was necessary to adopt clearer rules on the use of tear gas (or pepper spray) and tear gas grenades, ensure adequate training of law enforcement and its control and supervision during demonstrations and provide for an effective after-review of the necessity, proportionality, and reasonableness of any use of force. The Court further reiterated its findings from the *Abdullah Yasa* judgment in the case of *Ataykaya*,¹⁴⁶ concerning the death of the applicant's son as a result of a tear gas grenade fired by the police.

59. The Turkish authorities provided two action plans¹⁴⁷ and responded to a communication submitted by IHOP NGO¹⁴⁸ in January 2015¹⁴⁹. At its 1222nd (DH) meeting (11-12 March 2015), the CM adopted another decision¹⁵⁰, urging the Turkish authorities to amend the relevant legislation, in particular the "Meetings and Demonstrations Marches Act" (No. 2911), "so that Turkish legislation requires an assessment of the necessity of interfering with the right to freedom of assembly, in particular in situations where demonstrations are held peacefully and do not represent a danger to the public order." It also requested the authorities to consolidate the diverse legislation that regulated the conduct of law enforcement officers and fixed the standards regarding the use of force during demonstrations, and to ensure that the relevant legislation required that any force used by law enforcement officers during demonstrations was proportionate and included provisions for an adequate ex post facto review of the necessity, proportionality and reasonableness of any such use of force. Lastly, the CM called again on the authorities to carry out investigations promptly and diligently into allegations of ill-treatment and hold accountable law enforcement officers responsible for such abuses.

60. It should be noted that a new security bill, increasing the powers of police, has recently been sent to the Turkish Parliament. On 6 February 2015, the Council of Europe Commissioner for Human Rights expressed his concerns about this bill¹⁵¹, in line with his previous criticism expressed after the Gezi events in May-June 2013.¹⁵² In its report published in January 2015, the Committee for the Prevention of Torture (CPT) also paid particular attention to the situation of persons deprived of their liberty following the Gezi protests¹⁵³. Moreover, our Committee's rapporteur, Mr Antti Kaikkonen (Finland, ALDE) is currently preparing a report on "Urgent need to prevent human rights violations during peaceful protests."¹⁵⁴ During my visit to Ankara (April 2014), I stressed the necessity of not abusing the use of force during peaceful demonstrations and the need to sanction law enforcement officials responsible for such abuses with my interlocutors, in the Grand National Assembly, the Ministry of Interior, and the General Prosecutor Office, and was provided information on training activities and the use of disciplinary sanctions.

2.8 New complex/structural issues

61. The CM 2014 Annual Report also mentions the judgment in the case of *Söyler v. Turkey*¹⁵⁵ concerning an automatic ban on a certain convicted prisoners' voting rights (violation of Article 3 of Protocol 1). An action plan was submitted by the Turkish authorities in December 2014¹⁵⁶ and this case is now under the enhanced supervision of the CM. Moreover, the CM recently¹⁵⁷ transferred under its enhanced supervision procedure the case *Opuz v. Turkey*¹⁵⁸, concerning a domestic violence incident (violation of Article 2).

¹⁴³ List of cases.

¹⁴⁴ Application no. 42606/05, judgment of 23 July 2013.

¹⁴⁵ Application no. 44827/08, judgment of 16 July 2013.

¹⁴⁵ Application no. 42606/05, judgment of 23 July 2013.

¹⁴⁵ Application no. 44827.

¹⁴⁶ Application no. 50275/08, judgment of 22 July 2014.

¹⁴⁷ DH-DD(2014)915 of 31 July 2014 and DH-DD(2015)91 of 14 January 2015.

¹⁴⁸ DH-DD(2015)88 of 5 January 2015.

¹⁴⁹ DH-DD(2015)136 of 29 January 2015.

¹⁵⁰ Decision in cases no. 20.

¹⁵¹ On his official Facebook page.

¹⁵² Report on the Commissioner's visit to Turkey from 1 to 5 July 2013, ComDH(2013)24 of 26 November 2013.

¹⁵³ CPT/Inf (2015) 6 of 15 January 2015.

¹⁵⁴ Doc. 13565.

¹⁵⁵ Application no. 29411/07, judgment of 17 September 2013.

¹⁵⁶ DH-DD(2014)1492 of 11 December 2014.

¹⁵⁷ See decision taken at its 1222nd (DH) meeting in March (11-12) 2015.

¹⁵⁸ Application No. 33401/02, judgment of 9 June 2009.

3. Russian Federation

62. 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;
- 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, 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.¹⁵⁹

63. The report also focused on the actions of the security forces in the Chechen Republic.¹⁶⁰ 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. Although, in line with my predecessors’ practice, I wished to conduct a dialogue on the above-mentioned issues with the Russian authorities through a fact-finding visit, my visit to Moscow, which had been planned for May 2014 upon an agreement reached with the authorities in February 2014, was postponed *sinæ die* and *de facto* cancelled by the Russian delegation, after the adoption on 10 April 2014 of Assembly’s Resolution 1990 (2014) on “Reconsideration on substantive grounds of the previously ratified credentials of the Russian delegation” suspending the Russian delegation’s voting rights in the Assembly. In its decision on the “postponement” of my visit, the Russian delegation referred to the State Duma’s declaration “On the anti-Russian resolution adopted by the Parliamentary Assembly of the Council of Europe”,¹⁶¹ which stated that “in the context of the reprisals and restrictions introduced against the delegation of the Federal Assembly of the Russian Federation its further constructive participation in the PACE activities cannot be possible”.

3.1. Non-enforcement of domestic judicial decisions

64. In 2009, the Court adopted a pilot judgment in the case of *Burdov v. Russia (No. 2)*,¹⁶² 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 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.¹⁶³

65. In its Interim Resolution CM/ResDH(2011)293,¹⁶⁴ 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 obligations¹⁶⁵ laid down in the pilot judgment and to join the examination of further general measures with the *Timofeyev* group, the original group where all problems related to the non-execution of domestic judgments were examined,¹⁶⁶ including the underlying structural problems of non-enforcement more generally.

66. Notwithstanding this progress, the Court held in two subsequent judgments¹⁶⁷ that the new legislation did not resolve the specific problem of failure to enforce decisions that ordered the provision of housing to 50

¹⁵⁹ Supra note 2, paragraph 108.

¹⁶⁰ Ibid, paragraphs 126-127.

¹⁶¹ Adopted on 18 April 2014, available at: http://www.coe.mid.ru/doc/GD_eng.htm.

¹⁶² *Burdov v. Russia (No. 2)*, Application no. 33509/04, Judgment of 15 January 2009.

¹⁶³ *Nagovitsyn and Nalgiyev v. Russia (dec.)*, Application nos. 27451/09 and 60650/09, judgments of 23 September 2010.

¹⁶⁴ CM/ResDH(2011)293 of 2 December 2011.

¹⁶⁵ 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 162.

¹⁶⁶ *Timofeyev v. Russia*, Application no. 58263/00, judgment of 23 October 2003. According to the CM 2014 Annual Report, the group comprises 257 cases, which concern non-enforcement or delayed enforcement of domestic judicial decisions and lack of an effective remedy. See also Interim Resolution CM/ResDH(2009) 43, 19 March 2009, adopted for this group of cases.

¹⁶⁷ *Ilyushkin and Others v. Russia*, Application no. 5734/08, and *Kalinkin and Others v. Russia*, Application no. 16967/10, judgments of 17 April 2012.

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 this part of the problem remained unresolved despite the Compensation Act. Another judgment concerning non-enforcement of domestic decisions awarding social-payment arrears to former policemen (41 applicants) was given by the Court on 20 February 2014.¹⁶⁸ At the same time, the Court tackled the structural problem in question in the context of another group of cases (*Gerasimov and Others v. Russia*),¹⁶⁹ which led to issuing a pilot judgment (of 1 July 2014) dealing with non-enforcement or delayed enforcement of judicial decisions imposing obligations in kind or pecuniary obligations on the State or municipal authorities (violations of Articles 6§1, 13, and 1 of Protocol No. 1).¹⁷⁰ The Court found that these violations stemmed from a practice incompatible with the Convention and indicated that the Russian authorities should set up, by 1 October 2015 and in cooperation with the Committee of Ministers, an effective domestic remedy in respect of the non-enforcement of in-kind obligations and to grant redress, by 1 October 2016, to applicants in similar cases pending before it (which have been adjourned). At its 1222nd meeting (11-12 March 2015), the CM welcomed the rapid response of the Russian authorities to this judgment, in particular the draft amendments to the Compensation Act, promptly prepared by the Ministry of Justice and aimed at extending its scope to obligations in kind. It also invited the authorities to submit a comprehensive action plan concerning the measures taken/envisaged to implement the said pilot judgment and address the long-standing problem examined in the *Timofeyev* group and to co-operate closely with its Secretariat in preparing the legislative reform.¹⁷¹

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

67. 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*.¹⁷² Although two legislative reforms had been undertaken since, the ECtHR did not regard them as sufficient to solve the problem.¹⁷³ A third 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 very recently been subject to the assessment by the ECtHR: in its decision in the case of *Abramyan and Others v. Russia*¹⁷⁴, the Court examined for the first time the new cassation procedure before the presidia of regional courts and the Supreme Court in civil cases. It held that the new procedure was to be considered an ordinary appeal on points of law similar to that existing in the jurisdictions of other States Parties.

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

68. 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, and there was no effective remedy in this respect (violations of Articles 3 and 13 of the ECHR).¹⁷⁵ A further 61 cases concern unlawful detention, excessive length and insufficient grounds for extending detention on remand (violations of Article 5).¹⁷⁶ Communications regarding a number of specific cases¹⁷⁷ have been submitted to the CM by the authorities, but until now the measures taken (and envisaged) are not regarded as fully satisfactory.¹⁷⁸

69. In January 2012, the Court delivered a pilot judgment in the case of *Ananyev and Others v. Russia*,¹⁷⁹ 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

¹⁶⁸ *Nosov and Others v. Russia*, Application nos. 9117/04 and 10441/04.

¹⁶⁹ *Gerasimov and 14 other applications v. Russia*, Application no. 29920/05, judgment of 1 July 2014.

¹⁷⁰ Such as the provision of housing, housing maintenance and repair services, provision of a car for a disabled person, etc.

¹⁷¹ See decisions adopted at the CM(DH) 1222nd meeting, *Case No. 16*.

¹⁷² Application no. 52854/99, judgment of 24 July 2003.

¹⁷³ See *Martynets v. Russia*, Application no. 29612/09, decision of 5 November 2009.

¹⁷⁴ Application nos. 38951/13 and 59611/13, decision of 12 May 2015, notified on 4 June 2015.

¹⁷⁵ 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.

¹⁷⁶ *Klyakhin v. Russia* Application no. 46082/99, judgment of 30 November 2004; list of cases grouped with it, last updated on 6 March 2012.

¹⁷⁷ For the *Kalashnikov* group see at: http://www.coe.int/t/dghl/monitoring/execution/Themes/Add_info/RUS-Kalashnikov_en.asp

¹⁷⁸ See *Interim Resolution CM/ResDH(2010)35*.

¹⁷⁹ *Ananyev and Others v. Russia*, Application no. 42525/07, judgment of 10 January 2012.

(violations of Article 3 and 13). 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 of 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. An action plan and an action report were provided by the Russian authorities in October¹⁸⁰ and November 2012¹⁸¹ respectively, which were welcomed by the CM at the 1157th meeting (December 2012) as based on a comprehensive and long-term strategy to solve the structural problem; following this, an additional action plan and report were provided by the authorities in February 2013¹⁸² and August 2013¹⁸³ respectively, and in April 2014, the authorities provided an updated action plan¹⁸⁴ (which has not yet been fully analysed by the CM).¹⁸⁵ At their 1201st meeting (3-5 June 2014),¹⁸⁶ the CM expressed satisfaction that the Russian authorities had undertaken significant efforts to ensure the swift resolution of similar cases pending before the Court and noted with interest the information provided with respect to the setting up of judicial domestic remedies, with preventive and compensatory effect. It urged the Russian authorities to accelerate the adoption and entry into force of a system of effective remedies before the end of 2014, at the latest, and strongly encouraged them to take full advantage of the opportunities provided by the Human Rights Trust Fund (HRTF) project No. 18.

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

70. In the case of *Mikheyev* and over 60 similar cases, the Court found that the applicants had been subject to torture or ill-treatment in police custody and that the state subsequently either failed entirely to investigate wrongdoing by state officials or did it ineffectively (mainly substantial and procedural violations of Article 3; covering the period of 1998-2006).¹⁸⁷ Action plans were provided by the Russian authorities in November 2010¹⁸⁸ and in August 2013.¹⁸⁹ The authorities informed about the following measures: the adoption of a new law “On Police” and a number of implementing acts, improvements in the supervision of prosecutors, improvements in monitoring by civil society, the setting-up of the Investigative Committee of the Russian Federation and creation of specialised investigation units, amendments to the Code of Criminal Procedure, improvement of judicial control over investigations, training and awareness raising measures.¹⁹⁰

71. At its 1201st (DH) meeting (3-5 June 2014),¹⁹¹ the CM took note of the comprehensive action plan provided by the authorities, but pointed out a number of issues that still needed to be addressed as regards general measures.¹⁹² In particular, the CM called upon the authorities to deliver “at a high political level, a clear and firm message of “zero tolerance” of torture and ill-treatment, at improving safeguards against such acts and at reinforcing judicial control over investigations”.¹⁹³ It also “strongly urged the Russian authorities to address, without delay, the problem of the expiration of limitation periods, in particular, in the case of serious crimes such as torture committed by state agents” and to take measures to ensure that the domestic courts exclude any evidence found to have been obtained in breach of Article 3 of the Convention”.¹⁹⁴ The CM also examined the issue of individual measures and “noted with grave concern” that no “tangible progress” had been made in the majority of cases in this group as regards domestic investigations into allegations of torture. It also expressed concern about the case of *Tangiyev v. Russia*, in which the applicant had been convicted on the basis of evidence obtained through ill-treatment and was allegedly intimidated by

¹⁸⁰ [DH-DD\(2012\)1009E](#).

¹⁸¹ [DH-DD\(2012\)1072E](#).

¹⁸² [DH-DD\(2013\)153](#).

¹⁸³ [DH-DD\(2013\)936](#).

¹⁸⁴ [DH-DD\(2014\)580](#) of 5 May 2014. The latest communication from the NGOs concerning this case was received by the CM on 7 October 2013; see [DH-DD\(2014\)44](#).

¹⁸⁵ Items 2, 3 and 7 of the CM decision, 1157th (DH) meeting, 4-6 December 2012.

¹⁸⁶ Decisions adopted at the 1201st CM (DH) meeting (3-5 June 2014), Case No. 14.

¹⁸⁷ *Mikheyev v. Russia*, Application no. 77617/01, judgment of 26 January 2006; *Mikheyev group list* of 63 cases as of June 2014. According to the CM 2014 Annual report, there are 69 cases in this group.

¹⁸⁸ [DH-DD\(2010\)591](#).

¹⁸⁹ [DH-DD\(2013\)933](#).

¹⁹⁰ See CM/Del/Dec(2014)1201 concerning detailed information contained in these action plans and the CM's assessment.

¹⁹¹ Decisions adopted at the 1201st (DH) meeting, Case No 16.

¹⁹² See also communications from NGOs on this subject: [on 1 September 2010](#)), [on 15 June 2012](#) and [on 21 August 2013](#).

¹⁹³ Item 3 of the decision.

¹⁹⁴ Items 4 and 5 of the decision.

the Federal Security Service (FSB) when he was seeking the reopening of his criminal case after the ECtHR judgment.¹⁹⁵

72. In December 2014, the Russian authorities provided additional information,¹⁹⁶ which was examined by the CM at its 1222nd (DH) meeting in March 2015.¹⁹⁷ As regards individual measures, the CM expressed again its concern about the lack of progress in the conduct of the domestic investigations, and, concerning the *Tangiyev* case, it took note of applicant's retrial by a jury whereby his confession obtained through ill-treatment had been declared unlawful, and requested a copy of the judicial decision. Concerning general measures, the CM welcomed the recent regulatory and legislative changes aimed at providing more safeguards against ill-treatment as well as the awareness raising measures and requested additional information concerning a number of issues such as the functioning of the Investigative Committee. However, it also reiterated its call upon the Russian authorities to adopt measures aimed at sending "a zero tolerance" message to the police and addressing the problem of the expiration of limitation periods.

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

73. Since 2005 the Court has found grave human rights violations in over 220 cases against the Russian Federation caused by the action of security forces in the North Caucasus, mainly in the Chechen Republic, between 1999 and 2006 (unlawful killings, unacknowledged detention, disappearances, torture, destruction of property, lack of effective investigations as well as of effective domestic remedies).¹⁹⁸

74. 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.

75. Although throughout 2011 the Russian authorities provided information concerning the measures adopted at a national level to provide a remedy to victims and conduct effective investigation,¹⁹⁹ in its Interim Resolution CM/ResDH(2011)292, 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.²⁰⁰ 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.²⁰¹ The CM therefore called on the Russian authorities to ensure independent and thorough investigations in cooperation among all the law-enforcement and military bodies (which should include the participation of victims and relatives and 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

¹⁹⁵ Items 6 and 7 of the decision.

¹⁹⁶ DH-DD(2015)44; for a summary see document H/Exec(2015)4.

¹⁹⁷ Decisions taken at the 1222nd (DH) meeting (11-12 March 2015), Cases No. 13.

¹⁹⁸ See list of 221 cases in *Khashiyev and Akayeva v. Russia*, Application no. 57942/00, judgment of 24 February 2005, as of March 2015.

¹⁹⁹ See DH-DD(2011)130E, DH-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 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.

²⁰⁰ CM/ResDH(2011)292 of 6 December 2011.

²⁰¹ In relation to the problem of statutes of limitation see Communication from NGOs, DH-DD(2011)1144, 15 December 2011. The NGOs show their deep concern about examples of cases signaling 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.

persons. Although the Russian authorities provided further information on 14 May 2012,²⁰² the CM reiterated its previous concerns in June and September 2012.²⁰³

76. On 18 December 2012, the Court delivered its judgment in the case of *Aslakhanova and Others v. Russia*,²⁰⁴ in which it 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 ECtHR outlined two types of general measures, under Article 46 of the Convention, to be taken by Russia to address those problems: 1) to alleviate the continuing suffering of the victims' families; and, 2) to remedy the structural deficiencies of the criminal proceedings. The Court based its findings not only on the circumstances of this case, but also on a general assessment of the progress in the implementation of the *Khashiyev* group of cases. A corresponding strategy was to be prepared by Russia without delay and to be submitted to the Committee of Ministers for the supervision of its implementation. At the same time, the Court decided not to adjourn the examination of similar cases pending before it.

77. Despite additional information provided by the Russian authorities in August 2013²⁰⁵ and July 2014,²⁰⁶ there has been no significant progress in the implementation of this group of judgments.²⁰⁷ In July 2014, the Russian authorities submitted another action plan,²⁰⁸ which was examined by the CM at its 1208th (DH) meeting (23-25 September 2014).²⁰⁹ The CM "noted with grave concern that the information provided does not attest to any improvement in the capacity of the present system of criminal investigations to handle the problem of the persons reported as missing" and insisted that the Russian authorities create "a single and high level body mandated with the search for persons reported as missing as a result of counterterrorist operations in the North Caucasus". As this has not yet been done, as attested by the information contained in another action plan of December 2014,²¹⁰ at its 1222nd (DH) meeting (11- 12 March 2015),²¹¹ the CM adopted Interim Resolution CM/ResDH(2015)45 in which it "strongly urged" the Russian authorities to establish such a body. In its decision adopted at the same meeting, it also invited the Russian authorities to provide information on the concrete work carried out by forensic institutions and additional information on the fate of missing persons and urged them again to ensure that the domestic law and practice concerning the applicability of the statute of limitations take into account the Convention standards. As regards individual measures, the CM once again requested information on the outcome of criminal proceedings.²¹²

78. 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".²¹³ The lack of tangible progress in these cases was also deplored in the Pourgourides report²¹⁴ and in Assembly's Resolution 1787 (2011).²¹⁵ Our Committee colleague, Mr Michael McNamara (Ireland, Socialist Group) is currently preparing a report "Human Rights in the North Caucasus: what follow-up to Resolution 1738 (2010)?", which will examine in depth the issue of non-implementation of this group of judgments.²¹⁶

3.6. Risk of ill-treatment in cases of extradition (and/or expulsion), disregard of ECtHR interim measures under Rule 39 of the Rules of the Court and illegal abductions and forcible transfers

79. This problem is examined in the Garabayev group of cases. 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

²⁰² DH-DD(2012)488-part 1, and DH-DD(2012)488-part2 of 15 May 2012.

²⁰³ Decisions of the Committee of Ministers concerning the Khashiyev and Akayeva group of cases, 1144th (DH) meeting, 4-6 June 2012; and Decisions of the Committee of Ministers concerning the Khashiyev and Akayeva group of cases, 1150th (DH) meeting, 24-26 September 2012.

²⁰⁴ *Aslakhanova and Others v. Russia*, Application nos. 2944/06+, judgment of 18 December 2012.

²⁰⁵ DH-DD(2013)935.

²⁰⁶ DH-DD(2014)892.

²⁰⁷ See, in particular, the decision adopted at the CM 1193rd (DH) meeting, 4-6 March 2014, CM/Del/OJ/DH(2014)1193/17 of 6 March 2014.

²⁰⁸ DH-DD(2014)892.

²⁰⁹ Decisions adopted at the 1208th (DH) meeting (23-25 September 2014), Case No. 17.

²¹⁰ DH-DD(2015)23.

²¹¹ Decisions adopted at 1222nd meeting (11-12 March 2015), Cases No. 14.

²¹² A number of submissions concerning this group of cases have been submitted by NGOs, including inter alia EHRAC, Memorial « Human Rights Centre » and Russian Justice Initiative; see at Pending cases: state of execution.

²¹³ "Legal remedies for human rights violations in the North-Caucasus Region", Report Mr Dick Marty (Switzerland, ALDE), Doc. 12276 of 4 June 2010.

²¹⁴ Supra note 2, paragraphs 127 and 212.

²¹⁵ Adopted on 26 January 2011, paragraph 7.7.2.

²¹⁶ See Doc. 13064.

forcible transfer to Tajikistan in circumstances in which the authorities must have been aware that the applicant faced a real risk of ill-treatment.²¹⁷ A few similar cases concerning abductions/disappearances and forcible transfers to Tajikistan and Uzbekistan are now pending execution before the CM,²¹⁸ some of them also concerning violations of Article 34 due to non-respect of the interim measures indicated by the Court under Rule 39 of its Rules of Court.²¹⁹ In the *Abdulkhakov* case, the Court noted that “any extra-judicial transfer or extraordinary rendition, by its deliberate circumvention of due process, is an absolute negation of the rule of law and the values protected by the Convention”.²²⁰ On 25 April 2013, the Court delivered an important judgment in the case of *Savriddin Dzhurayev v. Russia*,²²¹ in which it found that disappearances of persons who were the subject of extradition requests followed a certain factual pattern and occurred with the direct or indirect involvement of the authorities. It also indicated, under Article 46 of the Convention, a number of measures that Russia should take to solve the recurrent problem without delay”.²²²

80. Since the *Iskandarov* judgment delivered in 2010, the CM has been repeatedly informed of incidents of this kind either by the ECtHR’s Registry or by NGOs/applicants’ representatives.²²³ Despite a number of instructions and awareness raising measures adopted by the Russian authorities, in September 2013, the CM adopted an Interim Resolution,²²⁴ in which it exhorted the Russian authorities to develop a mechanism of protection against unlawful or irregular removal from the territory of Russia and the jurisdiction of the Russian courts. Although the authorities had provided further information in January 2014,²²⁵ new alleged abduction incidents were reported to the CM in the course of 2014.²²⁶ Hence, the authorities provided an updated action plan in November 2014²²⁷ on further measures to raise awareness; however, at its 1214th meeting (DH) in December 2014, the CM found these measures insufficient and requested further information from the authorities, with a view of examining the necessity of adopting a second interim resolution at its 1229 meeting (DH) in June 2015. It also decided to examine this group of cases at its first regular meeting in case a new similar abduction or disappearance is reported. As regards individual measures, the CM expressed grave concern regarding the unknown fate of several (abducted/disappeared) applicants.²²⁸ Following the submission by the authorities of an updated action plan in April 2015²²⁹, the CM examined this group of cases at its 1230th meeting (DH) in June 2015.

81. It should be noted in this context that the issue of non-cooperation with the Court in respect of interim measures has already been examined by our Committee and the Assembly.²³⁰ The issue of “undercover” transfer of persons to Tajikistan and Uzbekistan was dealt with in detail in the report of our Committee colleague Mr Kimo Sasi (Finland, EPP/CD) on “Urgent need to deal with new failures to co-operate with the European Court of Human Rights”.²³¹ According to Amnesty International, the repeated abductions/disappearances, as those reported in the *Iskandarov* group of cases, result from a region-wide renditions programme in the Commonwealth of Independent States (CIS).²³²

²¹⁷ *Iskandarov v. Russia*, application no. 17185/05, judgment of 23 September 2010.

²¹⁸ See Pending cases: state of execution, group of cases *Garabayev v. Russia*, application no. 38411/02, judgment of 30 January 2008, concerning different violations related to extradition (Articles 3, 5, 13 and 24).

²¹⁹ *Savriddin Dzhurayev v. Russia*, Application no. 71386/10, judgment of 25 April 2013; *Abdulkhakov v. Russia*, Application no. 14743/11, judgment of 2 October 2012; *Zokhidov v. Russia*, Application no. 67286/10, judgment of 5 February 2013; *Nizomkhon Dzhurayev v. Russia*, Application No 31890/11, judgment of 3 October 2013; *Ermakov v. Russia*, Application of 43165/10, judgment of 7 November 2013; *Kasymakhunov v. Russia*, Application no. 29604/12, judgment of 14 November 2013; *Mamazhonov v. Russia*, Application no. 17239/13, judgment of 23 October 2014; *Mukhitdinov v. Russia*, Application no. 20999/14.

²²⁰ Paragraph 156.

²²¹ Application no. 71386/10, judgment of 25 April 2013.

²²² *Ibid*, paragraphs 253-263.

²²³ See the letters from the Court’s Registry DD(2012)214, DH-DD(2012)1046, DH-DD(2013)75, DH-DD(2013)783 and the submissions of the NGOs and applicants’ representatives DH-DD(2012)158, DH-DD(2012)422, DH-DD(2013)218, DH-DD(2013)720, DH-DD(2014)571, DH-DD(2014)913.

²²⁴ CM/ResDH(2013)200 adopted.

²²⁵ DH-DD(2014)58.

²²⁶ See CM decisions in the group of cases taken at its 1193rd (DH) meeting in March 2014, 1201st (DH) meeting in June 2014 and 1208th (DH) meeting in September 2014.

²²⁷ DH-DD(2014)1357.

²²⁸ Decisions adopted at the 1214th meeting (DH), 2-4 December 2014, Cases No.18.

²²⁹ DH-DD(2015)424.

²³⁰ 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.

²³¹ Doc. 13435, paragraphs 30-34. See also Assembly’s Resolution 1991 (2014) of 10 April 2014.

²³² Amnesty International, report of 3 July 2013, Eurasia: Return to torture: Extradition, forcible returns and removals to Central Asia.

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

82. In the case *Alekseyev v. Russia*²³³ 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 (between 2006 and 2008), on the holding of gay-rights marches and pickets imposed by Moscow authorities on account of the failure of the authorities to adequately assess the risk of the safety of the participants and public order (violations of Article 11, Article 13 in conjunction with Article 11 and Article 14 in conjunction with Article 11). Despite the findings of this judgment, 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.²³⁴

83. Although since 2011 the CM has repeatedly called for the adoption of general measures and expressed concern about the implementation of this judgment, the competent authorities in the Russian Federation have continued to mostly refuse to authorize public events in support of the rights of LGBTI persons since 2005. When examining this case, the CM focused on two aspects: the laws prohibiting "homosexual propaganda" among minors and the procedure for the organization of public assemblies.

84. Although on numerous occasions the CM had expressed concerns about regional laws prohibiting "homosexual propaganda" among minors, on 11 June 2013, the State Duma adopted similar provisions at the federal level, without giving consideration to the Opinion of the Venice Commission.²³⁵ At its 1179th meeting (DH) in September 2013, the CM expressed its concerns about this law, noting that it "could undermine the effective exercise of the freedom of assembly".²³⁶

85. Following the submission by the authorities of another action plan in July 2014,²³⁷ at the 1208th (DH) meeting - (23-25 September 2014), the CM expressed serious concern that the majority of requests made in Moscow, St Petersburg, Kostroma and Arkhangelsk between 1 July 2013 and 1 May 2014 to hold public events, similar to those described in the *Alekseyev* judgment, had been refused on the basis of the Federal Law prohibiting "propaganda of non-traditional sexual relations" among minors. It called on the authorities to ensure that the Federal Law does not hinder the effective exercise of the right to assembly and noted that a case was pending before the Constitutional Court concerning this law.

86. As regards the question of an effective remedy, the CM strongly encouraged Russian authorities to speedily adopt the draft Code of Administrative Procedure, which would oblige courts to settle disputes concerning the organization of public events prior to the date foreseen for such events. It also invited the authorities to continue to monitor the implementation of the Constitutional Court's decision of 14 February 2013, which stressed the need for courts to settle disputes concerning the holding of public events before the date foreseen for such events. Following the submission by the authorities of an updated action plan in April 2015²³⁸, the CM examined this group of cases at its 1230th meeting (DH) in June 2015.

3.8 Other new issues

87. The CM 2014 Annual Report points out a couple of other complex/structural issues concerning implementation of judgments against Russia which are examined under its enhanced supervision: automatic blanket ban on prisoners' voting rights (*Anchugov and Gladkov*),²³⁹ violation of the right to education of children and parents from Moldovan/Romanian language schools in the Transdnestrian region of the Republic of Moldova (*Catan and Others*)²⁴⁰ and shortcomings of the system for judicial review of expulsion of foreigners based on national security grounds (*Liu No. 2*)²⁴¹ group of cases). Especially the *Catan and Others* case, which was recently examined at the 1230th meeting (DH) in June 2015, has been the object of close supervision by the Committee of Ministers in 2014 and 2015 due to the absence of information on any measure which would be compliant with the Court's judgment.

²³³ Application no. 4916/07, judgment of 21 October 2010.

²³⁴ http://www.coe.int/t/dghl/monitoring/execution/Themes/Add_info/RUS-Alekseyev_en.asp

²³⁵ CDL-AD(2013)022, Venice Commission Opinion on the issue of the prohibition of so-called "propaganda of homosexuality" in the light of recent legislation in some member States of the Council of Europe adopted on 14-15 June 2013. See also *PACE rapporteur calls on State Duma not to support law banning 'gay propaganda'*.

²³⁶ Item 3 of the decision.

²³⁷ DD(2014)914, see also previous action plans DH-DD(2014)57 and DH-DD(2013)67.

²³⁸ DH-DD(2015)405.

²³⁹ Application no. 1157/04, judgment of 9 December 2013.

²⁴⁰ Application no. 43370/04, judgment of 19 October 2012.

²⁴¹ Application no. 29157/09, judgment of 8 March 2012.

4. Ukraine

88. 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.²⁴²

89. The report also dealt with the issues surrounding the *Gongadze* case.²⁴³

4.1. Non-enforcement of domestic judicial decisions

90. The *Zhovner* group comprises over 400 cases concerning non-enforcement of final domestic judgments, mostly delivered against the State or State enterprises, and the absence of an effective remedy in this respect (violations of Articles 6§1, 13 and Article 1 of Protocol 1).²⁴⁴ In its pilot judgment *Yuriy Nikolayevich Ivanov v. Ukraine*²⁴⁵ 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 decided 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.

91. 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 2013.²⁴⁶ 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. The impact in practice of the new remedy legislation on the general problem of non-execution of domestic judicial decisions still remains to be assessed.

92. At their 1164th (DH) meeting in 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 the issue of non-enforcement of judicial decisions imposing non-pecuniary obligations.²⁴⁷

93. On 19 September 2013, the Ukrainian Parliament adopted amendments setting up a remedy in respect of the non-enforcement of domestic judicial decisions rendered before 1 January 2013. At its 1186th (DH) meeting on 5 December 2013, the CM noted with satisfaction these developments and invited the Ukrainian authorities to take all the necessary measures to ensure that the new remedy is implemented effectively.

94. On 11 March 2014, the ECtHR decided to suspend the examination of this type of non-enforcement cases and to review the situation in six months; at that time, there were 10,440 cases pending before the Court, out of which 1,585 had been communicated to the Ukrainian government.²⁴⁸ In April 2014, the

²⁴² Supra note 2 at paragraph 149.

²⁴³ Ibid, paragraphs 172-173.

²⁴⁴ *Zhovner v. Ukraine*, application No. 56848/00, judgment of 29 June 2004; as of 11 June 2015 there were 421 cases in this group.

²⁴⁵ Application No. 40450/04, judgment of 15 October 2009.

²⁴⁶ 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.

²⁴⁷ Decision cases No. 32.

²⁴⁸ [Letter from the ECtHR Registry](#) of 14 April 2014.

authorities provided information²⁴⁹ on the number of applications for compensation lodged at the domestic level, recognizing that the lack of funds remained a problem. They also did not prove that the new domestic remedy was effective. In September 2014, the Cabinet of Ministers adopted the “Rules on Debt Payment Under the Courts Judgments the Implementation of Which is Guaranteed by the State”, which established the procedure for payment under the new remedy and a working group was set up for a better implementation of this procedure.²⁵⁰ The Ministry of Justice is currently preparing an electronic register with information on relevant payments.²⁵¹ Another action plan was provided by the authorities in April 2015, but it has not yet been assessed by the CM.²⁵²

95. As noted by the CM at the 1214th (DH) meeting in December 2014,²⁵³ the adopted measures have not prevented similar violations and in a large number of cases, the just satisfaction awarded by the Court has not been paid to the applicants and the domestic judicial decisions have not been enforced. The CM encouraged the authorities to “explore all possibilities for co-operation which the Council of Europe can offer in ensuring a viable solution to this problem”.²⁵⁴ To sum up, despite the adoption by the CM of five interim resolutions in this group of cases,²⁵⁵ there has been no tangible progress in the implementation of these judgments since 2004.

96. In April 2015²⁵⁶, the Ukrainian authorities provided their latest action plan concerning general measures for this group of cases. The Committee of Ministers examined it at its 1230th DH meeting (June 2015)²⁵⁷.

4.2. Excessive length of civil and criminal proceedings

97. Two groups of cases – concerning mainly the excessive length of civil (the *Svetlana Naumenko* group)²⁵⁸ and criminal (the *Merit* group)²⁵⁹ 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, nearly 270 cases)²⁶⁰ since 2004.

98. 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 mainly focused on the question of a remedy and not on solutions to the root causes for excessive length of judicial proceedings.²⁶¹ Thus, the CM had urged the Ukrainian authorities, in its decision of March 2012, to take concrete measures to solve the structural problem revealed,²⁶² recalling its Recommendation CM/Rec(2010) 3 on effective remedies for excessive length of proceedings.²⁶³ Between July 2012 and February 2013, the authorities provided information on legislative measures such as the adoption of the 2010 Law on Judiciary and Status of Judges, amendments to the Code of Civil Procedure of 2011 and the new 2012 Code of Criminal Procedure.²⁶⁴ At its 1164th meeting in March 2013, the CM requested additional information and “reiterated their serious concern” that, despite the Court’s numerous judgments, no progress had been achieved regarding the introduction of an effective remedy against excessive length of proceedings.²⁶⁵

99. In view of the Ukrainian authorities’ failure to provide the requested information, at their 1179th (DH) meeting in September 2013,²⁶⁶ the CM strongly urged the Ukrainian authorities to provide, by 31 December

²⁴⁹ [DH-DD\(2014\)461](#) and [DH-DD\(2014\)652](#).

²⁵⁰ [DH-DD\(2014\)1203](#), communication of the Ukrainian authorities of 30 September 2014.

²⁵¹ *Ibid.*

²⁵² [DH-DD\(2015\)419](#) of 13 April 2015.

²⁵³ Decisions adopted at the 1214th (DH) meeting (2-4 December 2014), [Cases No. 26](#).

²⁵⁴ Item 3 of the said decision.

²⁵⁵ [CM/ResDH\(2008\)1](#), [CM/ResDH\(2009\)159](#), [CM/ResDH\(2010\)222](#), [CM/ResDH\(2011\)184](#), [CM/ResDH\(2012\)234](#).

²⁵⁶ [DH-DD\(2015\)419](#)

²⁵⁷ *Supra* note 4.

²⁵⁸ *Svetlana Naumenko v. Ukraine*, Application no. 41984/98, judgment of 9 November 2004.

²⁵⁹ *Merit v. Ukraine*, Application no. 66561/01, judgment of 30 March 2004.

²⁶⁰ As of 11 June 2015, there are 200 cases from the *Naumenko* group and 68 from the *Merit* group.

²⁶¹ See the government’s action report of 7 August 2012, [DH-DD\(2012\)709E](#).

²⁶² 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.

²⁶³ Recommendation [CM/Rec\(2010\)3](#) of 24 February 2010.

²⁶⁴ Action plan (*Naumenko Svetlana* group) of 15/06/2012 [DH-DD\(2012\)709](#); Communication from Ukraine (*Merit* group) of 14/01/2013 [DH-DD\(2013\)69](#) and Communication from Ukraine (*Merit* group) of 11/02/2013 [DH-DD\(2013\)138](#).

²⁶⁵ Decisions adopted at 1164th meeting (DH), 7 March 2013, [Cases No. 35](#).

²⁶⁶ The authorities provided only information on statistics; Communication from Ukraine (*Naumenko Svetlana* group) of 19/07/2013, [DH-DD\(2013\)835](#).

2013, the required analysis specifying how the measures adopted will 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 CM further reiterated its previous request to adopt concrete measures aimed at setting up effective domestic remedies in view of a number of similar repetitive applications brought before the ECtHR and to provide information in this respect by 31 December 2013.²⁶⁷ An updated action plan was provided on 20 January 2015²⁶⁸ and is being assessed.

4.3. Issues concerning Detention on Remand

4.3.1. Poor conditions of detention

100. Mr Pourgourides' report highlighted several problems concerning detention facilities. In over forty cases, 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.²⁶⁹ 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.²⁷⁰ 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 2012,²⁷¹ 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 (...)".²⁷² According to the CM 2014 Annual Report,²⁷³ consultations between the CM Secretariat and the authorities continued throughout the course of 2014 with a view to elaborate a comprehensive action plan and special meetings were organised in the context of the Human Rights Trust Fund Project (HRTF) 18 Programme.

101. In its preliminary observations of the visit in 2011, 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.²⁷⁴ Furthermore. In its preliminary observations of the visit in 2013, the CPT pointed to poor access to natural light and fresh air, lack of privacy as concerned in-cell toilets, the small size and oppressive state of the exercise yards and poor level of cleanliness in temporary detention isolators (ITT), as well as internal affairs divisions not suitable for keeping detainees.²⁷⁵ In its periodic 2013 report on Ukraine published on 29 April 2014,²⁷⁶ the CPT noted a major decrease in the number of inmates, but stressed the need to pursue efforts to eliminate overcrowding in pre-trial detention centres. It also noted that no decisive action had been taken to improve the material conditions in most of the centres that it had visited. The cumulative effect of these conditions and restrictions could be considered a form of inhuman and degrading treatment by many detainees.

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

102. At present over 35 cases are pending execution in this area (mainly violations of Articles 3 and 5).²⁷⁷ In the *Kaverzin v. Ukraine* judgment (also concerning systemic handcuffing of the applicant when he was out of his cell), under Article 46 of the Convention, the Court stated that the practice of ill-treatment in custody is

²⁶⁷ Decisions adopted at the CM 1179th (DH) meeting, 24-26 September 2013, Cases No. 22.

²⁶⁸ DD(2015)112 - Communication from the Ukrainian authorities - Action plan of 20.01.2015.

²⁶⁹ According to the CM 2014 Annual Report, there are 45 cases (altogether); see the cases grouped under the following judgments: *Nevmerzhiysky 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. See also concerning poor conditions of the applicants' detention between 1996 and 2000 on "death row" in different prisons. The Kuznetsov Group (*Kuznetsov v. Ukraine*, Application no. 39042/97, judgment of 29 April 2003).

²⁷⁰ *Ibid.*

²⁷¹ DH-DD(2012)444E of 4 May 2012.

²⁷² Decisions adopted at the 1144th meeting (DH), 4-6 June 2012, Cases No. 27 item 2 of the decision.

²⁷³ P. 119.

²⁷⁴ 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.

²⁷⁵ 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 9 to 21 October 2013, published on 15 November 2013, p. 5.

²⁷⁶ Report to the Ukrainian Government on the visit to Ukraine carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 9 to 21 October 2013, paragraphs 119-127.

²⁷⁷ As of 11 June 2015, there were 37 cases in the Kaverzin/Afanashev group of cases: *Kaverzin v. Ukraine*, Application no. 23893/03, judgment of 15 May 2012 and *Afanashev v. Ukraine*, Application no. 38722/02, judgment of 5 April 2005.

a systemic problem. 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 2012.²⁷⁸ In April 2013, the Ukrainian authorities further provided their action plan,²⁷⁹ that the CM assessed at their 1172nd (DH) meeting in June 2013.²⁸⁰ The CM welcomed the adoption of a number of legislative and practical measures, in particular the setting up of a National Preventive Mechanism (NPM) under the United Nations Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) and the changes to the new Code of Criminal Procedure. It also invited the Ukrainian authorities to provide information on the impact in practice on these measures and the measures aimed at ensuring that investigations into ill-treatment allegations comply with the Convention standards. The CM took note of the authorities' intention to establish the State Bureau of Investigation at the latest by 2017. Lastly, the Ukrainian authorities were encouraged to take advantage of the opportunities offered by the Council of Europe under its various co-operation/technical programmes. In 2014, two new action plans were provided.²⁸¹ During its 1201th (DH) meeting in June 2014, the Committee of Ministers reiterated its satisfaction with the significant improvements brought about by the new Code of Criminal Procedure and invited the authorities to provide, an updated action plan containing their assessment of the impact of the reforms and information on additional measures envisaged to implement the recommendations of the CPT. On 31 October 2014, the Ukrainian authorities provided an updated action plan²⁸², which is now being assessed.

103. According to a report of Amnesty International of 12 October 2011,²⁸³ "endemic police criminality", such as the use of torture, beatings and extortion by police remained a widespread phenomenon. This was confirmed by the CPT in the observations from its visits to Ukraine of 2011 and 2013; the CPT noted that ill-treatment by police in a number of cases was of such severity that it could well amount to torture.²⁸⁴ Similar findings are contained in its 2013 periodic report published in April 2014.²⁸⁵ In its report of April 2015 concerning an ad hoc visit in September 2014 to a few correctional colonies in the Kharkiv area, the CPT noted some progress and called again on the authorities to pursue their efforts to combat the phenomena of ill-treatment in the visited colonies.²⁸⁶

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

104. Numerous judgments of the Court pertaining to the issue of unlawful and/or excessively long pre-trial detention²⁸⁷ (violations of Article 5) 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*²⁸⁸ 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.

105. 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,²⁸⁹ according to which a new Criminal Procedure Code was to be adopted. The new Criminal Procedure Code ('CPC') entered into force on 20 November 2012; it was the object of extensive expert advice from the Council of Europe.²⁹⁰ 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 and should create the necessary 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

²⁷⁸ Communication from Ukraine concerning the Afanasyev group of cases, DH-DD(2012)1182E, 20 December 2012.

²⁷⁹ Communication from Ukraine, DH-DD(2013)411.

²⁸⁰ CM 1172nd (DH) meeting in June 2013.

²⁸¹ DH-DD(2014)1343 - Communication from the Ukrainian authorities - Updated action plan of 31.10.2014 and DH-DD(2014)463 - Communication from the Ukrainian authorities - Action plan - 07.04.2014.

²⁸² DH-DD(2014)1343E

²⁸³ Ukraine: 'No evidence of a crime': Paying the price for police impunity in Ukraine.

²⁸⁴ *Supra* 274, p.3.

²⁸⁵ *Supra* note 275.

²⁸⁶ Report to the Ukrainian Government on the visit to Ukraine carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 9 to 16 September 2014, paragraph 44.

²⁸⁷ http://www.coe.int/t/dghl/monitoring/execution/reports/pendingcases_EN.asp

²⁸⁸ *Kharchenko v. Ukraine*, Application no. 40107/02, judgment of 10 February 2011.

²⁸⁹ Action plan concerning the case of *Kharchenko against Ukraine*, DH-DD(2011)1066E, 22 November 2011.

²⁹⁰ http://www.coe.int/t/dghl/cooperation/capacitybuilding/expertises_en.asp.

detention by police or the use of administrative arrest for criminal investigation purposes.²⁹¹ At its 1128th 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.²⁹² 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 relating to the general measures in the context of the case of *Balitskiy* against Ukraine²⁹³ and in October 2012 in the context of the *Kharchenko* group of cases.²⁹⁴ In both submissions, the authorities mainly referred to provisions of the new Code of Criminal Procedure. They also provided statistics on the application of detention on remand covering 2010, 2011 and the first half of 2012, showing a minor trend of decrease regarding the use of detention on remand. In February 2013, the authorities submitted a revised action plan,²⁹⁵ of which the CM took note at its 1157th (DH) meeting (March 2013). The CM instructed its Secretariat to prepare an in-depth assessment of this new information and encouraged the authorities to take advantage of the cooperation offered in the framework of the HRTF No 18.²⁹⁶

106. On 9 October 2014, the Court delivered another judgment concerning detention without a court order in 2013 (violation of Article 5§1) in the case of *Chanyev v. Ukraine*.²⁹⁷ Under Article 46 of the Convention, it indicated the need for further legislative changes, including amendments to the 2012 CCP.²⁹⁸

107. As noted in the CM 2014 Annual Report,²⁹⁹ problems remain concerning the implementation of two judgments concerning unlawful detention on remand and use of detention for other reasons than those permissible under Article 5 of the Convention in the context of criminal proceedings against the applicants – *Lutsenko v. Ukraine*³⁰⁰ and *Tymoshenko v. Ukraine*³⁰¹ (violations of Articles 5§1, 5§4, 5§5 and Article 18 taken together with Article 5). Although both applicants were released, the CM is still examining the issue of general measures that would prevent the circumvention of legislation by prosecutors and judges.³⁰² This issue was also dealt with by our Committee colleague Mr Pieter Omtzigt (Netherlands, EPP/CP) in his report on "Keeping political and criminal responsibility separate".³⁰³

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

108. Several judgments are pending before the Committee of Ministers on this issue. (violations of Article 6§1).³⁰⁴ 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.³⁰⁵ It is noted that this legislative reform has been the object of several Venice Commission opinions.³⁰⁶ In June 2013, the Venice Commission published an opinion on the draft law concerning amendments to the Constitution aimed at strengthening the independence of judges.³⁰⁷

²⁹¹ Pending cases: state of execution, *Kharchenko v. Ukraine*.

²⁹² 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.

²⁹³ See [DH-DD\(2012\)1023](#).

²⁹⁴ See [DH-DD\(2012\)1180](#).

²⁹⁵ See [DH-DD\(2013\)190](#).

²⁹⁶ Items 4 and 5 of the CM decision, 1164th (DH) meeting.

²⁹⁷ Application no. 46193/13, judgment of 9 October 2014.

²⁹⁸ *Ibid*, paragraphs 34-35.

²⁹⁹ P. 155.

³⁰⁰ Application no. 6492/11, judgment of 3 July 2012.

³⁰¹ Application no. 49872/11, judgment of 30 April 2013.

³⁰² See decision taken at the 1193rd meeting (4-6 March 2014) concerning the *Tymoshenko* case, case No. 25.

³⁰³ Doc. 13214 of 28 May 2013, see also Assembly's Resolution 1950 (2013).

³⁰⁴ See in particular the four judgments in the Salov group (*Salov v. Ukraine*, Application no. 65518/01, judgment of 6 September 2005).

³⁰⁵ Law of Ukraine No. 2453-VI on the Judiciary and the Status of the Judges adopted by the Verkhovna Rada on 7 July 2010.

³⁰⁶ 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](#). 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](#).

³⁰⁷ [CDL-AD\(2013\)014](#).

109. In the meantime in the judgment *Oleksandr Volkov v. Ukraine*³⁰⁸ the ECtHR found serious systemic problems as regards the functioning of the Ukrainian judiciary. The case concerns four violations of the applicant's right to a fair hearing on account of his unlawful dismissal from his post as a judge at the Supreme Court of Ukraine. The Court ordered urgent legislative reforms to be implemented as well as the applicant's reinstatement in his previous post of the judge of the Supreme Court at the earliest possible date. It is further noted that the ECtHR communicated to the Ukrainian Government 18 similar applications on 15 January 2014.³⁰⁹

110. As regards individual measures in this case, upon repeated pressure from the Committee of Ministers and after the adoption of its Interim Resolution CM/ResDH(2014)275 on 4 December 2014, the applicant was reinstated to his post of judge of the Supreme Court as of 2 February 2015. The CM welcomed this step at their 1222nd (DH) meeting (11-12 March 2015)³¹⁰. The Deputies assessed the latest action report³¹¹ submitted in January 2015 and invited Ukrainian authorities to transmit an updated and comprehensive action plan on the general measures envisaged and to take full benefit of all co-operation opportunities offered by the Council of Europe to ensure that the judiciary is reformed in line with Convention standards.

111. As regards general measures in this case, it should be noted that, according to the Ukrainian authorities, certain issues have been solved by the new law "On Ensuring the Right to Fair Trial" adopted by Parliament on 12 February 2015, which entered into force on 29 March 2015³¹². On 3 March 2015, a Constitutional Commission was established by the President and tasked with drafting coordinated proposals for constitutional amendments, including amendments aimed at reforming the judiciary.

112. In its Resolutions 1862 (2012)³¹³ and 1988 (2014)³¹⁴ 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.

4.5. Other issues

4.5.1. The Gongadze case

113. 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.³¹⁵ This case is particularly sensitive politically, as several senior state officials, including a former President, are implicated.³¹⁶ At its 1157th (DH) meeting in December 2012, the CM noted some developments and insisted on the Ukrainian authorities' obligation to continue their efforts to find the instigators and organisers of the killing of G. Gongadze. At its 1172nd (DH) meeting (4-6 June 2013),³¹⁷ the CM welcomed that the trial against O. Pukach, the superior of the three police officers involved in the murder of Mr Gongadze, was completed in first instance on 29 January 2013. Noting that the Prosecutor General's Office continues its investigation into the circumstances of Mr Gongadze's death, the CM once again urged the Ukrainian authorities to continue and enhance their efforts to ensure that all necessary investigatory measures to this end are taken as a matter of urgency. No new information has been received since by the CM.

114. 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

³⁰⁸ Application no. 21722/11, judgment of 9 January 2013.

³⁰⁹ Application no. 5114/09 Andriy Volodymyrovych Kulykov against Ukraine and 17 other applications.

³¹⁰ Decisions adopted at the 1222nd (DH) meeting (11-12 March 2015), Case No. 22.

³¹¹ DH-DD(2015)27 of 5 January 2015.

³¹² See CDL-AD(2015)007-e "Joint opinion by the Venice Commission and the Directorate of Human Rights of the Directorate General of Human Rights and the Rule of Law on the Law on the Judiciary and the Status of Judges and amendments to the Law on the High Council of Justice of Ukraine, adopted by the Venice Commission at its 102nd Plenary Session (Venice, 20-21 March 2015)"

³¹³ 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).

³¹⁴ Resolution 1988 (2014) on "Recent developments in Ukraine: threats to the functioning of democratic institutions", adopted on 9 April 2014, paragraph 10. See also the Monitoring Committee's report on this subject, co-rapporteurs: Ms Mailis Reps (Estonia, ALDE) and Ms Marietta de Pourbaix-Lundin (Sweden, Group of European People's Party), doc. 13482 of 8 April 2014.

³¹⁵ *Gongadze v. Ukraine*, Application no. 34056/02, judgment of 8 November 2005.

³¹⁶ See, in particular, the most recent CM decision on this case taken at its 1157th meeting (December 2012).

³¹⁷ Decision cases No. 25.

issues as a matter of priority”.³¹⁸ This issue was examined by the Assembly in 2009³¹⁹ and, more recently, in March 2015, following a report on “Threats to the rule of law in Council of Europe member states – asserting the authority of the Assembly” by our Committee colleague Ms Marieluise Beck (Germany, ALDE).³²⁰ In its Resolution 2040 (2015), the Assembly noted that its previous recommendations concerning this case had been implemented only in part. Although three Interior Ministry officials and their commander, General Pukach, had been found guilty of the murder, their former Minister committed suicide in questionable circumstances and the accusations launched by General Pukach against the former President and the former head of the Presidential Administration were not followed up effectively.³²¹

4.5.2. Freedom of assembly

115. Another case under the enhanced supervision of the Committee of Ministers is *Vyerentsov v. Ukraine*, where the Court found violations of Articles 11 and 7 on account of the applicant’s conviction for having organised a peaceful demonstration in October 2010. The ECtHR discovered a lacuna in the Ukrainian legislation with respect to a procedure for holding demonstrations and required an urgent reform.³²²

116. At their 1201st (DH) meeting (June 2014),³²³ the CM assessed the second action plan³²⁴ submitted by Ukraine on 7th April 2014. Welcoming the Supreme Court’s decision of 3 March 2014, which quashed the applicant’s administrative sentence and the cooperation between its Secretariat and the authorities, it nevertheless stressed again the urgency to bring into conformity the legislative framework on freedom of assembly and the administrative practice with the Convention requirements. The CM noted, however, that there was no currently any draft legislation pending before the Ukrainian Parliament with respect to the issue of freedom of assembly.

5. Romania

117. 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.³²⁵

118. The report also dealt with the case of *Rotaru v. Romania*³²⁶ concerning a violation of the right to respect for private life (Article 8) due to the Romanian system of storing and using information gathered by the secret services which operated in Romania before the fall of the communist regime. Following the adoption of individual and general measures by Romania, the CM closed the examination of this case in November 2014.³²⁷ The CM continues to supervise the adoption of legislative measures in the framework of the case *Bucur and Toma v. Romania*³²⁸ concerning ongoing secret surveillance measures based on national security considerations.

119. Another sizable group of cases concerning ill-treatment by police and lack of effective investigation has been identified in the CM 2011, 2012, 2013 and 2014 Annual Reports.³²⁹

5.1. Failure to restore or compensate for nationalised property

120. 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

³¹⁸ Supra note 2, at paragraphs 173 and 174.

³¹⁹ 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.

³²⁰ Doc. 13713 of 18 February 2015.

³²¹ Resolution 2040 (2015) adopted on 6 March 2015 by the Standing Committee, paragraph 3.2.

³²² *Vyerentsov v. Ukraine*, Application no. 20372/11, judgment of 11 April 2013.

³²³ Decision, Cases No 23.

³²⁴ DH-DD(2014)458. See also the previous action plan DH-DD(2013)1270 of 14 November 2013.

³²⁵ Supra note 2, paragraph 92.

³²⁶ Ibid, paragraphs 105-107.

³²⁷ Resolution CM/ResDH(2014)253 adopted on 26 November 2014.

³²⁸ Application no. 40238/02, judgment of 8 January 2013,

³²⁹ See the CM 2011 Annual Report p. 44, CM 2012 Annual Report, pp. 54, CM 2013 Annual Report p. 49 and the CM 2014 Annual Report, p. 69.

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 180 such cases are currently pending before the CM.³³⁰

121. Considering the scale of the problem, the ECtHR handed down in 2010 a pilot judgment in the case of *Maria Atanasiu and Others v. Romania*. The Court required Romania to put in place clear and simplified to provide redress to victims. 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 May 2013.

122. In response to the pilot judgment and following consultations between high level representatives of the Romanian government, the Department for the Execution of Judgments and the Registry of the ECtHR, on 22 April 2013, the Romanian parliament adopted a law reforming the compensation mechanism, which entered into force on 20 May 2013. The law provides for restitution of property and, if the latter is not possible, it sets up a mechanism for compensation. It also foresees the adoption of some preparatory measures, such as the drawing up of an inventory of available agricultural land and woodland and the setting-up of a National Fund for agricultural lands and other immovable properties. The Rules for the application of the law entered into force on 29 June 2013.³³¹

123. At its 1172nd (DH) meeting (4-6 June 2013),³³² the CM welcomed the adoption of the above-mentioned law, underlined the importance of a thorough and constant monitoring of its implementation at the national level, encouraged the Romanian authorities to continue to cooperate with the Execution Department with a view to clarifying the outstanding issues identified in the Memorandum CM/Inf/DH(2013)24³³³, and to keep the CM regularly informed of the implementation of the first stages of the application of the new law, with a view to enabling it to assess the progress made.

124. On 29 April 2014, the Court delivered a follow-up judgment to the pilot judgment in the case of *Preda and Others v. Romania*,³³⁴ in which it held that the new law provided, in principle, an accessible and effective framework of redress for the vast majority of situations arising in the reparation process. However, some issues identified in this judgment turned out to still be problematic, such as the lack of provisions affording redress in cases where there were multiple documents of title for the same building or lack of access to compensation of former owners entitled to compensation (in the absence of restitution), when the fact rendering restitution impossible became known after the deadline for lodging a compensation claim.³³⁵ As a consequence of the *Preda and Others* judgment, the Court rejected 442 applications because of non-exhaustion of domestic remedies.

125. On 22 October 2014, Romanian authorities submitted a revised action plan,³³⁶ which was assessed by the CM at its 1214th (DH) meeting (2-4 December 2014).³³⁷ The CM noted with interest the progress in the implementation of the first stages of the law and decided to close the examination of cases concerning situations identified in the *Preda and Others* judgment as covered by the new mechanism and in which all the individual measures have been taken, *i.e.* 85 cases from this group.³³⁸ However, as regards the other cases and the pilot judgment *Maria Atanasiu and Others*, the CM decided to monitor the developments concerning the outstanding issues identified by the Court. In March 2015, the authorities provided new information on the general measures required in this group of cases.³³⁹

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

126. The cases of *Nicolau v. Romania*³⁴⁰ and *Stoianova and Nedelcu v. Romania*³⁴¹ concern the excessive length of civil and criminal proceedings and in some cases also the lack of an effective remedy in this respect (violations of Articles 6 and 13). At present, over 80 similar cases are pending execution before the CM

³³⁰ According to the CM 2014 Annual Report, see the *Strain* group of cases, *Strain and Others v. Romania*, Application no.57001/00, judgment of 21 July 2005 and the pilot judgment *Maria Atanasiu and Others v. Romania*, Application no. 30767/05, judgment of 12 October 2010.

³³¹ For more information on the compensation mechanism, see information document [CM/Inf/DH\(2013\)24](#).

³³² Decision [Cases No. 17](#).

³³³ *Supra* note 331.

³³⁴ Application no. 9584/02+, judgment of 29 April 2014, paragraph 129.

³³⁵ *Ibid*, paragraph 124.

³³⁶ [DH-DD\(2014\)1285](#).

³³⁷ Decision [Cases no. 14](#).

³³⁸ [CM/ResDH\(2014\)274](#), adopted on 4 December 2014.

³³⁹ [DH-DD\(2015\)349](#) - Communication from the authorities - General measures, 17.03.2015.

³⁴⁰ Application no. 1295/02, judgment of 12 January 2006.

³⁴¹ Application no. 77517/01, judgment of 4 August 2005.

concerning this structural problem.³⁴² On 10 October 2011 Romania submitted an action plan to the CM detailing a number of measures Romania is taking to solve these problems.³⁴³

127. Firstly, in order to *simplify and accelerate judicial proceedings* a “little reform” was instituted in 2010, through which a number of legislative amendments to the Civil and Criminal Procedure Codes were introduced.³⁴⁴ 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 entered into force in February 2014. They both envisage large-scale legislative measures.

128. 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 the direct application of the Convention in the domestic law and that the domestic courts’ case law has evolved accordingly, thereby providing interested persons with remedies, and allowing for acceleration of proceedings and compensation for damages suffered.

129. On 26 June 2013, the Romanian authorities submitted their revised action plan.³⁴⁵ At its 1179th (DH) meeting (24-26 September 2013),³⁴⁶ as concerns excessive length of proceedings, the CM took note of the entry into force of the new Code of Civil Procedure and of the positive impact of the “little reform” and called on the authorities to continue to monitor the effects of these reforms. As concerns effective remedies, the CM invited the authorities to indicate the reasons for which the acceleratory remedy introduced by the new Code of Civil Procedure only applied to the proceedings initiated after its coming into force on 15/02/2013 and invited the authorities to provide clarifications to certain other outstanding issues, including the functioning of civil action for damages as a compensatory remedy. On 26 November 2013, the Court delivered a judgment in the case of *Vlad and Others v. Romania*,³⁴⁷ in which it welcomed the general measures taken by Romania to remedy the structural problem of excessive length of civil and criminal proceedings. However, under Article 46, the ECtHR invited the authorities to take further measures to ensure a specific and clearly regulated remedy against excessive length of proceedings.

5.3. *Non-enforcement of domestic judicial decisions*

130. For over ten years, the CM has been examining a number of cases with regard to the state’s failure to enforce final domestic court decisions (violations of Article 6§1 and/or Article 1 of Protocol No. 1).³⁴⁸

131. In November 2011 the Romanian authorities provided to the CM a revised action report regarding the *Ruianu* group.³⁴⁹ Moreover, an action plan concerning the *Sacaleanu* group of cases was submitted in January 2012³⁵⁰ and an action plan concerning the *Strungariu* group of cases was submitted in June 2012³⁵¹, followed by a revised version in March 2013³⁵². In the revised action report submitted for the *Ruianu* group³⁵³ in November 2011, the authorities asserted 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. 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-

³⁴² According to the CM 2014 Annual Report, there are 53 cases in the *Nicolau* group and 29 in the *Stoianova* group.

³⁴³ See [DH-DD\(2011\)900F](#).

³⁴⁴ Law no. 202/2010 for accelerating the judicial proceedings.

³⁴⁵ [DH-DD\(2013\)712 rev.](#)

³⁴⁶ Decision Cases No. 13.

³⁴⁷ Application no. 40756/06+, judgment of 26 November 2013, paragraphs 163 and 164.

³⁴⁸ See, e.g. *Sacaleanu v. Romania*, Application no. 73970/01, judgment of 6 September 2005; *Strungariu v. Romania*, Application no. 23878/02, judgment of 29 September 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.

³⁴⁹ 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 [DH-DD\(2011\)1037F](#) of 16 November 2011 (in French only).

³⁵⁰ According to the CM 2014 Annual report, there are 29 cases in the *Sacaleanu* group of 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 (in French only).

³⁵¹ [DH-DD\(2012\)673](#). 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.

³⁵² [DH-DD\(2013\)458E](#).

³⁵³ [DH-DD\(2011\)1037](#) - Communication from the Romanian authorities - Revised action report - 07.11.2011.

exhaustion of domestic remedies or manifestly ill-founded³⁵⁴. The Romanian authorities further detailed the various general measures taken with respect to such cases³⁵⁵ and requested the CM to close the examination of this group of cases. . On 6 September 2012 they submitted additional comments concerning the *Sacaleanu* group, asserting in particular that a new Code of Civil Procedure contained provisions simplifying the domestic enforcement procedure and thus better safeguarding the rights of the creditors.³⁵⁶

132. At its 1150th (DH) meeting (September 2012),³⁵⁷ the CM noted with interest the latest action plan submitted in the *Sacaleanu* group of cases, but expressed concern that several crucial issues related to general measures were still outstanding, in particular as regards the mechanisms and the guarantees set forth in the domestic law for ensuring voluntary and prompt enforcement of court decisions by the administration and the remedies available in this respect.³⁵⁸ It noted that the violations found by the Court in these cases revealed the existence, at the time of the relevant facts, of important complex problems.

133. On 16 December 2014, Romanian authorities provided updated information³⁵⁹ on measures adopted in the *Sacaleanu* group, containing, *inter alia*, information about the setting up of a ministerial working group tasked with examining the problem of non-implementation of decisions against public debtors. on 29 January 2015, the authorities provided another action plan concerning the *Ruianu* group of cases.³⁶⁰

5.4. Poor conditions of detention

134. In the cases of the group *Bragadireanu v. Romania*³⁶¹ the Court held that the applicants' conditions of detention amounted to inhuman and degrading treatment (violations of Article 3 and 13), due, in particular, to prison overcrowding and poor material conditions of detention and that there was no effective remedy to obtain redress in such situation. At present, more than 90 similar cases concerning these structural problems in prisons and police detention facilities³⁶² are pending before the CM.

135. The Romanian authorities provided two action plans in April 2011³⁶³ and in March 2012,³⁶⁴ setting out the measures taken and envisaged to tackle the issues highlighted in these judgments affecting prisons and police detention facilities. At its 1144th meeting (June 2012),³⁶⁵ the CM welcomed the information that the domestic prison monitoring mechanism used evaluation criteria similar to those of the Court and that its findings were accessible to civil society; however, it expressed concerns about most detention facilities' inability to observe the national standards guaranteeing a minimum individual living space to prisoners.³⁶⁶ The CM also encouraged the Romanian authorities to establish a similar monitoring mechanism for police detention facilities, to intensify their efforts to tackle poor detention conditions and to provide information on other concrete measures taken in response to other outstanding issues identified by the CM Secretariat³⁶⁷ and their effects, in particular the setting up of effective domestic remedies.³⁶⁸

136. In 2012, the ECtHR delivered its judgment in the case of *Iacov Stanciu*, in which it stated that the measures taken by the authorities had led to an improvement in the living and sanitary conditions in Romanian prisons. However, under Article 46, it called on the authorities to take further measures in this respect and to set up a system of effective remedies against violations of Article 3.³⁶⁹ Following this

³⁵⁴ 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, judgment of 3 February 2005 ; *Maghiran v. Romania*, Application no. 29402/07, decision of 19 January 2010; *Butan v. Romania*, Application no. 18522/05, decision of 29 September 2009; *Radvan v. Romania*, Application no. 26846/04, decision of 2 June 2009.

³⁵⁵ Round Table organised by the Department for the Execution of Judgments of the ECtHR on 21 and 22 June 2007, Conclusions.

³⁵⁶ DH-DD(2013)417.

³⁵⁷ Decision Cases No. 15 concerning the *Sacaleanu* group.

³⁵⁸ Items 1, 2 and 3 of the decision in the *Sacaleanu* group, *ibid*; see also Memorandum of the CM Secretariat CM/Inf/DH(2012)24.

³⁵⁹ DH-DD(2015)14.

³⁶⁰ DH-DD(2015)164 - Communication from the Romanian authorities - Action plan - 29.01.2015.

³⁶¹ Application no. 22088/04, judgment of 6 December 2007, list of cases of March 2015.

³⁶² 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.

³⁶³ DH-DD(2011)301F (in French only).

³⁶⁴ DH-DD(2012)388.

³⁶⁵ 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.

³⁶⁶ *Ibid*, items 2-3 of the decisions.

³⁶⁷ CM/Inf/DH(2012)13.

³⁶⁸ *Supra* note 365, item 4 of the decisions.

³⁶⁹ Application no. 35972/05, judgment of 24 July 2012, paragraphs 196-197.

judgment and the CM assessment of the adopted measures, in September 2012 the Government adopted new lines of priority action to resolve the structural problem in question; they also set up a working group to monitor their implementation. Moreover, Romania became a beneficiary of the HRTF Project No. 18 aimed at implementing ECtHR judgments revealing structural problems in the field of detention on remand and effective remedies to challenge conditions of detention.

137. A revised action was submitted to the CM in October 2014,³⁷⁰ which was assessed by the Deputies at their 1222nd (DH) meeting (11-12 March 2015).³⁷¹ The CM noted with interest the measures taken by the authorities as part of the reform of the State's criminal law policy. However, the CM considered with concern that the legislative measures adopted were not sufficient, regarding the severity of overcrowding in detention facilities and noted that the authorities maintained the system of detention on remand in police detention facilities, despite the fact that a part of these facilities were not suitable for detention. It also noted that the information provided to that date by the authorities did not allow for a conclusion that the available procedures represented adequate and effective remedies. Thus, the CM urged the authorities to rapidly define and implement appropriate additional measures and to provide information on the strategy they envisaged to put in place for the implementation of these judgments by 1 June 2015 at the latest and encouraged them to draw inspiration from the solutions proposed in the framework of the relevant project of the "Human Rights" Trust Fund.

138. Moreover, the CPT, after its visit to Romania in September 2010, raised concerns about several shortcomings regarding conditions of detention in its report.³⁷² 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), the poor 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.³⁷³ Furthermore, the CPT made several recommendations concerning deficiencies in the provision of medical services.

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

139. There are currently over 20 cases concerning this issue before the Committee of Ministers.³⁷⁴ In the *Barbu Anghelescu* group of cases the Court found violations of the Convention on account of several issues, including ill-treatment of the applicants in police custody, lack of effective investigation into the abuses and racially motivated treatment of detainees of Roma origin (violations of Articles 3, 13 and 14 taken in conjunction with 3 and 13). In the case of *Carabulea v. Romania*, it found a substantive violation of Article 2, as the applicant had died due to the ill-treatment by law enforcement authorities.³⁷⁵

140. On 9 January 2013 the Romanian authorities submitted an action plan for execution of this group of judgments,³⁷⁶ but the CM Secretariat found multiple deficiencies in it.³⁷⁷ First of all, the fundamental procedural safeguards against ill-treatment, comprised of the right to have access to legal and medical assistance and the right to inform a third party of the apprehension, continued to apply only to those individuals who have been formally remanded. Issues were 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 that 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.

³⁷⁰ [DH-DD\(2014\)1369](#).

³⁷¹ [1222nd \(DH\) meeting \(11-12 March 2015\)](#).

³⁷² *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](#).

³⁷³ *Ibid*, paragraphs 41-47.

³⁷⁴ *Barbu Anghelescu v. Romania*, Application no. 46430/99, judgment of 5 October 2004 ; see [list of cases](#).

³⁷⁵ Application no. 45661/99, judgment of 13 July 2010

³⁷⁶ Communication from Romania, 15 January 2013, [DH-DD\(2013\)35E](#).

³⁷⁷ For a full assessment of this information, see the information document prepared by the CM Secretariat [CM/Inf/DH\(2013\)8](#).

141. 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.

142. At its 1164th meeting (DH) in March 2013, the Committee of Ministers requested further information on individual and general measures from the Romanian authorities.³⁷⁸ It underlined the need for systematic action in line with a policy of "zero-tolerance" of acts contrary to Articles 2 and 3 of the Convention.³⁷⁹ On 17 July 2013, Romanian authorities provided information on individual measures adopted in the case.³⁸⁰ In the course of 2014, bilateral consultations between the authorities and the CM Secretariat were pursued, taking into account the impact of the entry into force of a new Criminal Code and a new Code of Criminal Procedure on 1 February 2014.³⁸¹

5.6. Other areas of specific concern

143. The CM 2014 Annual Report also points out other cases involving important structural and/or complex issues. Most of these cases concern violations of Articles 2 or 3 of the Convention and reveal the following problems: the ineffectiveness of criminal investigations into violent crackdowns on anti-governmental demonstrations related to the fall of the communist regime in the context of the group of cases *Association '21 Decembre 1989' and Maries v. Romania*³⁸² (mainly procedural violations of Article 2), lack of appropriate judicial and social protection and medical care for a seropositive man of Roma origin, diagnosed with "profound intellectual disability", who died in 2004 in a psychiatric facility (violations of Article 2 and 13) in the case of *Centre for Legal resources on behalf of Valentin Câmpeanu*,³⁸³ the inadequacy of the detention regime of "dangerous" prisoners (violation of Article 3) in the case of *Enache v. Romania*³⁸⁴ and the inadequate management of psychiatric conditions of detainees in prison (violation of Article 3 in the group of cases of *Țicu v. Romania*).³⁸⁵

6. Greece

144. According to the Pourgourides report, the most serious problems concerning Greece included:

- 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.³⁸⁶

145. 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. They are also mentioned in the CM 2014 Annual Report.

146. Additionally, the CM 2014 Annual Report lists poor conditions of detention in prisons as an important issue.

6.1. Excessive length of proceedings

147. At present over 320 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).³⁸⁷ 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

³⁷⁸ 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.

³⁷⁹ Item 4 of the decision.

³⁸⁰ [DH-DD\(2013\)900](#).

³⁸¹ CM 2014 Annual Report, p. 10.

³⁸² Application no. 33810/07, Grand Chamber judgment of 24 May 2011.

³⁸³ Application no. 47848/08, Grand Chamber judgment of 17 July 2014.

³⁸⁴ Application no. 10662/06, judgment of 1 April 2014

³⁸⁵ Application no. 24575/10, judgment of 1 October 2013.

³⁸⁶ Supra note 1, paragraph 32.

³⁸⁷ As of March 2014, there were 190 cases concerning length of proceedings before administrative courts and the Council of State. See list of the Manios group cases against Greece, 1193rd (DH) meeting. For the list of cases concerning length of proceedings before criminal courts (76 cases) as of December 2014, see the list of cases concerning the Diamantides No. 2 group, 1214th DH meeting.

victims.³⁸⁸ 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).³⁸⁹ Thus some general measures have been taken or are underway.

148. Law No. 3900/2010, entitled “Rationalisation and acceleration of proceedings before administrative courts and other provisions”, entered into force on 1 January 2011.³⁹⁰ 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.³⁹¹ 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.³⁹²

149. On 6 March 2012, Law No. 4055/2012 providing an acceleratory and a compensatory remedy in cases of excessive length of proceedings before administrative courts and the Council of State was adopted by Parliament before the expiry of the deadline set by the European Court (i.e. 21 March 2012) and entered into force on 2 April 2012.³⁹³ 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 and took note of the Greek authorities’ intention to follow the compensatory remedy’s implementation and to explore if necessary, in the light of its functioning, the opportunity for possible adjustments.³⁹⁴

150. On 08 April 2013, Greek authorities submitted a revised action plan³⁹⁵ recalling that a first set of satisfactory results were obtained within 8 months after the entry into force of law 3900/2010 and that the implementation of Law 4055/2012 resulted in a decrease in the workload of the Council of State. On 1 October 2013, the Court delivered a decision in which it stated that the remedies set out by Law No. 4055/2012 were effective and accessible.³⁹⁶ Following this decision, at its 1193rd (DH) meeting (4-6 March 2014),³⁹⁷ the CM decided to supervise this group of cases under the standards procedure and invited the Greek authorities to provide further information on the concrete impact of the measures aimed at reducing the length of administrative proceedings.³⁹⁸

151. 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**.³⁹⁹ In its judgment, 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

For the list of cases concerning length of proceedings before civil courts (55 cases) as of December 2014, see the [list of cases concerning the Konti-Arvaniti group](#), 1214th DH meeting.

³⁸⁸ Interim Resolution, [CM/ResDH\(2007\)74](#), adopted at 997th meeting of the Committee of Ministers, 6 June 2007.

³⁸⁹ *Vassilios Athanasiou and Others v. Greece*, Application no. 50973/08, judgment of 21 December 2010, paragraphs 36-58.

³⁹⁰ Communication from Greece concerning the case of Athanasiou and others against Greece, [DH-DD\(2011\)349](#) of 16 May 2011.

³⁹¹ Action plan, [DH-DD\(2011\)850F](#) of 17 October 2011 (in French only).

³⁹² 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.

³⁹³ Ibid.

³⁹⁴ Ibid.

³⁹⁵ [DH-DD\(2013\)758](#).

³⁹⁶ Decision on inadmissibility in the case of *Techniki Olympiaki A.E.v. Greece*, Application no. 40547/10.

³⁹⁷ Concerning the general measures, for more information see the document of the Department for Execution of ECtHR Judgments, [H/EXEC\(2014\)1](#) of 7 March 2014.

³⁹⁸ Decision [Cases No. 7](#).

³⁹⁹ *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.

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.⁴⁰⁰

152. Similarly, on 30 October 2012, a pilot judgment was delivered in the case of *Glykantzi v. Greece*,⁴⁰¹ concerning **excessive length of proceedings before civil courts** and the lack of an effective remedy in this respect. The Court requested that Greece put in place an effective remedy for excessively lengthy civil proceedings before 30 January 2014. In the meantime, the ECtHR extended the deadline for the introduction of a remedy in the case of *Michelioudakis* until 30 January 2014⁴⁰² to be in line with the deadline for the execution of the *Glykantzi* pilot judgment.

153. At its 1193rd (DH) meeting (March 2014),⁴⁰³ the CM noted with satisfaction that a law introducing a compensatory remedy was adopted by the Greek Parliament on 13 February 2014 (Law No. 4239/2014) and entered into force on 20 February 2014.

154. In October 2014, the Court delivered a judgment in the case of *Xynos v. Greece*,⁴⁰⁴ in which it found that the above-mentioned compensatory remedy constituted a sufficient response to the State's obligation to establish an effective remedy against excessive length of civil and criminal proceedings as well as the proceeding before the Court of Audit. At its 1214th (DH) meeting (2-4 December 2014), the CM noted that the European Court concluded that the compensatory remedy introduced by Law No. 4239/2014 can be considered effective and accessible and invited the authorities to provide further information on its functioning in practice.⁴⁰⁵

155. As regards measures to reduce the length of civil and criminal proceedings, between 2012 and 2014 the authorities provided a number of submissions to the CM.⁴⁰⁶ As regards civil proceedings, they informed, *inter alia*, about the setting up of a single-judge court of appeals, computerised court management, assessment of judges' performance; as regards criminal proceedings – about the introduction of a single-judge formation, reclassification of certain misdemeanours as petty offences and the inadmissibility of anonymous complaints. The CM examined these measures at their 1172nd (June 2013), 1179th (September 2013) and 1186th (December 2013) meetings (DH). At the 1186th meeting, the CM requested the authorities to provide information (including statistical information) on the impact of these measures on reducing the length of civil and criminal proceedings and reiterated this request at its 1214th meeting in December 2014.⁴⁰⁷ A new updated action plan and an action report were respectively provided in March⁴⁰⁸ and June 2015.⁴⁰⁹

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

156. 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.⁴¹⁰

157. 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

⁴⁰⁰ *Michelioudakis v. Greece*, supra note 399, paragraph 67.

⁴⁰¹ Judgment of 30 October 2012, application no. 40150/09.

⁴⁰² See ECtHR letter, DH-DD(2013)788.

⁴⁰³ CM (DH) decision.

⁴⁰⁴ Application no. 30226/09, judgment of 9 October 2014.

⁴⁰⁵ Decision Cases No. 6.

⁴⁰⁶ For the list of submissions: Greece, Submissions from States, Applicants and NGO/NHRS.

⁴⁰⁷ Decision Cases No. 6.

⁴⁰⁸ DH-DD(2015)324, communication from the Greek authorities, updated action plan, 17.03.2015, cases *Michelioudakis v. Greece* and group *Diamantides n°2 v. Greece*, *Glykantzi v. Greece* and group *Konti-Arvaniti v. Greece*.

⁴⁰⁹ DH-DD(2015)621, communication from the Greek authorities, action report, 02.06.2015, case *Athanasios Vassilios v. Greece* and group of cases *Manios v. Greece*.

⁴¹⁰ 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.

measures to avoid further similar violations of Article 2 of the Convention.⁴¹¹ In particular, Law No. 29/1943 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.⁴¹² 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).⁴¹³

158. 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,⁴¹⁴ disseminating circulars to police stations and prosecutors as reminders of their obligation to effectively investigate human rights violations and training police officers more extensively on human rights issues.⁴¹⁵

159. 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).⁴¹⁶ 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.⁴¹⁷ According to the CM 2014 Annual Report, in November 2014, the authorities provided an action report, which is being assessed.⁴¹⁸

160. It should be noted that, according to some prominent international NGOs, abuse of force by police officers remains a worrying phenomenon in Greece, especially concerning anti-austerity protesters,⁴¹⁹ migrants and asylum-seekers.⁴²⁰ Moreover, the CPT, in its report following its visit to Greece in April 2013, noted that the problem of ill-treatment by the police appeared to be growing and that there was little evidence showing that such abuses had been promptly and thoroughly investigated.⁴²¹ This issue was also examined during its visit to Greece in April 2014.⁴²²

6.3. Conditions of detention of foreigners and asylum procedure

161. In nearly 20 cases, examined by the CM subsequent to the case of *M.S.S v. Belgium and Greece*,⁴²³ the Court found violations of Article 3 due to the conditions under which the applicants (including unaccompanied minors)⁴²⁴ were detained as irregular migrants (overcrowding, lack of beds/mattresses, insufficient ventilation, no regular access to toilets or sanitary facilities, and no outdoor exercise). The case of *M.S.S. v. Belgium and Greece*⁴²⁵ 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). Moreover, in October 2014, in the case of *Sharifi and Others v. Italy and Greece*,⁴²⁶ the Court found, amongst others, that Italy violated Article 3, when returning the applicants to Greece, where they had

⁴¹¹ CM/Inf/DH (2012)40 of 27 November 2012.

⁴¹² Law No. 3169/2003.

⁴¹³ By-law No. 3938/2011.

⁴¹⁴ Presidential decree No. 120/2008. It entered into force in September 2008.

⁴¹⁵ Supra note 411.

⁴¹⁶ Idem. It was established within the Ministry of the Citizen Protection.

⁴¹⁷ Supra note 410.

⁴¹⁸ P. 99.

⁴¹⁹ Serious incidents were reported at demonstrations in Athens in May in June 2011, as well as in April 2012 and November 2014.

⁴²⁰ Human Rights Watch, "Greece needs 'zero tolerance' approach to police violence", by Eva Cossé, 17 October 2012 and Amnesty International, "Greek authorities must send a strong message against cases of police abuse", public statement of 24 October 2012, and its statement of 21 November 2014 "Greece: Unlawful police violence during protests must end and perpetrators held accountable".

⁴²¹ CPT/Inf (2014) 26 of 16 October 2014, Report to the Greek Government on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 4 to 16 April 2013, pp. 12-23.

⁴²² CPT, News flash of 28 April 2014.

⁴²³ Application no. 30696/09, judgment of 21 January 2011 (Grand Chamber) and other 6 cases from this group as examined at the 1222nd meeting (DH) in March 2015, Decision Cases No. 7. See also cases from the group S.D. v. Greece, Application no. 53541/07, judgment of 11 June 2009. Some of these cases also concern violations of Article 5 due to the irregularities in the applicants' detention.

⁴²⁴ See, for example, *Rahimi v. Greece*, Application no. 8687/08, judgment of 5 April 2011.

⁴²⁵ Supra note 423.

⁴²⁶ Application no. 16643/09, judgment of 21 October 2014.

no access to adequate asylum procedure and were facing deportation to Afghanistan. It also held that there had been a violation of Article 13 in conjunction with Article 3 with respect to Greece.

162. 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,⁴²⁷ and put forward a series of recommendations in its related report on its January 2011 visit to Greece.⁴²⁸ The CPT statement and the response of the Greek authorities were also discussed at the meeting of the CLAHR Sub-Committee on Human Rights on 4 October 2012.⁴²⁹ Following his visit to Greece, the Council of Europe Commissioner for Human Rights Nils 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 (...)”⁴³⁰ In its most recent report on Greece of 2014,⁴³¹ the CPT reiterated its concerns about the conditions of detention of irregular migrants and was particularly critical about the treatment of unaccompanied minors (who are occasionally detained with adults) and the poor conditions in the special holding facilities at the Athens airport, Fylakio and Petrou Ralli.

163. The Greek authorities, some NGOs and the UNHCR submitted a number of communications concerning this group of cases.⁴³² The first measures taken by the Greek authorities were assessed in the Memorandum CM/Inf/DH(2012)19.⁴³³

164. As regards the conditions of detention of asylum seekers and irregular migrants, the Greek authorities informed the CM that irregular migrants were no longer detained in police stations; however, the UNHCR alleges that this is not the case.⁴³⁴ The authorities have also informed the CM about improved medical and psychological care for irregular migrants in a number of detention centres. However, a number of issues still remain. At their 1222nd meeting (DH) in March 2015, although the CM welcomed the improvements made as regards the conditions of detention in pre-return centres and noted the Greek authorities’ statement that aliens subject to deportation were no longer detained at police stations, it urged the authorities to improve the conditions of their detention, in particular at the holding facilities at the Athens airport, Fylakio and Petrou Ralli (as noted by the CPT). It also urged the authorities to ensure, as a matter of priority, the full protection of the rights of unaccompanied minors, so that alternatives to detention are sought for them, taking into account the “best interests of the child”.

165. As regards a remedy allowing asylum seekers and irregular migrants to complain about the conditions of detention, the authorities alleged that they could do so under Article 76 of Law No. 3386/2005. In its admissibility decision of 8 July 2014 in the case of *S.B. v Greece*,⁴³⁵ the Court acknowledged the existence of this remedy; however, it has not yet recognized that it is effective.⁴³⁶ At its 1222nd meeting (March 2015), the CM invited the authorities to ensure that this remedy is effective in practice and to provide developments of domestic case law in this regard.⁴³⁷

166. As regards shortcomings in the asylum procedure, at its 1186th (DH) meeting (3-5 December 2013),⁴³⁸ the CM noted with satisfaction that the three services established by Law No. 3907/2011 -Asylum Service, Appeals Committee and First Reception Centres - had started operating (on 7 June 2013). Since the new asylum system was set up, the old and the new asylum regimes co-exist⁴³⁹ and the backlog of the applications lodged before 3 June 2013 is examined by a committee composed of police officers and, if appropriate, by second instance committees. At their 1222nd meeting (DH) in March 2015, the CM noted with interest the positive impact of the new asylum services on the effectiveness of the asylum procedure. It also

⁴²⁷ CPT Public Statement concerning Greece, CPT/Inf (2011) 10 of 15 March 2011.

⁴²⁸ 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.

⁴²⁹ See Synopsis of the Committee’s meeting in Strasbourg held from 1-4 October 2012, AS/Jur(2012) CB 07 of 9 October 2012.

⁴³⁰ “Greece Must Curb Hate Crime and Combat Impunity”, HR Commissioner’s statement of 16 April 2013.

⁴³¹ Supra note 428.

⁴³² Greece: Submissions from States, Applicants and NGO/NHRS.

⁴³³ CM/Inf/DH(2012)19 of 29 May 2012.

⁴³⁴ See H/Exec(2015)6rev.

⁴³⁵ Application no. 73554/2011.

⁴³⁶ *Mahammad v. Greece*, Application no. 48352/12, judgment of 15 January 2015, paragraph 67. See also H/Exec(2014)4rev.

⁴³⁷ Item 8 of the decision.

⁴³⁸ CM (DH) decision.

⁴³⁹ For more details about the new system see H/Exec(2014)4rev.

called on the authorities to fully protect the rights of minors through an effective guardianship system, guarantee the right to free legal aid and eliminate the backlog of cases lodged before 7 June 2013.⁴⁴⁰

167. It should be noted that in its report of 30 January 2015,⁴⁴¹ the UNHCR commended Greece for reforming its asylum system despite tough economic and political times. However, it also pointed out numerous gaps and concerns and recommended to EU member states not to return asylum seekers to Greece under the Dublin Regulation. The problems persist and have been worsened due to the recent dramatic increase in refugee and migrant arrivals (mainly by sea) from Syria, Afghanistan, Eritrea and Somalia.⁴⁴² The issue of irregular migrants coming to Europe by crossing the Mediterranean or otherwise has been debated by the Assembly on many occasions in the last few years.⁴⁴³

6.4 Freedom of association

168. 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,⁴⁴⁴ and to the dissolution of an association promoting the idea that a Turkish ethnic minority exists in Greece (violations of Article 11).⁴⁴⁵

169. 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 were pending at that time.⁴⁴⁶ The cassation appeal lodged by the association *Tourkiki Enosi Xanthis* was rejected by the Court of Cassation,⁴⁴⁷ 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.⁴⁴⁸

170. 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.⁴⁴⁹ 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" association's 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 to recognise the association in question.⁴⁵⁰ 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.⁴⁵¹

171. 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

⁴⁴⁰ Items 2-4 of the decision.

⁴⁴¹ [DH-DD\(2015\)147](#).

⁴⁴² See also Amnesty International Report of 21 April 2015, [Europe's sinking shame: The failure to save refugees and migrants at sea](#).

⁴⁴³ See, for example, Resolution 2050 (2015) "The human tragedy in the Mediterranean: immediate action needed", adopted on 23 April 2015 and report by Mr Thierry Mariani (France, EPP/CD), Committee on Migration, Refugees and Displaced Persons, Doc. 13764 of 21 April 2015; Recommendation 2028 (2013) on "Monitoring the return of irregular migrants and failed asylum seekers by land, sea and air", adopted on 22 November 2013 by the Standing Committee and report by Ms Anne-Mari Virolainen (Finland, EPP/CD) from the same committee, Doc. 13351 of 7 November 2013 and Resolution 1918 (2013) and Recommendation 2010 (2013), on "Migration and asylum: mounting tensions in the Eastern Mediterranean", report by Ms Tineke Strik (Netherlands, SOC) from the same committee, doc. 13106 of 23 January 2013.

⁴⁴⁴ *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.

⁴⁴⁵ *Tourkiki Enosi Xanthis and Others v. Greece*, Application no. 26698/05, judgment of 27 March 2008.

⁴⁴⁶ According to their representative, see [DH-DD\(2012\)1085](#) of 22 November 2012.

⁴⁴⁷ By judgment of 353/2012.

⁴⁴⁸ 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.

⁴⁴⁹ [DH-DD\(2012\)1022](#) of 5 November 2012 (in French only).

⁴⁵⁰ [DH-DD\(2012\)625](#) of 22 June 2012.

⁴⁵¹ *Ibid.*

without excluding any avenue in that respect".⁴⁵² It also invited the Greek authorities to provide precise and concrete information on the measures taken or envisaged.⁴⁵³ On 8 April 2013 the Greek government submitted new information.⁴⁵⁴

172. At its 1186th (DH) meeting (3-5 December 2013),⁴⁵⁵ the CM noted that, following the judgments of the ECtHR, the court proceedings brought by the applicant associations in the cases *Bekir-Ousta and Others* and *Emin and Others* did not lead to the expected results, the applicants' appeals in cassation, as in the case of *Tourkiki Enosis Xanthis*, have also been dismissed on procedural grounds without an examination on the merits. The CM further noted with dissatisfaction that the avenue consisting of amending the code of civil procedure in order to implement the individual measures of the present judgments appeared to be still under consideration. As the Greek authorities had not provide further information, at its 1201st meeting in June 2014, the CM adopted an interim resolution in this group of cases.⁴⁵⁶ The CM recalled that since June 2013 the authorities had been considering "the most appropriate solution" to implement individual measures and strongly regretted that no concrete and tangible information had been provided in this respect. Therefore, it called upon the authorities to take, without further delay, all necessary measures so that the applicants benefit from proceedings compliant with the Convention requirements. So far, no reply has been provided by the authorities to this interim resolution.

173. 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.⁴⁵⁷ 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".⁴⁵⁸

6.5. Other outstanding issues

174. The CM is currently examining under the enhanced supervision procedure a number of cases concerning poor conditions of detention (mainly due to overcrowding) in the Ioannina, Korydallos and Larissa prisons (violations of Article 3). In the *Nisiotis v. Greece* judgment,⁴⁵⁹ the Court found that overcrowding in prisons appeared to be a structural problem in Greece. This issue was also pointed out in the latest CPT's report on Greece of 2014.⁴⁶⁰ The CM examined this group of cases for the last time at their 1230th meeting (DH) in June 2015.

175. Since 2006, the CM has been examining a number of cases (*Beka-Koulocheri v. Greece*)⁴⁶¹ concerning failure or considerable delay in the enforcement of final domestic judgments and absence of effective remedies in this respect (violations of Articles 6§1 and 13). Most of these cases concern non-implementation of domestic judgments concerning lifting of expropriation. The CM examined this group of cases for the last time at their 1214th meeting (DH) in December 2014.⁴⁶²

7. Poland

176. Mr Pourgourides' report pointed out two main structural issues in Poland: excessive length of proceedings and lack of an effective remedy and excessive length of detention on remand.⁴⁶³

⁴⁵² Item 3, *supra* note 12.

⁴⁵³ *Ibid*, item 4.

⁴⁵⁴ [DH-DD\(2013\)452](#).

⁴⁵⁵ [Decision of the CM at its 1186th \(DH\) meeting](#).

⁴⁵⁶ Interim Resolution [CM/ResDH\(2014\)84](#) adopted on 5 June 2014.

⁴⁵⁷ 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.

⁴⁵⁸ 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.

⁴⁵⁹ Application no. 34704/08, judgment of 10 February 2011. For the group of cases, see the CM [decision](#) adopted at their 1172nd meeting (DH) (4-6 June 2013).

⁴⁶⁰ *Supra* note 428.

⁴⁶¹ Application no. 38878/03, judgment of 6 July 2006.

⁴⁶² [Decision Cases No. 7](#) adopted at the 1214th meeting (DH), 2-4 December 2014.

⁴⁶³ *Supra* note, paragraph 75.

177. 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.⁴⁶⁴ Since then, the Committee of Ministers considered that the authorities had taken sufficient measures to implement judgments concerning excessive length of detention on remand (the *Trzaska v. Poland*⁴⁶⁵ and *Kauczor v. Poland*⁴⁶⁶ group of 173 cases⁴⁶⁷) and unfairness of lustration proceedings (*Matyjek v. Poland* group of cases)⁴⁶⁸ and closed the examination of the cases from these groups. However, other issues turned out to be problematic (see below). During my visit to Warsaw (3-5 December 2014), I discussed all these problems with the competent authorities and representatives of NGOs (Helsinki Foundation of Human Rights and the Warsaw Bar Association).

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

178. 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.⁴⁶⁹ Since then, further information has been provided as regards progress on reducing the length of criminal⁴⁷⁰ (*Kudła v. Poland* and other cases) and civil proceedings (*Podbielski v. Poland* and other cases)⁴⁷¹ as well as proceedings before administrative authorities and courts (*Fuchs v. Poland* and other cases).⁴⁷²

179. On 22 November 2011, the Polish authorities submitted an action plan⁴⁷³ concerning the *Kudła v. Poland*⁴⁷⁴ and *Podbielski v. Poland*⁴⁷⁵ groups of cases, and on 23 November 2011 they submitted a separate action plan concerning the *Fuchs v. Poland*⁴⁷⁶ group of cases.⁴⁷⁷ 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),⁴⁷⁸ as well as statistical information on the matter of length of proceedings up to 2010. At its 1128th DH meeting (November-December 2011),⁴⁷⁹ the CM noted these measures.

180. In October 2012, the Court communicated to the Polish authorities five cases (*Suchecky v. Poland*⁴⁸⁰ and four other cases) concerning excessive length of proceedings and the effectiveness of the domestic remedy introduced in 2004. The Court applied the pilot-judgment procedure and asked the authorities whether the communicated cases showed a systemic problem consisting in the malfunctioning of the Polish judicial practice in that the courts did not comply with its criteria stemming from the Convention. At that date, some 400 cases concerning this problem were pending before the Court.

181. An updated action plan concerning the *Kudła v. Poland* and *Podbielski v. Poland* groups of cases was submitted by the authorities on 4 July 2013.⁴⁸¹ The authorities confirmed that they were pursuing the measures announced in 2011 and presented a number of new legislative measures aimed at the simplification and acceleration of proceedings; the transfer of responsibilities from judges to non-judicial officers and from the courts' jurisdiction to other legal professions, such as public notaries. According to the statistics concerning all types of cases provided for 2012, the courts managed to deal with a number of cases that was higher than that of the incoming ones. This led to a reduction in the backlog of pending cases

⁴⁶⁴ Supra note, paragraphs 86-91.

⁴⁶⁵ Application no. 25792/94, judgment of 11 July 2000.

⁴⁶⁶ Application no. 45219/06, judgment of 3 February 2009.

⁴⁶⁷ Resolution CM/ResDH(2014)268 adopted on 4 December 2014.

⁴⁶⁸ *Matyjek v. Poland*, Application No. 38184/03, judgment of 24 April 2007.

⁴⁶⁹ Supra note, paragraph 80.

⁴⁷⁰ See "Kudła group of cases against Poland – 70 cases mainly concerning the length of criminal proceedings and the lack of an effective remedy, 1179th (DH) meeting, September 2013. According to the CM 2014 Annual Report, there were 107.

⁴⁷¹ See "Podbielski group against Poland – 237 cases of length of civil proceedings before civil and labour courts, 1179th (DH) meeting, September 2013. According to the CM 2014 Annual Report, there were 268.

⁴⁷² See "Fuchs group against Poland – 84 cases of length of proceedings concerning civil rights and obligations before administrative bodies and courts, 1179th (DH) meeting, September 2013. According to the CM 2014 Annual Report, there were 82.

⁴⁷³ Action plan, DH-DD(2011)1074 of 24 November 2011.

⁴⁷⁴ Application no. 30210/96, judgment of 26 October 2000.

⁴⁷⁵ Application no. 27916/95, judgment of 30 October 1998.

⁴⁷⁶ Application no.33870/96, judgment of 11 May 2003.

⁴⁷⁷ Action plan, DH-DD(2011)1073 of 24 November 2011.

⁴⁷⁸ Supra note 471, pp. 4-6.

⁴⁷⁹ Decisions by the Committee of Ministers concerning the Podbielski, Kudła, and Fuchs groups of cases, 1128th (DH) meeting, 29 November-2 December 2011, CM/Del/Dec(2011)1128/15 of 2 December 2011.

⁴⁸⁰ Application no 23201/11.

⁴⁸¹ DH-DD(2013)787 of 4 July 2013.

for the first time in recent years. In 2012, Polish courts had completed over 14 million cases but, as of 31 December 2012, there was still a backlog of over 1,8 million cases⁴⁸².

182. The updated action plan also sets out information on the effectiveness of the domestic complaint against excessive length of proceedings introduced in 2004 and further improved by a legislative amendment in 2009. The Polish authorities are of the opinion that courts were taking into account the Court's case law to a greater extent, and between 2009 and 2010, the number of such complaints increased by nearly 35%,⁴⁸³ between 2010 and 2011 – by 23% and between 2011 and 2012 – by 32%.⁴⁸⁴ In 2012, the percentage of well-founded complaints amounted to nearly 18%, and, in 95% of these complaints, applicants had been awarded pecuniary compensation.⁴⁸⁵ Most of the complaints concern civil proceedings (62%, compared with 25% for criminal proceedings). In its Resolution of 28 March 2013,⁴⁸⁶ the Supreme Court stated that courts should take into account the overall length of proceedings when examining allegations of excessive length of proceedings. In its communication to the Committee of Ministers of 6 December 2013,⁴⁸⁷ the Polish Bar Council complained that court proceedings were often protracted and that the domestic remedy was not efficient, because of the “fragmentation of proceedings” (i.e. not taking into account the overall length of proceedings), the incomplete reasoning of court decisions and the lack of indication on how to accelerate proceedings as well as the low level of granted compensation (although the law provides that such compensation may vary between 500 and 5,000 EUR, courts award at the level of 700-1000 EUR).

183. When assessing that Action plan at the 1179th meeting in September 2013,⁴⁸⁸ the Deputies further encouraged the authorities to “develop a clear strategy” in order to maintain the positive trend concerning the reduction of the backlog of pending cases. However, they expressed serious concern as regards the functioning of the domestic remedy, considered that further corrective measures were needed in this respect and called upon the authorities to conduct an in-depth reflection on the measures needed and provide an updated action plan. In response the authorities submitted an updated action plan to the Committee of Ministers on 26 May 2015⁴⁸⁹.

184. Concerning the excessive length of administrative proceedings, the statistical information included in the action plan on the *Fuchs* group of cases of 2011 reveals that administrative courts usually completed complaints about the inactivity of administrative authorities within 3-6 months⁴⁹⁰ and that the workload of the Supreme Administrative Court remained stable.⁴⁹¹ In 2011, a new law on financial liability of public officials for gross violation of law⁴⁹² and new amendments to the Code of Administrative Procedure (“CAP”) entered into force. 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 (Article 37 of the Code of Administrative Procedure). However, this new remedy has no compensatory effect (in contrast the above-mentioned remedy introduced in 2004 applies to excessively lengthy proceedings before administrative courts.).

185. This action plan and this group of cases were discussed at the CM's 1128th DH meeting (November-December 2011)⁴⁹³ and at its 1179th meeting on 26 September 2013.⁴⁹⁴ In its decision adopted at the latter meeting, the Deputies expressed concern about the lack of new information and about the overall situation, noting that the number of cases pending before administrative courts had increased and that there was no information available on the length of proceedings before administrative bodies. They also underlined that this issue had been pending before the Committee of Ministers for more than ten years.

⁴⁸² Statistics as of the end of the third quarter of 2013 were presented on 15 January 2014, see DH-DD(2014)145, in response to a communication from the Polish Bar Council.

⁴⁸³ Ibid, p. 9. In 2010, courts completed 96.3% of the incoming complaints concerning excessive length of proceedings.

⁴⁸⁴ DH-DD(2013)787 of 4 July 2013, p. 18.

⁴⁸⁵ In 1,453 complaints, as compared with 1; 167 in 2011, 926 in 2010 and 588 in 2009.

⁴⁸⁶ Case no. III SPZP 1/13.

⁴⁸⁷ DH-DD(2014)146 of 30 January 2014.

⁴⁸⁸ CM/Del/OJ/DH(2013)1179/13 of 26 September 2013, decision No 11.

⁴⁸⁹ Action plan DH-DD(2015)618.

⁴⁹⁰ 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.

⁴⁹¹ Supra note 477, pp. 2 and 5.

⁴⁹² Law of 20 January 2011, *ibid*.

⁴⁹³ 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.

⁴⁹⁴ CM/Del/OJ/DH(2013)1179/13 of 26 September 2013, decision No 12.

186. In January 2014, the authorities provided an updated action plan,⁴⁹⁵ with an update on the use of the new remedy from Article 37 of the CAP, statistics concerning proceedings before administrative courts and supervisory and organisational measures taken within them. It results thereof that the number of complaints based on Article 37 of the CAP, including admissible ones, has been on a constant rise. In 2012, regional administrative courts settled most of the cases (78%) within one year, but, despite their efficiency, they still had a backlog of unsolved cases at the end of 2012. The same could be said about the Supreme Administrative Court, which had to deal with a constantly increasing number of cassation appeals (47% of them had been examined within one year and 53% within a period of between 12 and 24 months). No information has been provided on the length of proceedings before administrative bodies. In April 2015, the authorities provided an updated action plan.⁴⁹⁶

187. During my visit to Warsaw, the authorities told me that they were doing their utmost to eradicate the chronic problem of excessive length of judicial proceedings, despite the high number of incoming court cases (nearly 15 million per year). Representatives of the Ministry of Justice stated that it was, to some extent, related to the deficiencies in the court experts' system and that the authorities intended to review the legislation governing their status. As regards criminal proceedings, new provisions in the Code of criminal procedure would enter into force on 1 July 2015 and they would shorten the length of proceedings, by introducing adversarial procedures. Awareness raising measures – such as training sessions for judges and prosecutors or publications concerning the Convention and the ECtHR case law- were being taken. In March 2014, the Ministry of Foreign Affairs, the Ministry of Justice, the Supreme Administrative Court and the Constitutional Court signed an agreement on sharing Polish translations of ECtHR judgments and other relevant information. Concerning the effectiveness of the domestic remedy against excessive length of judicial court proceedings (in particular the “fragmentation of proceedings” and too low compensations), I raised this issue with the President and judges of the Supreme Court. As regards administrative proceedings, I was informed during my meeting in the Supreme Administrative Court that their excessive length was mainly due to the inactivity of administrative bodies and that a further reform of the proceedings before administrative courts was pending.

7.2. Outstanding issues

7.2.1. Poor conditions of detention

188. 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 *Norbert Sikorski v. Poland*)⁴⁹⁷ and the lack of adequate medical care (*Kaprykowski v. Poland* and other cases),⁴⁹⁸ 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.⁴⁹⁹

189. On 17 March 2010⁵⁰⁰ and on 12 September 2011,⁵⁰¹ the Polish authorities submitted action plans concerning the cases of *Orchowski* and *Norbert Sikorski*.⁵⁰² The second action plan demonstrated a decline in the number of detainees combined with a solid increase in prison and remand centre holding capacity from 2006 to July 2011.⁵⁰³ Moreover, the ECtHR delivered two inadmissibility decisions in 2010, where it found that an effective remedy against detention facility overcrowding was available (civil action for 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.⁵⁰⁴

⁴⁹⁵ [DH-DD\(2014\)102](#) of 21 January 2014.

⁴⁹⁶ [DH-DD\(2015\)493](#) of 7 May 2015.

⁴⁹⁷ *Orchowski v. Poland*, application no. 17885/04, judgment of 22 October 2009, and *Norbert Sikorski v. Poland*, application no. 17599/05, judgment of 22 October 2009. According to the CM 2014 Annual Report, there were 8 cases in this group.

⁴⁹⁸ *Kaprykowski v. Poland* (application no. 23052/05, judgment of 3 February 2009). According to the CM 2014 Annual Report, there were 9 cases in this group.

⁴⁹⁹ *Orchowski v. Poland*, paragraph 147.

⁵⁰⁰ [DH-DD\(2011\)627](#) of 11 August 2011.

⁵⁰¹ Action plan, [DH-DD\(2011\)709E](#) of 12 September 2011.

⁵⁰² Action plan, [DH-DD\(2011\)709E](#) of 12 September 2011.

⁵⁰³ *Ibid.*, p.3.

⁵⁰⁴ 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.

190. At its 1120th meeting (September 2011),⁵⁰⁵ the CM noted those elements and highlighted that, as regards the *Orchowski* and *Norbert Sikorski* cases, 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.⁵⁰⁶ At its 1164th meeting (March 2013), the CM invited the Polish authorities to provide consolidated action report including the outstanding information⁵⁰⁷ and, in August 2014, the authorities provided a consolidated action report, in which they indicated, inter alia, that new accommodation places for detainees had been acquired between 2006 and 2010 and that improvements in using the electronic surveillance of convicts had been made both at the legislative and the organisational level. The authorities also pointed out that the occupancy rate in prisons and remand centres was of 98% as of 31 December 2012 and of 96,4% - as of 30 April 2013 (according to the Polish statutory living space standard of 3 m² per inmate).

191. 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.⁵⁰⁸ 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 capacity.⁵⁰⁹ The overall figures may hide important regional differences or reflect differences in the methods used to compile statistics. This also stems from the submission of NGOs,⁵¹⁰ which find that the current situation is contrary to the principle of the rule of law and advocate reviewing the practice of applying pre-trial detention and non-custodial measures rather than the creation of new detention facilities. When assessing this information at its 1164th meeting (March 2013) the Committee of Ministers also noted with interest the authorities' commitment to continue their efforts to take into account the recommendations of the CPT, notably in respect of living space. In the report on its visit to Poland in June 2013, the CPT confirmed that overcrowding remained a problem in all the prisons visited. It called upon the authorities to double their efforts to combat this negative phenomenon and to revise as soon as possible the current legislation for living space per prisoner (i.e. 3 m²).⁵¹¹

192. A first action report/plan on the *Kaprykowski* group of cases was submitted to the CM in March 2010⁵¹² and then supplemented on 12 September 2011.⁵¹³ Additional information was provided by the government on 11 January 2013.⁵¹⁴ 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.⁵¹⁵ 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.⁵¹⁶ Further information was provided to the CM in January 2013.⁵¹⁷ In its decision adopted at the 1164th CM-DH meeting (5-7 March 2013), the Deputies noted with interest the newest developments presented by the authorities, including the systematic growth of

⁵⁰⁵ 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.

⁵⁰⁶ [DH-DD\(2013\)88](#).

⁵⁰⁷ Item 6 of the decision.

⁵⁰⁸ 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.

⁵⁰⁹ 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.

⁵¹⁰ [DH-DD\(2013\)798](#) of 11 July 2013, Communication from the Helsinki Foundation for Human Rights and the Association for Legal Intervention. In this respect, see also communication from the Polish authorities [DH-DD\(2013\)867](#) of 19 August 2013.

⁵¹¹ [CPT/Inf \(2014\)21](#) of 25 June 2014, pp. 59-61.

⁵¹² [Communication from the Polish authorities](#) of 26 February 2010.

⁵¹³ Action plan, [DH-DD\(2011\)710E](#) of 12 September 2011.

⁵¹⁴ Communication from Poland concerning the *Kaprykowski* group of cases, [DH-DD\(2013\)89](#).

⁵¹⁵ *Ibid.*, p. 4-6.

⁵¹⁶ *Ibid.*, p. 3. The decree entered into force on 3 January 2011.

⁵¹⁷ [DH-DD\(2013\)89E](#)

expenditure on healthcare services in prisons, but considered that additional information was still needed to clarify the scope and the impact of these measures and concerning the remedies available to detainees in relation to access to healthcare.⁵¹⁸ According to the Polish Bar Council,⁵¹⁹ the legislation currently in force constitutes a sufficient basis for guaranteeing adequate medical healthcare to detainees, but the problem stems from extra-legal circumstances, including the lack of sensitivity of some penitentiary officers. In response to this, the authorities indicated that the Central Board of Penitentiary Service organised numerous training sessions for prison staff. Following its visit to Poland in June 2013, the CPT observed that in some prisons health-care services were not adequate and that complaints in gaining access to these services were heard in all visited prisons.⁵²⁰

193. During my visit in Warsaw, the authorities informed me that the number of detainees had decreased (with 90% population density in prisons), but they still had to tackle the problem of “queues to prisons”. That is why electronic surveillance was being used more and more often, with over 30,000 persons having been monitored since 2009 and nearly 4,600 being currently monitored. The Ministry of Justice proposed to build new facilities outside big cities and MPs from the Justice and Human Rights Committee were in favour of this initiative. The authorities also reckoned that they needed a couple of years to reach the CPT’s standard of 4m² per inmate and that health care facilities in detention centres should be further improved.

7.2.2. Violation of the right to freedom of assembly

194. In the case of *Bączkowski and others v. Poland*,⁵²¹ 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.⁵²²

195. Whilst a number of execution measures have been taken, the lack of an effective remedy against local authorities’ refusal to hold an assembly still remains an issue. According to the action plan submitted on 17 February 2012,⁵²³ interim measures (mainly a broad dissemination of the ECtHR judgment) were in place, whilst awaiting a final legislative solution.

196. Following proposals submitted by the Polish President, amendments to the 1990 Assemblies Act were adopted on 14 September 2012 by the Sejm. However, it was still possible for the organisers of an assembly to receive the decision of the appellate body after its planned date. On 18 September 2014, the Constitutional Court delivered a judgment on the constitutionality of the Assemblies Act as amended.⁵²⁴ As regards the appellate procedure in case of a ban on an assembly, it ruled that “the legislators not only failed to set out a proper deadline for state administration bodies to take action, but also entirely prevented a possibility to judicially review negative decisions issued by such bodies. Therefore, it is impossible to consider the existing appellate procedure effective”. A draft law to implement this judgment of the Constitutional Court was issued by the Ministry of Administration and Digitalisation in March 2015 the details of which are set out in the authorities revised action plan submitted to the Committee of Ministers on 27 April 2015.⁵²⁵ During my visit in Warsaw, I discussed this issue at length with the Minister of Administration and Digitalisation – Mr Andrzej Halicki, a former member of the Assembly and head of the Polish delegation to PACE.

7.3. Other outstanding issues

197. A few cases concerning treatment inflicted by the police - between 1997 and 2006 - and lack of effective investigation in this respect (substantive and procedural violations of Art. 3)⁵²⁶ are pending before the Committee of Ministers, which, at its 1201st meeting (3-5 June 2014), decided to transfer them from the standard to the enhanced procedure, in the light of the judgment delivered by the Court in the *Przemysk* case.⁵²⁷ In the latter judgment, the Court considered that the excessive length of judicial proceedings and delays in investigating alleged violations of human rights protected under Articles 2 and 3 of the Convention

⁵¹⁸ Items 2-4 of the decision in the *Kaprykowski* group of cases.

⁵¹⁹ DH-DD(2014)140 of 30 January 2014, submission by the Polish bar Council and the Government’s response.

⁵²⁰ CPT/Inf (2014)21, paragraphs 73-78.

⁵²¹ Application no. 1543/06, judgment of 3 May 2007.

⁵²² Ibid, paragraph 70.

⁵²³ Action plan, DH-DD(2012)362 of 3 April 2012.

⁵²⁴ Case No. K 44/12

⁵²⁵ Action plan, DH-DD(2015)492 of 7 May 2015.

⁵²⁶ *Dzwonkowski v Poland*, Application No 46702/99, judgment of 12 April 2007 and 7 other cases.

⁵²⁷ In the *Przemysk v. Poland*, Application No 22426/11, judgment of 17 September 2013.

are an object of recurrent complaints brought before the Court and noted that this appears to disclose a structural problem which calls for adequate general measures to be taken. During my visit in Warsaw, I raised this problem during my discussion with the Prosecutor General; he stressed that, although he was entitled to take disciplinary measures against prosecutors, since a reform of 2009, he had only limited powers to influence pending investigations.

198. The excessive length of investigations was also, *inter alia*, criticised by the Court in the cases *Al Nashiri and Husayn (Abu Zubaydah)*⁵²⁸ concerning secret rendition and detention by the CIA in Poland of the applicants who were suspected of terrorist acts. In both cases, the Court found violations of Article 3 (in both its substantive and procedural aspects), Article 5, Article 8, Article 13⁵²⁹, Article 6§1, Article 38, and in *Al Nashiri*, Article 1 of Protocol 6 of the Convention. The implementation of these judgments is now being supervised by the CM⁵³⁰ (see its decision taken at the 1222nd meeting, on 12 March 2015). The authorities have paid just satisfaction in the case of *Al Nashiri* and, as regards the *Husayn* case, they submitted a motion for deposit to the relevant domestic court (the Polish law does allow to make payments to persons who, like the applicant, are on EU and UN sanctions lists).⁵³¹ Although the Polish authorities acknowledged the existence of CIA secret detention centres on the Polish territory⁵³², during my visit to Warsaw, I got only evasive answers concerning this issue.

199. Moreover, the Committee of Ministers is also examining the *Horych* group of cases concerning “dangerous detainee” regime that the Court found contrary to Articles 3 and 8 of the Convention.⁵³³ At its 1208th meeting (23–25 September 2014), the CM noted that some legislative amendments were envisaged by the Polish authorities and invited them to submit the further information to assess this group of cases at one of their meetings in 2015.

8. Hungary

200. According to the CM 2014 Annual Report, the most serious problems concerning Hungary are:

- excessive length of proceedings;
- overcrowded detention facilities amounting to ill-treatment;
- discriminatory assignment of children of Roma origin to schools for children with mental disabilities during their primary education.⁵³⁴

8.1 Excessive length of proceedings

201. Since 2003, over 230 judgments against Hungary have been pending execution concerning excessive length of civil and criminal proceedings and the lack of an effective remedy in this respect.⁵³⁵ Hungarian authorities adopted a series of measures including a law providing for acceleratory remedies in 2006 and laws to improve the functioning of the judiciary in 2009, 2010 and 2011. Nevertheless, the problem persisted, and at its 1136th meeting (DH) in March 2012, the CM transferred the cases to enhanced supervision in light of the structural nature of the issue.⁵³⁶

202. Hungarian authorities submitted an action plan in December 2012,⁵³⁷ which highlighted that the Court found the acceleratory remedy in criminal proceedings effective in certain circumstances⁵³⁸ and pointed out the serious consideration that was being given to the introduction of a compensatory remedy. In December 2013, the Court delivered a judgment⁵³⁹ in which it found, under Article 46, that in view of the systemic character of the problem at stake, general measures were needed. It pointed out that there were nearly one hundred similar cases pending before it. The Court also called on the Hungarian authorities to either amend the existing domestic remedies or to create new ones. Moreover, in November 2014, the Court

⁵²⁸ Applications Nos 28761/11 and 7511/13, judgment of 24 July 2014.

⁵²⁹ In conjunction with Article 3 in *Al Nashiri*, and in conjunction with Articles 3, 5 and 8 in *Husayn (Abu Zubaydah)*

⁵³⁰ See its decision taken at the 1222nd meeting, on 12 March 2015, case no. 11.

⁵³¹ DH-DD(2015)515 of 20 May 2015, communication from the authorities.

⁵³² See, for example, DH-DD(2015)585 of 4 June 2015, communication from Open Society Justice, p.4.

⁵³³ *Horych v. Poland*, Application No 13621/08, judgment of 17/04/2014 and 3 other cases.

⁵³⁴ See the CM 2014 annual report, *supra* note 3, p. 66.

⁵³⁵ See list of the Timár group cases against Hungary, as of March 2015, 1222nd (DH) meeting.

⁵³⁶ Decisions adopted at the 1136th (DH) meeting, 6-8 March 2012, CM/Del/Dec(2012)1136/11 of 8 March 2012.

⁵³⁷ Action plan, DH-DD(2014)8 of 7 January 2014.

⁵³⁸ *Fazekas v. Hungary*, application no. 22449/08, inadmissibility decision of 28 September 2010.

⁵³⁹ *Barta and Drajkó v. Hungary*, application no. 35729/12, judgment of 17 December 2013 (concerning criminal proceedings), see paragraphs 42 and 47-49.

communicated to the government the case *György Gazsó*,⁵⁴⁰ asking whether that case lent itself to the pilot judgment procedure.

203. Hungarian authorities submitted an updated action plan in January 2015,⁵⁴¹ in which they acknowledged the need for measures to shorten the length of judicial proceedings, improve the effectiveness of existing acceleratory remedies and create a compensatory remedy or a combination of remedies for excessively lengthy proceedings. They also announced their intention to make a decision by March 2015 as to whether to introduce new remedies by separate law or within the content of the ongoing legislative reform of the codes of civil and criminal procedure.

204. The CM, at its 1222nd (DH) meeting (11-12 March 2015), noted with interest the Hungarian authorities' acknowledgement that general measures are required and urged them to intensify their efforts in that respect.⁵⁴² The CM also invited Hungarian authorities to provide their decision regarding the way in which new remedies would be introduced by the end of April 2015. An updated group action plan was submitted on 28 April 2015.⁵⁴³

8.2 Overcrowded detention facilities amounting to ill-treatment

205. In a few cases, violations of Article 3 of the Convention arose due to the conditions of detention facilities, due to multi-occupancy cells measuring less than 4 square meters per person and statutory provisions.⁵⁴⁴ The CM received an action plan from the Hungarian authorities on 22 April 2013,⁵⁴⁵ which was updated on 9 March 2015.⁵⁴⁶ A pilot judgment concerning this issue became final on 10 June 2015.⁵⁴⁷

8.3 Discriminatory assignment of children of Roma origin to schools for children with mental disabilities during their primary education

206. In the case *Horváth and Kiss v. Hungary*, the Court found a violation of Article 2 of Protocol No. 1 read in conjunction with Article 14 with respect to the discriminatory assignment of Roma children to special schools for children with mental disabilities.⁵⁴⁸ In their action plans of October 2013⁵⁴⁹ and January 2014,⁵⁵⁰ the authorities provided information on measures taken so far, including the objective and non-discriminatory nature of the tests applied to evaluate the aptitude and abilities of Roma children and the procedural safeguards against misdiagnosis and misplacement of Roma students.

207. At its 1193rd (DH) meeting (4-6 March 2014), the CM took note of these measures, invited the authorities to provide information on their concrete impact and encouraged them to continue implementing a non-discriminatory education policy.⁵⁵¹ A revised action plan was submitted on 20 May 2015.⁵⁵²

9. Bulgaria

208. 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.⁵⁵³

⁵⁴⁰ Application no. 48322/12.

⁵⁴¹ Action plan, [DH-DD\(2015\)50](#) of 14 January 2015.

⁵⁴² Decisions adopted at the 1222nd (DH) meeting, 11-12 March 2015, [CM/Del/Dec\(2015\)1222/8](#) of 12 March 2015.

⁵⁴³ [DH-DD\(2015\)631E](#).

⁵⁴⁴ *Istvan Gabor and Kovacs v. Hungary*, Application no. 15707/10, judgment of 17 April 2012. See also *Csüllög v. Hungary*, Application no. 30042/08, judgment of 7 September 2011; *Szél v. Hungary*, Application no. 30221/06, judgment of 7 September 2011; *Engel v. Hungary*, Application no. 46857/06, judgment of 2 August 2010, *Hagyó*, Application no. 52624/10, *Fehér*, Application no. 69095/10.

⁵⁴⁵ According to the CM 2014 annual report, *supra* note 3, p. 113.

⁵⁴⁶ See at: [Pending cases: state of execution](#).

⁵⁴⁷ *Varga* and 78 other applications, no. 14097/12+, judgment of 10 March 2015.

⁵⁴⁸ *Horváth and Kiss v. Hungary*, Application no. 11146/11, judgment of 29 April 2013.

⁵⁴⁹ Action plan, [DH-DD\(2013\)1185](#) of 6 November 2013.

⁵⁵⁰ Action plan, [DH-DD\(2014\)186](#) of 7 February 2014.

⁵⁵¹ Decisions adopted at the 1193rd (DH) meeting, 4-6 March 2014, [CM/Del/OJ/DH\(2014\)1193/9](#) of 6 March 2014.

⁵⁵² [DD\(2015\)551](#) of 20 May 2015. See also submissions by NGOs: [DH-DD\(2014\)386](#) - Communication from NGOs (Roma Education Fund) of 11 March 2014 and [DH-DD\(2014\)368](#) - Communication from NGOs (Chance for Children Foundation (CFCF), European Roma Rights Centre (ERRC)) of 04 March 2014.

209. The CM 2014 Annual Report also lists poor conditions of detention and a number of other outstanding issues (see below).⁵⁵⁴

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

210. The Committee of Ministers is currently examining over 30 cases concerning deaths and ill-treatment at the hands of law enforcement officials: the *Velikova* group of cases⁵⁵⁵ concerning deaths and ill-treatment and the *Nachova*⁵⁵⁶ group of cases regarding excessive use of fire-arms. In most of those cases, the State was found to have failed to conduct effective investigations.⁵⁵⁷

211. In February 2013 the Bulgarian government submitted a revised action plan for further measures to be taken.⁵⁵⁸ On 1 July 2012, an amendment to the Ministry of Interior Act (Bill No. 202-01-14), containing important changes to the legal framework restricting the use of force and firearms, 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.⁵⁵⁹ 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 that 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 was 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 were necessary, in particular on the following issues: a) exact procedure followed in cases of allegations 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.

212. Moreover, the practical operation of procedural safeguards during police custody has admittedly been improved as compared to the period prior to 2008, but the reports of the CPT,⁵⁶⁰ its recent public statement concerning Bulgaria of 26 March 2015⁵⁶¹ and the reports prepared by observers from civil society⁵⁶² show that little or no progress had been achieved and that measures are still necessary in order to overcome some problems. Some of these problems persist and are related, *inter alia*, to obtaining the assistance of a duty lawyer in police custody, the record keeping concerning detainees and the effective implementation of the obligation to notify the prosecution authorities of injuries which may be caused by ill-treatment.

213. 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

⁵⁵³ Supra note 2, at paragraph 32.

⁵⁵⁴ See the CM 2014 annual report, supra note 3, p. 63-64.

⁵⁵⁵ See judgment *Velikova v. Bulgaria*, Application no. 41488/98, judgment of 18 May 2000.

⁵⁵⁶ See judgment *Nachova and Others v. Bulgaria*, Application no. 43577/98, judgment of 6 July 2005.

⁵⁵⁷ See also Interim Resolution [CM/ResDH\(2007\)107](#) of 17 October 2007.

⁵⁵⁸ See [DD-DH\(2013\)60revE](#).

⁵⁵⁹ 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. See also Information Document [CM/Inf/DH\(2013\)6 rev](#) of 26 February 2013.

⁵⁶⁰ [European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment \(CPT\) report](#) of 15 March 2012. In May 2012, the CPT carried out an [ad hoc visit to Bulgaria](#). See also its 2014 report, Report to the Bulgarian Government on the visit to Bulgaria carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 24 March to 3 April 2014, [CPT/Inf \(2015\)12](#), 29 January 2015.

⁵⁶¹ [CPT/Inf \(2015\)17](#), adopted following its 2015 visit to Bulgaria.

⁵⁶² Communication from a NGO and reply of the government [DH-DD\(2011\)298](#).

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.⁵⁶³

214. On 3 November 2014, Bulgarian authorities submitted a revised action plan currently under assessment.⁵⁶⁴ In a judgment of 3 March 2015 (*S.Z. v. Bulgaria*)⁵⁶⁵, the Court, under Article 46, stated that the lack of effective investigations (procedural violations of Articles 2 and 3 in 45 cases, not only in the context of allegations of misconduct by law-enforcement agents, but also concerning acts of private persons) was a structural problem and called upon the Bulgarian authorities to take the necessary general measures to solve this problem, in cooperation with the CM.

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

215. The problem of excessive length of proceedings was widespread for many years widespread in criminal, civil and administrative cases in Bulgaria and was usually accompanied by a lack of effective remedies (over 120 cases).⁵⁶⁶ 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.⁵⁶⁷ Bulgaria was asked to introduce such remedies within one year, i.e. by 10 August 2012.

216. 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, a law introducing a judicial remedy entered into force on 15 December 2012; it is available to persons who are parties to pending judicial proceedings as well as after the termination of the proceedings.⁵⁶⁸

217. On 18 June 2013, in two inadmissibility decisions – *Valcheva and Abrashev v. Bulgaria*⁵⁶⁹ and *Balakchiev and Others v. Bulgaria*⁵⁷⁰ – the Court found the two new remedies (judicial and administrative) taken together to be effective. At their 1179th (DH) meeting (24-26 September 2013),⁵⁷¹ the CM noted with interest these decisions and invited the Bulgarian authorities to keep it informed of the development of the domestic practice in this area. As concerns the introduction of a preventive remedy in criminal proceedings (allowing for the closure of an investigation if it has lasted more than two years), the CM found that it raises questions concerning its compatibility with the requirements of the Convention, in particular in the area of effective investigation, and invited the authorities to provide additional information on the measures envisaged to ensure its compliance with these requirements as described in the pilot judgment of *Dimitrov and Hamanov*. At their 1157th (DH) meeting, the CM had already encouraged the Bulgarian authorities to continue with their works aiming at introducing an acceleratory remedy in criminal matters.

218. As concerns the actual length of judicial proceedings, the reforms described in Interim Resolution CM/ResDH(2010)223⁵⁷² and in Information document CM/Inf/DH(2012)36⁵⁷³ (such as adoption of new procedural codes, supervision measures and electronic case management) seem to have improved the efficiency of the Bulgarian judicial system. 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).⁵⁷⁴ Although the efficiency of the courts has continued to increase, this has not led to the elimination of the backlog of the largest courts since 2009. At their 1179th (DH) meeting in September 2013, the CM recalled the existence of this backlog and called again upon the authorities to take all the necessary measures to improve the situation, especially concerning the large courts which seemed to be overburdened and to submit a revised action plan. However, such an action plan is still awaited from the Bulgarian authorities.

⁵⁶³ Supra note 559.

⁵⁶⁴ DD-DH(2014)1411.

⁵⁶⁵ Application no. 29263/12, judgment of 3 March 2015, paragraphs 54-58.

⁵⁶⁶ According to the CM 2014 Annual Report, supra note 3 p. 63, there were 125 cases concerning this problematic.

⁵⁶⁷ *Dimitrov and Hamanov v. Bulgaria*, Application nos. 48059/06 and 2708/09; *Finger v. Bulgaria*, Application no. 37346/05, judgments of 10 May 2011.

⁵⁶⁸ For more information, see Information document CM/Inf/DH(2012)36.

⁵⁶⁹ Application no. 6194/11+.

⁵⁷⁰ Application no. 65187/10.

⁵⁷¹ Decision taken at the CM 1179th (DH) meeting.

⁵⁷² Interim Resolution CM/ResDH(2010)223.

⁵⁷³ Information document CM/Inf/DH(2012)36.

⁵⁷⁴ 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.

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

219. In a number of cases, initially referred to as the *Al-Nashif and Others*⁵⁷⁵ 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 (Article 8). 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 and lack of an effective remedy or of procedural guarantees in case of expulsion (Articles 3, 5, 13 and Article 1 of Protocol 7).

220. The lack of independent control of expulsion orders, highlighted in this group of cases, received a first response from the Bulgarian authorities with the introduction of a remedy before the Supreme Administrative Court and several subsequent improvements of this remedy.⁵⁷⁶ Therefore, in March 2015,⁵⁷⁷ the CM decided to close the examination of four cases from this group and to consider the outstanding questions related to the functioning of the remedies in the area of expulsion of foreigners based on national security considerations in the cases from the group of *C.G. and Others v. Bulgaria*,⁵⁷⁸ concerning more recent facts. In two judgments from this group – *M. and Others v. Bulgaria*⁵⁷⁹ and *Auad v. Bulgaria*⁵⁸⁰ – the Court indicated, under Article 46, several legislative changes and/or change of the domestic case law that it deemed necessary to implement the judgments, in particular with respect to 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.⁵⁸¹

221. Following the submission of an action plan from the Bulgarian authorities,⁵⁸² at its 1222nd meeting (DH) in March 2015,⁵⁸³ the CM welcomed the positive developments concerning the practice of the Supreme Administrative Court and the legislation relating to detention pending expulsion, although certain indications given by the Court still needed to be implemented. It called upon the authorities to “introduce, without further delay, a remedy with automatic suspensive effect where an arguable claim about a substantial risk of death or ill-treatment in the destination country is made in a legal challenge against expulsion and to provide that the destination country should be mentioned in a legally binding act and that every change of the destination country is amenable to appeal”.⁵⁸⁴ Moreover, the authorities were invited to take measures to ensure that the expulsion based on public order considerations is not implemented before the foreigner has been able to exercise his rights under Article 1 of Protocol No. 7, unless the circumstances of the case require it.

9.4. Poor conditions of detention

222. There is a group of over 20 cases before the Committee of Ministers concerning inhuman and degrading treatment of the applicants due to poor conditions of detention in investigative detention facilities and prisons (in particular due to overcrowding and poor sanitary and material conditions).⁵⁸⁵ Some of the cases also concern the lack of effective remedy to challenge the conditions of detention (violations of Article 13 in conjunction with Article 3).

223. 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.⁵⁸⁶

224. The CM examined this action report at their 1144th (DH) meeting in June 2012 and invited the authorities to provide clarification on a number of outstanding issues.⁵⁸⁷

⁵⁷⁵ *Al-Nashif and Others v. Bulgaria*, Application no. 50963/99, judgment of 20 June 2002.

⁵⁷⁶ Consolidated action report, [DH-DD\(2015\)118](#) of 26 January 2015.

⁵⁷⁷ Resolution CM/ResDH(2015)44 adopted on 12 March 2015.

⁵⁷⁸ Application no. 1365/07, judgment 24 April 2008.

⁵⁷⁹ Application no. 41416/08, judgment of 26 July 2011.

⁵⁸⁰ Application no. 46390/10, judgment of 11 October 2011.

⁵⁸¹ [CM/Inf/DH\(2012\)3rev](#), 24 February 2012.

⁵⁸² [DD-DH\(2015\)55](#) of 9 January 2015.

⁵⁸³ Decision [Cases no. 4](#), items 3-6.

⁵⁸⁴ *Ibid*, item 4.

⁵⁸⁵ *Kehayov v. Bulgaria*, Application no. 41035/98, judgment of 18 January 2005.

⁵⁸⁶ Communication from Bulgaria concerning the Kehayov group of cases, [DH-DD\(2012\)426E](#), 15 May 2012.

⁵⁸⁷ See Decisions of the Committee of Ministers concerning this group of cases, 1144th (DH) meeting, 2-4 June 2012.

225. On 9 April 2013 the authorities submitted a revised action plan.⁵⁸⁸ At its 1172nd (DH) meeting (4-6 June 2013),⁵⁸⁹ the CM welcomed the efforts of Bulgaria to solve the systematic problem of overcrowding and improve the material conditions of detention, namely through the reconstruction projects funded with the assistance of the Norwegian Financial Mechanism. However, national action plans in this field could not be implemented due to budgetary restrictions in times of economic crisis. Thus additional measures and improvements were still necessary, in particular concerning overcrowding in prisons for men. The CM encouraged the authorities to develop further the use of alternative measures to imprisonment and preliminary detention and to establish an updated global strategy to address prison overcrowding. It also invited the authorities to give the highest priority to seeking solutions which would allow them to improve the conditions of detention, explore all possibilities of European cooperation and take due account of the relevant recommendations of the CPT. As regards the issue of setting up an effective remedy, the CM invited the Bulgarian authorities to draw full benefit from project 18 of the Human Rights Trust Fund.

226. On 8 December 2014, Bulgarian authorities submitted a revised action plan which is currently under assessment.⁵⁹⁰ In December 2013 and 2014, respectively meetings and a seminar were organised in Sofia in the framework of the HRTF project no. 18.⁵⁹¹

227. On 27 January 2015, the European Court delivered a pilot judgment in the case of *Neshkov and Others*,⁵⁹² instructing the authorities to make available, within eighteen months from the date on which this judgment becomes final, a combination of effective domestic remedies in respect of conditions of detention that have both preventive and compensatory effects.

228. It should be pointed out that in the above-mentioned public statement of 26 March 2015, the CPT deplored once again the overcrowding in the Bulgarian prisons. According to the CPT, the material conditions alone in the three prisons it visited (Sofia, Burgas and Varna) could be seen as amounting to inhuman and degrading treatment. Moreover, the vast majority of inmates did not have access to organised outdoor activities and the quality of medical care has even worsened.⁵⁹³ Thus, the CPT was of opinion that "the approach to the whole issue of deprivation of liberty in Bulgaria should radically change".⁵⁹⁴ During its meeting on 21 April 2015, the Sub-Committee on Human Rights of our Committee took note of this statement and proposed to the plenary Committee to invite the head of the Bulgarian PACE delegation to an exchange of views on this subject at a future meeting.⁵⁹⁵

9.5 Other outstanding issues

229. The CM is also examining a number of other outstanding issues related to the implementation of ECtHR judgments under its enhanced supervision procedure. These are: insufficient guarantees against arbitrary use of the powers accorded by the law on special surveillance means (group of cases *Association for European Integration and Human Rights and Ekimdzhiev v. Bulgaria*),⁵⁹⁶ placement in a social care home for people with mental disorders (*Stanev v. Bulgaria*),⁵⁹⁷ unjustified refusals to register an association aiming at achieving "the recognition of the Macedonian minority in Bulgaria" (*UMO Illinden and Others*⁵⁹⁸ and *UMO Illinden and Others No. 2*)⁵⁹⁹ and eviction of persons of Roma origin (*Yordanova and Others*).⁶⁰⁰

10. United Kingdom

230. 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

⁵⁸⁸ [DH-DD\(2013\)417E](#).

⁵⁸⁹ [Decision taken at the CM 1172nd \(DH\) meeting](#).

⁵⁹⁰ [DH-DD\(2014\)1490](#).

⁵⁹¹ CM 2014 Annual Report, p. 111.

⁵⁹² Application no. 36925/10+, judgment of 27 January 2015 (not final yet).

⁵⁹³ Supra note 561, paragraphs 12-15. See also CPT's report of 2014, supra note 560.

⁵⁹⁴ Supra note 561, paragraph 17.

⁵⁹⁵ AS/Jur (2015) CB 03, synopsis of the meeting held in Strasbourg on 20-23 April 2015.

⁵⁹⁶ Application no. 62540/00, judgment of 28 June 2007.

⁵⁹⁷ Application no. 36760/06, judgment of 17 January 2012.

⁵⁹⁸ Application no. 59491/00, judgment of 19 January 2006.

⁵⁹⁹ Application no. 34960/04, judgment of 18 October 2011.

⁶⁰⁰ Application no. 25446/06, judgment of 24 April 2012.

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.⁶⁰¹

231. In the case of *Hirst v. the United Kingdom (No. 2)*⁶⁰² and the pilot judgment of *Greens and M.T. v. the United Kingdom*,⁶⁰³ 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).

232. 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)*.⁶⁰⁴ 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.⁶⁰⁵

233. 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.⁶⁰⁶ 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.

234. On 18 December 2013, the UK Parliament’s Joint Committee on the Draft Voting Eligibility (Prisoners) Bill published its report, in which it recommended, inter alia, that all prisoners serving sentences of 12 months or less should be entitled to vote and that the government introduce a bill to parliament at the start of its 2014-2015 session. The Joint Committee did not recommend re-enacting the existing blanket ban. This report was welcomed at the 1193rd (DH) meeting of the CM in March 2014, at which the CM urged the UK authorities to implement the recommendations of the Joint Committee.

235. However, despite the upcoming general election in May 2015, no progress was achieved. At its 1208th meeting in September 2014, the CM “recalled the number of years that have passed since the judgments *Hirst No. 2* and *Greens and M.T.* became final, and the repeated calls of the Committee of Ministers to execute them” and “noted with profound concern and disappointment” that the government had not introduced a bill to parliament, as recommended by the Joint Committee. Thus, the CM urged the authorities to do so as quickly as possible.⁶⁰⁷

236. On 12 March 2013 the Court decided to adjourn examination of the over 2,300 applications pending before it on the same issue until, at the latest, 30 September 2013.⁶⁰⁸ However, on 24 September 2013 it decided not to further adjourn proceedings in these cases.⁶⁰⁹ In two judgments which became final in December 2014 and February 2015, the Court examined those applications and found violations of Article 3 of Protocol No. 1 because the impugned legislation remained unamended (see *Firth and others* and *McHugh and Others*).⁶¹⁰

237. As concerns the implementation of the judgment *S. and Marper v. the United Kingdom*,⁶¹¹ 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 offences (violation of Article 8), there has been significant progress and the case is now being examined by the CM under the standard supervision

⁶⁰¹ Supra note 2, paragraph 9.

⁶⁰² Application no. 74025/01, judgment of 6 October 2005.

⁶⁰³ Application nos. 60041/08 and 60054/08, judgment of 23 November 2010.

⁶⁰⁴ 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.

⁶⁰⁵ See item 5 of the decision taken at 1150th DH meeting (September 2012).

⁶⁰⁶ See: [Voting Eligibility \(Prisoners\) Draft Bill](#), of 22 November 2012 and [DH-DD\(2012\)1106](#).

⁶⁰⁷ Items 2 and 3 of the [Decision Cases No. 25](#).

⁶⁰⁸ See press release “Court adjourns 2,354 prisoners’ voting rights cases”, published 26 March 2013.

⁶⁰⁹ See [letter from the ECtHR Registry](#) to the CM of 23 October 2013.

⁶¹⁰ Application nos. 47784/09+, judgment of 12 August 2014, paragraphs 14-15; and Application nos. 51987/08+, Committee judgment of 10 February 2015, paragraphs 10- 11.

⁶¹¹ Application nos. 30562/04 and 30566/04, judgment of 4 December 2008.

procedure. Legislative changes for England and Wales, based on the Scottish model (which was praised by the ECtHR), were introduced by the Protection of Freedoms Act adopted on 1 May 2012.⁶¹² This new legislation had been welcomed by the CM at its 1115th DH meeting (June 2011)⁶¹³ An update is still awaited concerning the position in Northern Ireland, where certain provisions of the Criminal Justice (Northern Ireland) Act should be amended similarly to the Protection of Freedoms Act by summer 2015.⁶¹⁴

238. Mr Pourgourides' report also mentioned some landmark cases against the United Kingdom, such as *Al Saadoon and Mufdhi v. the UK*⁶¹⁵ concerning the applicants' transfer in Iraq by the UK Armed Forces to Iraqi custody which exposed them to the risk of the death penalty (violations of Articles 3, 13 and 34), *Gillan and Quinton v. the UK*⁶¹⁶ (Article 8) and *A. and Others v. UK*⁶¹⁷ concerning the use of anti-terrorism measures. The examination of all these cases was closed by the CM following the individual and general measures taken by the UK.⁶¹⁸

239. Since the Pourgourides report, the Court has delivered judgments in two cases, *McCaughey and Others* and *Collette and Michael Hemsworth*⁶¹⁹ concerning excessive length of investigations into deaths caused by the actions of security forces in Northern Ireland in the 1990s (violations of Article 2). These relate to a group of older cases still pending before the CM, the *McKerr* group⁶²⁰, where the majority of the general measures had already been adopted but the individual measures remained outstanding. The new judgments indicate that delays in inquest proceedings in legacy cases remain a serious and extensive problem in Northern Ireland.⁶²¹ This was also demonstrated by the ongoing delay in the conclusion of the investigations in the individual cases in the *McKerr* group.⁶²²

240. The United Kingdom authorities have since submitted a number of Action plans⁶²³ outlining proposals to improve the efficiency of inquest proceedings and investigations into deaths which took place during the "Troubles"⁶²⁴. At its 1201st (DH) meeting (June 2014), the CM, *inter alia*, expressed serious concern that the individual investigations were still outstanding and strongly urged the authorities to ensure their conclusion as soon as possible⁶²⁵. At its 1222nd (DH) meeting (March 2015), the CM noted, with interest, the December 2014 Stormont House Agreement and welcomed both the announcement to establish an independent single investigative body (the Historical Investigations Unit) and the fact that appropriate steps would be taken to improve the way legacy inquests function. The CM urged the authorities to use all necessary means to ensure that the implementation of these announcements proceeded according to a clear timetable.⁶²⁶

⁶¹² "Protection of Freedoms Act 2010-12".

⁶¹³ Decision, Cases No. 29

⁶¹⁴ See Pending cases: State of Execution, S. v. the UK and the newest action plan of 12 January 2015, DH-DD (2015)49.

⁶¹⁵ Application no. 61498/08, judgment of 2 March 2010.

⁶¹⁶ Application no. 4158/05, judgment of 12 January 2010.

⁶¹⁷ Application no. 3455/05, judgment of 19 February 2009.

⁶¹⁸ Resolutions CM/ResDH(2012)68 adopted by the CM on 8 March 2012, CM/ResDH(2013)52 adopted on 7 March 2013 and CM/ResDH(2013)114 adopted on 6 June 2013.

⁶¹⁹ Application nos. 43098/09 and 58559/09, judgments of 16 July 2013.

⁶²⁰ Application no. 28883/95, judgment of 4 August 2001.

⁶²¹ See paragraph 144 of the *McCaughey and Others* judgment.

⁶²² With the exception of two cases (*Finucane* and *McShane*) where the individual measures are closed.

⁶²³ See DH-DD(2014)224 of 12 February 2014; DH-DD(2014)505 of 15 April 2014; DH-DD(2014)663 of 16 May 2014; and DD(2015)81 of 12 January 2015.

⁶²⁴ See CM/Inf/DH(2014)16 rev for a summary of the measures proposed.

⁶²⁵ Item 2 of the Decision.

⁶²⁶ Items 1-3 of the Decision.

Appendix 1

Summary of the principal problems encountered in the execution of judgments of the European Court of Human Rights in respect of nine States Parties to the European Convention on Human Rights

State party	Leading case	Case description
Bulgaria	<i>Velikova v. Bulgaria</i> (application No. 41488/98, judgment of 18/05/2000), and <i>Nachova and others v. Bulgaria</i> (application No. 43577/98, judgment of 6 July 2005).	Cases principally concerning deaths or ill-treatment which took place under the responsibility of the forces of order.
	<i>Djangozov v. Bulgaria</i> (application No. 45950/99, judgment of 08/10/2004), <i>Kitov v. Bulgaria</i> (application No. 37104/97, judgment of 03/07/2003), <i>Dimitrov and Hamanov v. Bulgaria</i> (application nos. 48059/06 and 2708/09) and <i>Finger v. Bulgaria</i> (application no. 37346/05, judgment of 10 May 2011).	Excessive length of judicial proceedings and lack of an effective remedy.
	<i>Kehayov v. Bulgaria</i> (application no. 41035/98, judgment of 18 January 2005).	Inhuman and degrading treatment of the applicants due to poor conditions of detention in investigative detention facilities and prisons.
	<i>C.G. and Others v. Bulgaria</i> (application no. 1365/07, judgment of 24 April 2008).	Violations of the right to respect for family life due to deportation/order to leave the territory.
Greece	<i>Manios v. Greece</i> (application No. 70626/01, judgment of 11/03/2004), <i>Diamantides v. Greece (No. 2)</i> (application No. 71563/01, judgment of 19 May 2005) and <i>Konti-Arvaniti v. Greece</i> (application No. 53401/99, judgment of 10 April 2003).	Excessive length of judicial proceedings.
	<i>Makaratzis v. Greece</i> (application No. 50385/99, judgment of 20/12/2004).	Use of lethal force and ill-treatment by law enforcement officials and lack of effective investigation into such abuses.
	<i>M.S.S v. Belgium and Greece</i> (application no. 30696/09, judgment of 21 January 2011, Grand Chamber), <i>S.D. v Greece</i> (application no. 73554/2011, judgment of 11 June 2009) and <i>Sharifi and Others v. Greece and Italy</i> (application No. 16643/09, judgment of 21 October 2011).	Conditions of detention of irregular migrants and shortcomings in asylum procedure; lack of effective remedy in this respect.
	<i>Bekir-Ousta and others v. Greece</i> (application no. 35151/05, judgment of 11 October 2007), and <i>Emin and others v. Greece</i> (application no. 34144/05, judgment of 27 March 2008).	Violations of the right to freedom of association due to the Greek authorities' refusal to register associations and to the dissolution of an association of Turkish ethnic minority.
Hungary	<i>Timár v. Hungary</i> (application 36186/97, judgment of 25/02/2003).	Excessive length of civil and criminal proceedings and the lack of an effective remedy in this respect.
Italy	<i>Ceteroni v. Italy</i> (application No. 22461/93, judgment of 15/11/1996), and <i>Mostacciolo Giuseppe v. Italy</i> (application No. 64705/01, judgment of 29/03/2006).	Excessive length of judicial proceedings and lack of an effective remedy.

	<i>Ben Khemais v. Italy</i> (application No. 246/07, judgment of 06/07/2009), and <i>Hirsi Jamaa and Others v. Italy</i> (application no. 27765/09, judgment of 23 February 2012).	Non-respect of Rule 39 of the Rules of the Court and violations of the prohibition of torture and ill-treatment due to the expulsion of foreign nationals. Interception at sea and collective expulsion to Libya by the Italian military authorities of a group of Somalians and Eritreans.
	<i>Belvedere Alberghiera S.R.L v. Italy</i> (application No. 31524/96, judgments of 30/05/2000 and of 30/10/2003).	Unlawful deprivation of land by local authorities because of a judge-made rule, the “constructive-expropriation rule”, which precludes restitution if works commenced in the public interest have been completed.
	<i>Sulejmanovic v. Italy</i> (application 22635/03, judgment of 16 July 2009), and <i>Torreggiani and Others v. Italy</i> (Applications 43517/09+, judgment of 8 January 2013).	Poor detention conditions (mainly due to overcrowding in detention centres).
	<i>M.C. and Others v. Italy</i> (application 5376/11, Judgment of 3 September 2013).	Violations of the right to a fair trial and to the protection of property due to the cancellation of an annual adjustment of a compensation allowance for having suffered accidental viral contamination.
Poland	<i>Podbielski v. Poland</i> (Application No. 27916/95, judgment of 30/10/98), <i>Kudła v. Poland</i> (application No. 30210/96, judgment of 26/10/00 – Grand Chamber), and <i>Fuchs v. Poland</i> (application No. 33870/96, judgment of 11/05/2003).	Excessive length of civil, criminal and administrative proceedings and lack of an effective remedy in this respect.
	<i>Orchowski v. Poland</i> (application no. 17885/04, judgment of 22 October 2009), <i>Sikorski Norbert v. Poland</i> (application no. 17599/05, judgment of 22 October 2009), and <i>Kaprykowski v. Poland</i> (application No. 23052/05, judgment of 03/02/2009).	Poor conditions of detention (mainly due to overcrowding). Lack of adequate medical care in detention centres.
	<i>Bączkowski and Others v. Poland</i> (application No. 1543/06, judgment of 03/05/2007).	Violation of the right to freedom of assembly and lack of effective remedy in this respect.
Romania	<i>Străin and Others v. Romania</i> (application No.57001/00, judgment of 30/11/2005), and <i>Maria Atanasiu and Others v. Romania</i> (application No. 30767/05, judgment of 12 October 2010).	Failure to restore or compensate for nationalised property.
	<i>Nicolau v. Romania</i> (application No. 1295/02, judgment of 03/07/2006), <i>Stoianova and Nedelcu v. Romania</i> (application No. 77571/01, judgment of 04/11/2004).	Excessive length of civil and criminal proceedings and lack of an effective remedy.
	<i>Sacaleanu v. Romania</i> (application No. 73970/01, judgment of 06/12/2005), <i>Ruianu v. Romania</i> (application 34647/97, judgment of 17 June 2003) and <i>Strungariu v. Romania</i> (application No. 23878/02, judgment of 29 September 2005).	Non-enforcement of domestic final judicial decisions.
	<i>Bragadireanu v. Romania</i> (application No. 22088/04, judgment of 06/03/2008).	Poor conditions of detention.
	<i>Barbu Anghelescu v. Romania</i> (Application no. 46430/99, judgment of 5 October 2004).	Ill-treatment by police and lack of effective investigations.
Russian	<i>Burdov. (No. 2) v. Russian Federation</i>	Non-enforcement of domestic final judgments

Federation	(application No. 33509/04, judgment of 15/01/2009) <i>Timofeyev v. Russia</i> (application no. 58263/00, judgment of 23 October 2003) and <i>Gerasimov and Others v. Russia</i> (application no. 29920/05, judgment of 1 July 2014).	and lack of effective remedy in this respect.
	<i>Ryabykh v. Russian Federation</i> (application No. 52854/99, judgment of 24/07/03).	Violation of the principle of legal certainty on account of the quashing of final domestic judgments through the supervisory review procedure.
	<i>Kalashnikov. v. Russian Federation</i> (application No. 47095/99, judgment of 15/07/02), <i>Ananyev and others v. Russia</i> (application no. 42525/07, judgment of 10 January 2012) and <i>Klyakhin v. Russia</i> (application no. 46082/99, judgment of 30 November 2004).	Poor conditions and excessive length of detention on remand.
	<i>Mikheyev. v. Russian Federation</i> (application No. 77617/01, judgment of 26/01/2006).	Ill-treatment in police custody and lack of an effective investigation in this respect.
	<i>Garabayev v. Russia</i> (application no. 38411/02, judgment of 30 January 2008).	Various violations of the Convention related to extradition (Articles 3, 5, 13 and 34 of the Convention). Risk of ill-treatment in cases of extradition and disregard of interim measures indicated by the ECtHR under Rule 39 of the Rules of the Court.
	<i>Khashiyev and Akayeva v. Russian Federation</i> (Application No. 57942/00, judgment of 24/02/2005).	Various violations of the Convention resulting from and/or relating to the actions of the security forces in the Chechen Republic (mainly unjustified use of force by members of the security forces, disappearances, unacknowledged detentions, torture and ill-treatment, unlawful search and seizure and destruction of property).
	<i>Alekseyev v. Russia</i> (application No. 4916/07, judgment of 21 October 2010).	Violation of the freedom of assembly due to repeated bans of LGBT marches and discrimination on grounds of sexual orientation.
Turkey	<i>Hulki Güneş v. Turkey</i> (application No. 28490/95, judgment of 19/06/03).	Lack of judicial independence and impartiality, unfairness of judicial proceedings, ill-treatment inflicted in police custody.
	<i>Ülke v. Turkey</i> (application No. 39437/98, judgment of 24/01/06).	Degrading treatment of the applicant as a result of his repeated convictions and imprisonment for having refused to perform military service.
	<i>Inçal v. Turkey</i> (application No. 22678/93, judgment of 09/06/98).	Unjustified interferences in the freedom of expression.
	<i>Halise Demirel v. Turkey</i> (application No. 39324/98, judgment of 28/01/2003).	Excessive length of detention on remand.
	<i>Bati v. Turkey</i> (application Nos. 33097/96, and 57834/00, judgment of 03/06/2004).	Lack of independence in investigating authorities dealing with actions of security forces.
	<i>Cyprus v. Turkey</i> (application No. 25781/94, judgment of 10/05/01– Grand Chamber). <i>Xenides-Arestis v. Turkey</i> (application no. 46347/99, judgments of 22 December 2005 and 7 December 2006) and <i>Varnava and Others v. Turkey</i> (application No. 16064/90+, judgment of 18 September 2009, Grand	Various violations of the Convention relating to the situation in the northern part of Cyprus following a Turkish military operation in 1974 (missing persons, living conditions of Greek Cypriots in the northern part of Cyprus, the rights of Turkish Cypriots living in the northern part of Cyprus, and homes and property of displaced

	Chamber).	persons).
	<i>Oya Ataman v. Turkey</i> (application No. 74552/01, judgment of 5 December 2006).	Abusive use of force by security force in dispersing peaceful demonstrations.
Ukraine	<i>Yuriy Nikolayevich Ivanov. v. Ukraine</i> (application No. 40450/04, judgment of 15/01/2010), and <i>Zhovner v. Ukraine</i> (application No. 56848/00, judgment of 29/06/04).	Non-enforcement of domestic final judgments and lack of effective remedy in this respect.
	<i>Svetlana Naumenko v. Ukraine</i> (application No. 41984/98, judgment of 09/11/2004), and <i>Merit v. Ukraine</i> (application no. 66561/01, judgment of 30 March 2004).	Excessive length of civil and criminal proceedings.
	<i>Afanasyev. v. Ukraine</i> (application No. 387722/02, judgment of 05/04/2005), and <i>Kaverzin v. Ukraine</i> (application no. 23893/03, judgment of 15 May 2012).	Ill-treatment by police and lack of procedural safeguards.
	<i>Nevmerzhitsky v. Ukraine</i> (application No. 54835/00, judgment of 09/09/2004) and <i>Kuznetsov v. Ukraine</i> , (application no. 39042/97, judgment of 29 April 2003).	Poor conditions of detention on remand and detention conditions in “death row”.
	<i>Kharchenko v. Ukraine</i> (application no. 40107/02, judgment of 10 February 2011), <i>Chanyev v. Ukraine</i> (application no. 46193/13, judgment of 9 October 2014), <i>Lutsenko v. Ukraine</i> (application no. 6492/11, judgment of 3 July 2012) and <i>Tymoshenko v. Ukraine</i> (application no. 49872/11, judgment of 30 April 2013).	Problems regarding the legal framework governing and the use of pre-trial detention in Ukraine.
	<i>Salov v. Ukraine</i> (application No. 65518/01, judgment of 06/11/2005), and <i>Oleksandr Volkov v. Ukraine</i> (application no. 21722/11, judgment of 9 January 2013).	Lack of independence and impartiality of tribunals. Violations of the applicant’s right to a fair hearing on account of his unlawful dismissal from his post as a judge at the Supreme Court of Ukraine.
	<i>Gongadze v. Ukraine</i> (application No. 34056/02, judgment of 08/11/05).	Failure to protect life, failure to carry out an effective investigation into a death, lack of an effective remedy in this respect, attitude of the investigation authorities towards the applicant and her family amounting to degrading treatment.
	<i>Vyerentsov v. Ukraine</i> (application no. 20372/11, judgment of 11 April 2013).	Violation of the right to freedom of peaceful assembly.

Appendix 2

Background information concerning the rapporteur's fact finding visits*

A. Turkey

Official programme of visit: Ankara, 24-25 April 2014

24 April 2014

09.30-10.30: Meeting with Mr Ahmet İyimaya, Chairperson of the Committee on Justice, Grand National Assembly of Turkey

10.45-11.45: Meeting with Mr Ayhan Sefer Üstün, Chairperson of the Committee on Human Rights Inquiry, Grand National Assembly of Turkey

12.00-13.30: Working lunch hosted by Mr Reha Denemeç, Head of Turkey's Delegation to the Parliamentary Assembly of the Council of Europe

13.45-14.45: Meeting with Mr Enver Haliloğlu, Deputy Undersecretary, Ministry of Interior Affairs

15.00-16.00: Meeting with Mr Bekir Bozdağ, Minister of Justice

16.30-17.30: Meeting with Mr Dr. Alparslan Altan, Deputy President of the Constitutional Court of the Republic of Turkey

18.00-19.00: Meeting with Mr Ali Alkan, First President of the High Court of Appeals

25 April 2014

09.30-10.30: Meeting with Ms Kuvılcım Kılıç, Deputy Director General for Council of Europe and Human Rights, Ministry of Foreign Affairs

11.00-12.00: Meeting with Mr Mehmet Ekmekçi, Deputy Chief Public Prosecutor of the High Court of Appeals

Press Release

Turkey is one of the countries with the highest number of non-executed ECHR judgments, rapporteur says Strasbourg, 28.04.2014 – "I note that Turkey is one of the countries with the highest number of non-executed ECHR judgments and I hope that major structural problems will soon be overcome," said Klaas de Vries (Netherlands, SOC), PACE rapporteur on the implementation of judgments of the ECHR, at the end of a two-day fact-finding visit to Ankara (24-25 April).

He welcomed the Turkish authorities' efforts to reform their justice system and, in particular, to implement ECHR judgments, including the introduction of the individual constitutional complaint in 2012. He noted, however, that there are still outstanding human rights issues which need further improvement, especially as regards respect for freedom of expression and the right to peaceful assembly.

Mr de Vries also called for the establishment of a parliamentary structure to supervise implementation of Strasbourg Court judgments and was given assurances that this idea would soon be pursued.

During his visit to Ankara, the rapporteur met the Minister of Justice, the Deputy Undersecretary of State in the Ministry of Interior, the First President and judges of the Court of Cassation, the Vice-President of the Constitutional Court, the Deputy Prosecutor General and officials from the Ministry of Foreign Affairs. He also held discussions with Heads of the Committees on Justice and on Human Rights Inquiry of the Grand National Assembly.

This is the first in a series of visits by the rapporteur aimed at applying parliamentary pressure on states where delays or difficulties in implementing ECHR judgments have occurred.

* The Rapporteur was accompanied by Ms Agnieszka Szklanna, Secretary to the Committee on Legal Affairs and Human Rights, on his visits to Turkey, Italy and Poland.

B. Italy

Official programme of visit: Roma, 22-23 October 2014

22 October 2014

10.30 am: Meeting with Ms Antonella Manzione, Head of the Department of Legal and Legislative Affairs, and with Ms Margherita Piccirilli, Director General of the Litigation Office of the Chairmanship of the Council of Ministers. Meeting also attended by Mr Gaetano Pelella and Mr Marco Cerase, Chamber of Deputies officials.

12.00 pm: Meeting with Ms Donatella Ferranti, Chair of the Justice Committee

12.45 pm: Meeting with Mr Francesco Paolo Sisto, Chair of the Constitutional Affairs Committee

1.30 pm: Lunch with the Italian delegation to the Parliamentary Assembly of the Council of Europe

3.30 pm: Meeting with Prof. Ersiliagrazia Spatafora, Government Agent to the European Court of Human Rights, and with Ms Stefania Rosini, Deputy Head of the Service for Legal Affairs, Diplomatic Disputes and International Agreements, Ministry for Foreign Affairs

5 pm: Meeting in the Ministry of Justice

23 October 2014

9.15 am: Meeting with the President of the Court of Cassation, Giorgio Santacroce

10.30 am: Meeting with the Deputy Attorney General at the Court of Cassation, Pasquale Ciccolo

11.30 am: Meeting with the Deputy Minister of the Interior, Filippo Bubbico

Press Release

PACE rapporteur: Italy must promptly implement Strasbourg Court judgments

A PACE rapporteur has welcomed the ongoing efforts of Italian authorities to implement judgments of the European Court of Human Rights, but also expressed his concern that Italy has the highest number of pending non-implemented judgments out of all the contracting parties to the Convention.

Speaking at the end of a two-day fact-finding visit to Rome, PACE's rapporteur on implementation of Court judgments, Klaas de Vries (Netherlands, SOC), said: "Despite being an old democracy and one of the founding member states of the Council of Europe, Italy has the highest number of non-implemented judgments of the European Court of Human Rights pending before the Committee of Ministers. I have stressed, to all concerned, that this situation must be dealt with promptly."

The main problem in Italy is the excessively long time it takes the Italian courts to deal with legal cases. In a May 2013 report, Mr De Vries said this issue had "plagued the Italian justice system for decades, the backlog of cases increasing steadily each year". He pointed out that at that time the Committee of Ministers – the body which oversees execution of Court judgments – was examining more than 2000 such cases.

Mr De Vries encouraged the Italian authorities to continue their reforms, in particular those aimed at improving the efficiency of justice and ensuring the payment of arrears stemming from the application of the "Pinto law", which provides compensation for victims of lengthy judicial proceedings.

During his Rome visit (22-23 October 2014), the Rapporteur met Italy's Deputy Interior Minister, the President of the High Court of Cassation, the Deputy Prosecutor General and high officials in the Cabinet of the Council of Ministers, the Ministry of Justice and the Ministry of Foreign Affairs. He also had discussions with fellow parliamentarians, including the heads of the Committees on Justice and on Constitutional Affairs.

C. Poland

Official programme of visit: Warsaw, 4-5 December 2014

4 December 2014

9.00-10.15: meeting with the European Court of Human Rights working group

10.30: meeting with the Justice and Human Rights Committee of Sejm

11.30: meeting with the Human Rights, the Rule of Law and Petitions Committee of Senate

12.45: lunch with the members of the Polish Delegation to PACE

14.30: meeting in the Ministry of Justice with Vice-minister Mr Wojciech Węgrzyn

16.00: meeting with the Prosecutor General Mr Andrzej Seremet

19.00: working dinner

5 December 2014

9.00: meeting with the First President of the Supreme Court, prof. Małgorzata Gersdorf

10.30: meeting with the judges of Constitutional Court, prof. Maria Gintowt-Jankowicz and Mr Wojciech Hermeliński

12.00: meeting in the Supreme Administrative Court

13.30: lunch with Mr Andrzej Halicki – Minister of Administration and Digitilization