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Ensuring the viability of the Strasbourg Court: structural deficiencies in States Parties

Report¹

Committee on Legal Affairs and Human Rights

Rapporteur: Mr Serhii KIVALOV, Ukraine, European Democrat Group

Summary

States Parties bear the “primary responsibility” for ensuring the European Convention on Human Rights is applied effectively at national level, alongside the European Court of Human Rights and the Committee of Ministers.

The Committee on Legal Affairs and Human Rights deplores the fact that the Court is “still overloaded with a large number of repetitive cases revealing widespread dysfunctions in national legal orders”. It lists nine States (Bulgaria, Greece, Italy, the Republic of Moldova, Poland, Romania, the Russian Federation, Turkey and Ukraine) which continue to have “major structural problems” – adding that countries with a high proportion of complaints in relation to their population should also face scrutiny.

The committee calls on States Parties to the Convention to create strategies and action plans to deal with their structural problems, and amend their laws in line with the Court’s case law. States Parties should also consider establishing a national body responsible solely for the execution of the Court’s judgments. Moreover, national parliaments should be actively involved in the implementation of these judgments, and in particular of those revealing structural deficiencies.

The Council of Europe governments are also called on to “increase pressure and take firmer measures” in cases of dilatory and continuous non-compliance with the Court’s judgments.

1. Reference to committee: [Doc. 12370](#), Reference 3716 of 8 October 2010.

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A. Draft resolution²

1. The Parliamentary Assembly considers that the viability of the human rights protection system based on the European Convention on Human Rights (ETS No. 5, “the Convention”) falls within the scope of the shared responsibility, alongside the Committee of Ministers, of both States Parties and the European Court of Human Rights (“the Court”). However, it is the primary responsibility of States Parties to ensure that the Convention is applied effectively at national level.
2. The Assembly recalls its previous work on this subject, in particular its resolutions and recommendations on the implementation of the Court’s judgments, including [Resolutions 1516](#) (2006) and [1787](#) (2011) and [Recommendations 1764](#) (2006) and [1955](#) (2011), and its [Resolution 1856](#) (2012) on guaranteeing the authority and effectiveness of the European Court of Human Rights.
3. The Assembly deplores the fact that the Court is still overloaded with a large number of repetitive cases revealing widespread dysfunctions in national legal orders. Most of them relate to structural issues identified by well-established case law, such as the excessive length of judicial proceedings, chronic non-enforcement of domestic judicial decisions, deaths and ill-treatment attributable to law enforcement officials and lack of effective investigation thereof, unlawful detention on remand and its excessive length. In addition, there are specific systemic/structural deficiencies in States Parties. Some of them only exist within one national legal system.
4. The Assembly confirms (as underlined in [Resolution 1787](#) (2011)) that Bulgaria, Greece, Italy, the Republic of Moldova, Poland, Romania, the Russian Federation, Turkey and Ukraine face major structural problems leading to worrying delays in the execution of the Court’s judgments. However, in order to ensure the viability of the Strasbourg Court, States Parties which have a high proportion of complaints in relation to their population size should not be excluded from the scope of the investigation into structural deficiencies.
5. The Assembly insists on the fact that, where the Strasbourg Court has identified major and complex structural deficiencies in States Parties, regular and stringent national supervision must be ensured to adequately deal with them, in addition to their examination by the Committee of Ministers under the latter’s “enhanced supervision procedure”.
6. The Assembly is deeply concerned about this situation, which undermines the effectiveness of the Convention system and prevents the Court from focusing on new and important questions of interpretation and application of the Convention.
7. The Assembly therefore calls on States Parties to:
 - 7.1. strengthen their efforts to execute fully and rapidly the Court’s judgments, including through the implementation of the Interlaken Declaration and Action Plan of 19 February 2010 as well as the Izmir Declaration of 27 April 2011 and the Brighton Declaration of 20 April 2012, and in particular:
 - 7.1.1. set up, as a matter of priority, comprehensive strategies aimed at solving structural problems, and co-ordinate these strategies at the highest political level;
 - 7.1.2. rapidly provide action plans to the Committee of Ministers;
 - 7.1.3. consider establishing a national body responsible solely for the execution of the Court’s judgments, in order to avoid a conflict of responsibilities with the agent representing the government before the Court;
 - 7.2. amend legislation according to standards stemming from the case law of the Court and ensure that the Convention is implemented by all relevant national authorities;
 - 7.3. put in place effective domestic remedies, primarily in areas affected by structural problems;
 - 7.4. take comprehensive measures with a view to raising awareness of the Convention standards as interpreted by the Court. In States Parties with major structural problems, these measures could consist, in particular, in:
 - 7.4.1. creating a publicly available database containing the Court’s case law, including judgments pertinent to the State Party concerned in official translation;

2. Draft resolution adopted unanimously by the committee on 12 November 2012.

7.4.2. improving legal education with a view to deepening knowledge about the Convention among legal professionals;

7.5. strengthen national authorities' co-operation with civil society, bar associations, experts and national human rights institutions.

8. The previous work of the Assembly has shown the need for an increased role of national parliaments in monitoring the effective implementation of the Convention standards at national level. The Assembly therefore:

8.1. reiterates its call on States Parties to put into practice the basic principles for parliamentary supervision in this field, as set out in its [Resolution 1823](#) (2011) on national parliaments: guarantors of human rights in Europe;

8.2. invites parliaments to ensure that their committees monitoring compliance with human rights obligations are actively involved in the execution of the Court's pilot judgments and other judgments revealing structural problems;

8.3. invites the members of the Assembly, in their capacity as national parliamentarians, to question regularly their governments regarding execution of the Court's judgments.

B. Draft recommendation³

1. The Parliamentary Assembly, referring to its Resolution (2013) on ensuring the viability of the Strasbourg Court: structural deficiencies in States Parties, urges the Committee of Ministers to continue to use all available means to ensure the viability of the European Court of Human Rights ("the Court") and to that effect recommends that it:

1.1. consider further developing the Court's HUDOC database into a comprehensive database of the Court's case law, including cases pending before the Court and its own database on information concerning the implementation of its judgments; the latter database should also include information on the Court's recourse to the "pilot judgment" procedure and supervision procedures undertaken by the Committee of Ministers;

1.2. continue to afford priority treatment to the implementation of the Court's pilot judgments and other judgments revealing structural problems;

1.3. consider the possibility of regularly providing statistical analyses with respect to progress made in the elimination of structural deficiencies, as identified by the Court and the Committee of Ministers;

2. The Assembly reiterates its call in [Recommendations 1764](#) (2006) and [1955](#) (2011) on the implementation of judgments of the European Court of Human Rights, to increase pressure and take firmer measures in cases of dilatory and continuous non-compliance with the Court's judgments by State Parties.

3. Draft recommendation adopted unanimously by the committee on 12 November 2012.

C. Explanatory memorandum by Mr Kivalov, rapporteur

1. Introduction

1.1. *The rapporteur's mandate*

1. The motion for a resolution entitled “Ensuring the viability of the Strasbourg Court: structural deficiencies in States Parties” was referred to the Committee on Legal Affairs and Human Rights on 8 October 2010 for report.⁴ The committee appointed me rapporteur on 17 November 2010. It is important to note that this report is connected to the previous reports of Mr Christos Pourgourides (Cyprus, EPP/CD) and the current mandate of his successor, Mr Klaas de Vries (Netherlands, SOC), who cover the more wide-ranging issue of “The implementation of judgments of the European Court of Human Rights”.⁵

1.2. *Previous work of the committee*

2. To date, the Committee on Legal Affairs and Human Rights has reflected on the issue of the effectiveness of the European Court of Human Rights (“the Court”) on several occasions. In particular, it has issued seven reports on the implementation of Court judgments.⁶ The last report on this issue, prepared by Mr Pourgourides, showed that structural deficiencies pertaining to the effective implementation of Strasbourg Court judgments still remain in a number of countries.⁷ The report highlighted persistent problems in nine member States of the Council of Europe (Bulgaria, Greece, Italy, Republic of Moldova, Poland, Romania, Russian Federation, Turkey and Ukraine). Consequently, the Assembly expressed grave concerns about the continuing existence of major systemic deficiencies, which seriously undermine the rule of law in the States concerned, and called upon the above-mentioned nine States to resolve those problems.⁸ However, as stressed by Ms Marie-Louise Bemelmans-Videc in her report, “it is obvious that a one-size-fits-all approach for improving domestic remedies (for example, requiring State legislatures to draft similar laws) is not appropriate. The Court recognises that States Parties require flexibility to operate within the bounds of their diverse national conditions and legal frameworks”.⁹

1.3. *Purpose of the present report*

3. In my explanatory memorandum, I will strive to define the terms “structural/systemic deficiency”, “leading case” and “clone/repetitive case”, as well as to identify the measures taken to eliminate structural deficiencies by the nine States Parties that were listed in Mr Pourgourides’ report. Furthermore, along with some general suggestions, I will recommend national measures, including supervision of the execution of judgments by national parliaments, to ensure that structural deficiencies are promptly and adequately dealt with in order to safeguard the viability of the Strasbourg Court. For the purpose of this report, I asked parliamentary delegations from the nine above-mentioned States Parties to comment on the measures that have been taken in order to deal with major structural deficiencies; to date, only three delegations, Bulgaria, Poland and Turkey, have replied.

4. [Doc. 12370](#) of 28 September 2010, Reference No. 3716.

5. For an update on the status of the report Mr de Vries is currently working on, see “Reports under preparation in the Committees of the Parliamentary Assembly of the Council of Europe,” [AS/Inf \(2012\) 10](#) of 25 October 2012.

6. These seven reports gave rise to seven resolutions and six recommendations. See [Resolution 1226](#) (2000) and [Recommendation 1477](#) (2000) of 14 January 2000; [Resolution 1268](#) (2002) and [Recommendation 1546](#) (2002) of 22 January 2002; [Resolution 1297](#) (2002) and [Recommendation 1576](#) (2002) of 23 September 2002; [Resolution 1381](#) (2004) of 22 June 2004; [Resolution 1411](#) (2004) and [Recommendation 1685](#) (2004) of 23 November 2004; [Resolution 1516](#) (2006) and [Recommendation 1764](#) (2006) of 2 October 2006; [Resolution 1787](#) (2011) and [Recommendation 1955](#) (2011) of 26 January 2011.

7. “Implementation of judgments of the European Court of Human Rights”, 7th Report, Mr Christos Pourgourides (Cyprus, EPP/CD), [Doc. 12455](#) of 20 December 2010.

8. See [Resolution 1787](#) (2011).

9. “Guaranteeing the authority and effectiveness of the European Convention on Human Rights”, report by Ms Marie-Louise Bemelmans-Videc (Netherlands, EPP/CD), [Doc. 12811](#) of 3 January 2012, paragraph 33.

2. Definition of terms

2.1. Structural/systemic problem and pilot judgment procedure

4. The term “systemic” or “structural” problem often appears in documents issued by the Committee of Ministers and in judgments of the European Court of Human Rights. It is a relatively recent expression of the idea, inherent in the Convention system, that problems revealed – when violations are established – call not only for individual, but also for general measures when there is a risk of further similar violations.¹⁰

5. Both the European Court of Human Rights and the Committee of Ministers have highlighted the importance of prioritising cases that raise major structural or systemic problems.¹¹ As of 31 March 2011, the Court inserted in its Rules of Court a special rule, Rule 61, on the “pilot-judgment” procedure.¹² Rule 61.1 specifies how the Court is to use this procedure “where the facts of an application reveal in the Contracting Party concerned the existence of a structural or systemic problem or other similar dysfunction which has given rise or may give rise to similar applications”. The cases selected for this procedure “shall be processed as a matter of priority” (Rule 61.2.c).

6. Therefore, a structural or systemic problem may be considered a “dysfunction” in the national legal system which may lead, in particular, to numerous applications before the Court in Strasbourg. The Court defines such a problem in the context of the specific circumstances of a case before it. As stressed by the Steering Committee for Human Rights (CDDH), a structural or systemic problem “may originate in legislation or an absence of legislation or an administrative or judicial practice that may be contrary to the Convention (length of pre-trial detention, length of proceedings, detention conditions, non-execution of final judgments, property rights, etc.)”.¹³ However, according to the Committee of Ministers’ practice, the fact that a group of judgments pending execution before it is small does not prevent the underlying structural problem to be considered as important.¹⁴

2.2. Leading cases and clone cases

7. The annual reports of the Committee of Ministers make a distinction between “leading” cases, “clone” or “repetitive” cases, and “isolated” cases.¹⁵

8. A “leading case” is a case which either the Court, in one of its judgments, or the Committee of Ministers has identified “as revealing a new structural/general problem in a respondent State and which thus require[s] the adoption of new general measures (although these may already have been taken by the time the judgment is given), more or less important according to the case(s)”.¹⁶ This term also includes “pilot judgments” that extend beyond the particular case or cases at hand so as to cover all similar cases raising the same underlying issue.¹⁷ The aim of a pilot judgment is: (a) “to determine whether there has been a violation of the Convention in the particular case”; (b) “to identify the dysfunction under national law that is at the root of the violation”; (c) “to give clear indications to the Government as to how it can eliminate this dysfunction”; (d) “to bring about the

10. According to Committee of Ministers’ practice, individual measures are aimed at ensuring that the violation has ceased and its consequences for the injured party have been erased, whereas general measures are aimed at preventing further similar violations of the Convention. See in particular the 5th Annual Report of the Committee of Ministers on “Supervision of the execution of judgments and decisions of the European Court of Human Rights”, Council of Europe, April 2012, p. 16.

11. See “States with major structural/systemic problems before the European Court of Human Rights: statistics”, *AS/Jur/Inf (2011) 05 rev 2* of 18 April 2011.

12. Rule 61, European Court of Human Rights’ *Rules of Court* of 1 May 2012, pp. 33-34. This rule was inserted in response to the request addressed to the Court, at the February 2010 Interlaken Conference on the Court’s future, to “develop clear and predictable standards for the pilot judgment procedure as regards selection of applications, the procedure to be followed and the treatment of adjourned cases”. “New rule introduced concerning handling of systemic and structural human rights violations in Europe”, press release issued by the Registrar of the Court, No. 256 of 24 March 2011. See also “Pilot Judgments”, *Factsheet* prepared by the European Court of Human Rights Press Unit, July 2012.

13. “Implementation of the Interlaken Declaration”, First Report by the CCDH, *CDDH(2010)010 Addendum I* of 18 June 2010, Appendix III, paragraph 6.

14. 5th Annual Report 2011, op. cit., p. 40.

15. For example, see “Supervision of the execution of judgments of the European Court of Human Rights”, 4th Annual Report 2010 by the Committee of Ministers of April 2011, Appendix 2, p. 29.

16. *Ibid.*

17. *Ibid.*

creation of a domestic remedy capable of dealing with similar cases (including those already pending before the Court awaiting the pilot judgment), or at least to bring about the settlement of all such cases pending before the Court".¹⁸

9. Cases where the violation hinges on the specific circumstances of the case and where it is unlikely that the violation will be repeated are labelled "isolated cases".¹⁹

10. "Clone" or "repetitive" cases are "those relating to a structural or general problem already raised before the Committee of Ministers in one or several leading cases; these cases are usually grouped together – with the leading case as long as this is pending – for the purposes of the Committee's examination".²⁰

3. Overview of substantial structural/systemic deficiencies

11. In [Resolution 1787 \(2011\)](#) on the implementation of judgments of the European Court of Human Rights, the Assembly noted the continuing existence of major systemic deficiencies that cause large numbers of repetitive findings of violations of the Convention and seriously undermine the rule of law in the States concerned. These most widespread systemic/structural deficiencies, which represent common domestic problems for several States, are identified and discussed in section 3.2 of this report.

12. In addition, there are specific systemic/structural deficiencies in States Parties. Some of them only exist within one national legal system. This group of systemic/structural deficiencies requires special attention from national authorities.

3.1. Identifying the range of States with substantial structural/systemic deficiencies

13. In order to identify the range of States with major structural/systemic deficiencies, it is necessary to analyse the statistics of the European Court of Human Rights²¹ and the Committee of Ministers' annual reports on the supervision of the Court's judgments.²² It is also important to note that the structural/systemic deficiencies that arise within the legal systems of the States Parties are complex. As such, in this report, I will try to take into account all approaches and factors that may influence the objective evaluation of the problems at hand.

14. The majority of States Parties to the Convention belong to the Romano-Germanic legal family, where the role of precedent is deemed to be heterogeneous. Evidently, neither governments nor civil society in the so-called "newly democratic States" have effectively used the practice of the Strasbourg Court. Difficulties in implementing Convention standards may also be due to a conservative approach to the implementation of international legal acts, or to the political dimension of the principle of State sovereignty.

15. Four statistical indexes are used to identify the States with major structural/systemic deficiencies.

16. The first is the index of allocated applications pending before the Court, including the new applications in 2011. The data extracted from the Court's Annual Report from 2011 show that, on 31 December 2011, four States Parties accounted for over half (54.3%) of its docket: 26.6% of the pending cases concerned Russia, 10.5% – Turkey, 9.1% – Italy, and 8.1% – Romania.²³ The pending applications lodged against Ukraine constituted 6.8% of all pending applications, and those lodged against Serbia – 4.5%, against Poland – 4.2%, against the Republic of Moldova – 2.8%, and against Bulgaria – 2.7%.²⁴ Thus, in 2011 the following nine States Parties to the Convention – the Russian Federation, Turkey, Italy, Romania, Ukraine, Serbia, Poland, the Republic of Moldova and Bulgaria – accounted for 75.3% of the Court's workload. According to the Court's

18. "The Pilot-Judgment Procedure", [Information note](#) issued by the Registrar of the European Court of Human Rights, 2009, paragraph 3.

19. In the 5th Annual Report 2011, they have been grouped together with leading cases; see p. 31.

20. 4th Annual Report, op. cit. That said, the Committee of Ministers stresses that it may sometimes be difficult to establish this when the case is examined for the first time (for example, it may happen that a case initially qualified as "isolated" is subsequently re-qualified as "leading" in the light of new information attesting to the existence of a general problem).

21. See [Statistical information](#) of the European Court of Human Rights.

22. See [Execution of Judgments of the European Court of Human Rights](#), [Publications](#) of the Committee of Ministers.

23. [Annual Report 2011](#) by the Registry of the European Court of Human Rights, 2012, p. 153.

24. Ibid.

statistics for 2011, the global number of new applications allocated to a judicial formation amounted to 64 547.²⁵ The following States Parties had the highest number of new applications in 2011: Russian Federation, Turkey, Romania, Poland, Italy, Ukraine, Serbia, Sweden, Germany and France.²⁶

17. The second important statistical index is the number of applications allocated by population, that is by 10 000 inhabitants. Given that “the Council of Europe member States had a combined population of about 819 million inhabitants on 1 January 2011”, “[t]he average number of applications allocated per 10 000 inhabitants was 0,79 in 2011”.²⁷ States Parties whose applications allocated by population index has been the highest are not necessarily those with the highest number of applications. In 2011, the following States Parties had the highest number of applications in relation to their population: Serbia (5.10), Montenegro (5.02), Republic of Moldova (2.88), Croatia (2.69), Estonia (2.58), Liechtenstein (2.50), Romania (2.43), Monaco (2.42), Slovenia (2.08), and Sweden (2.02).²⁸ The above list does not include any of the States Parties yielding the biggest caseload in absolute terms, with the exception of Romania, namely the Russian Federation, Turkey, Poland, Ukraine and Italy.

18. The third index discloses the number of pilot (and quasi-pilot judgments) per State Party. According to the new working methods adopted by the Committee of Ministers in December 2010 at the 1100th meeting of the Ministers’ Deputies,²⁹ pilot judgments and other judgments disclosing major structural or complex problems, as identified by the Court, are examined by the Committee of Ministers under the “enhanced supervision procedure”, which means that the progress of execution is regularly followed by the Committee of Ministers at its human rights meetings. If we use the quasi-pilot and pilot judgments as indicators of the above-mentioned problems, we should pay attention to the presence of these problems in the States which are not included in the list of States yielding the highest number of applications lodged before the Court in absolute terms). For example, with respect to the length of civil proceedings – Germany (judgment *Rumpf v. Germany*³⁰), Slovenia (*Lukenda v. Slovenia*³¹); the prisoners’ right to vote in the United Kingdom (judgment in *Greens and MT v. the United Kingdom*³²). Unfortunately, a statistical analysis of pilot and quasi-pilot judgments per State Party is absent from the European Court of Human Rights’ Analysis of Statistics.

19. The fourth index refers to the number of judgments pending execution before the Committee of Ministers. The Committee of Ministers’ supervision has been based over the last years on “action plans” drawn up by the respondent States in accordance with the principle of subsidiarity, and the State’s margin of appreciation as regards the means of execution.³³ Since 2011, the Committee of Ministers examines cases under a new twin-track system, which means that all cases are examined under the “standard supervision procedure” (in which the Committee of Ministers’ intervention is limited) unless, because of its specific nature, a case requires consideration under the above-mentioned “enhanced supervision procedure”.³⁴ Unfortunately, the Committee of Ministers does not separate statistical analysis with respect to enhanced supervision procedures.³⁵

25. [Analysis of Statistics 2011](#) by the European Court of Human Rights, January 2012, Table 2: Applications allocated per Contracting State and population, p. 12.

26. See [Appendix 1](#).

27. Annual Report 2011, op. cit.

28. Analysis of Statistics 2011, op. cit.

29. See notably, “Outstanding issues concerning the practical modalities of implementation of the new twin track supervision system”, Information document by the Department of the Execution of Judgments of the European Court of Human Rights, [CM/Inf/DH\(2010\)45 final](#) of 7 December 2010, paragraph 10.

30. Application No. 46344/06, judgment of 2 September 2010.

31. Application No. 23032/02, judgment of 6 October 2005.

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

33. “Implementation of judgments of the European Court of Human Rights”, reply from the Committee of Ministers to Assembly [Recommendation 1955](#) (2011), [Doc. 12801](#).

34. *Ibid*, paragraph 2.

35. For general information on the execution of judgments, see “[Execution of Judgments of the European Court of Human Rights](#)”. To verify the status of a particular case, see also “[Pending cases: current state of execution](#),” Database of cases pending before the Committee of Ministers.

3.2. Overview

3.2.1. Excessive length of judicial proceedings

20. The problem of the excessive length of judicial proceedings is widespread in criminal, civil, and administrative cases, and is usually accompanied by a lack of effective remedies. For example, in Italy, the problem is exacerbated by the fact that the “Pinto compensation” practice of implementation (a law which was enacted in 2001 to provide compensation for victims of unreasonably long judicial proceedings) has created a new structural problem – the problem of the excessive length of compensation proceedings. Almost 4 000 cases in Italy involve delays in paying “Pinto compensation”.

21. At its 1136th meeting in March 2012, the Committee of Ministers demanded that “additional large-scale measures” be adopted, as it believed the situation was “deeply worrying”, 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”.³⁶

22. Possible causes of this structural/systemic problem are, in particular, complex national procedures and deficiencies in the practical functioning of the judiciary, including lack of budgetary resources.

23. Possible general measures aimed at improving procedural laws could be taken to address the causes of the excessive length of judicial proceedings, such as:

- introducing remedies aimed specifically at speeding up criminal proceedings;
- employing the “concentration principle” whereby evidence is brought together in first instance proceedings (Bulgaria,³⁷ Ukraine);
- changing the character of second instance proceedings from “second first instance” proceedings to proper appeal proceedings;
- limiting the grounds for lodging a further appeal to the Supreme Court;
- simplifying summons arrangements by introducing the possibility of serving a summons by delivering it to a person’s mailbox or affixing it to that person’s front door (Bulgaria³⁸);
- modifying and reducing the scope of the supervisory review procedure and the related issue of impartiality (Russia, Ukraine);
- introducing a minimal court fee in proceedings as an administrative measure to deter manifestly ill-founded applications;
- simplifying specific procedures, including civil proceedings by limiting the types of civil proceedings to three (Italy);³⁹
- rationalising and accelerating proceedings before administrative courts and streamlining provisions (Greece);
- introducing “participative proceedings”, namely the obligation to appoint a representative when the number of parties to a case reaches a certain level (20 for example).

24. Measures to expand an effective remedy to expedite proceedings provide that, if a court does not take a procedural step in due time, the parties may at any time apply to the superior court for a time-limit to be set for the taking of the procedural step in question, thus affording a remedy designed to speed up the proceedings.⁴⁰

36. For example, see “Ceteroni Group of cases v. Italy”, Decisions by the Deputies in “1136th Meeting (DH), 6-8 March 2012: Annotated order of Business and decisions adopted”, [CM/Del/Dec\(2012\)1136](#) of 13 March 2012.

37. According to Article 266 of the Civil Procedure Code, “in an intermediate appellate review proceedings, the parties may not allege new circumstances, cite and present evidence which the said parties could have cited and presented in due time in the first-instance proceedings”.

38. See Article 47 of the Civil Procedure Code.

39. See Action plan concerning the Ceteroni group of cases v. Italy (Application No. 22461/93), [DH-DD\(2011\)898F](#) of 25 October 2011.

40. For instance, Poland’s law on complaints against excessive length of proceedings of 2004.

25. In any event, awareness-raising measures for judges and other authorities are of crucial importance. States should ensure the translation of judgments of the European Court of Human Rights into the local language, their wide dissemination and official publication, possibly on the website of the competent authority, such as the Ministry of Justice. Additional measures could be taken to improve the administration of courts,⁴¹ such as:

- establishing assessment and monitoring mechanisms, particularly through the collection and analysis of statistical data (Bulgaria);
- reducing the length of trials and introducing simplified procedures for judicial review;
- digitalising case files, allowing for easier, faster access (Italy and Turkey);⁴²
- introducing a uniform method of managing civil case files in appellate courts and tribunals (Italy, end of March 2011);⁴³
- circulating best practices widely;
- increasing the number of judges.⁴⁴

26. Measures could also be put in place to compensate for damages caused by the excessive length of judicial proceedings. In criminal law, there are certain forms of non-pecuniary damages that could be implemented, such as the ability to mitigate penalties in cases of excessively lengthy proceedings (Bulgaria). Also, legislation could provide compensation for such damages caused by overly protracted proceedings (Poland, Greece and the Russian Federation). In Poland, for instance, to deal with Article 13 violations, a reformed domestic remedy for overly long proceedings entered into force on 1 May 2009, introducing *inter alia* an increase in the level of compensation for delay. Nevertheless, flaws remain in the application of compensation laws. For example, in Italy the duration of the compensation proceedings themselves is excessively long,⁴⁵ and in Poland the amount of compensation awarded is not always in line with the requirements of the European Court of Human Rights.⁴⁶

27. Only one State, Poland, has so far received a positive evaluation from the Committee of Ministers. The Committee of Ministers noted with interest Poland's action plans submitted on 22 and 23 November 2011,⁴⁷ the "significant number of measures taken to address this systemic problem" of excessively lengthy proceedings (notably, the "computerisation of proceedings", and further legal amendments aimed at the acceleration of proceedings), as well as the authorities' "regular monitoring of courts' caseloads and the comprehensive statistics submitted."⁴⁸ The Committee of Ministers also noted the commitment of the Polish authorities to closely monitor the implementation and impact of these measures with a view to assessing their effectiveness, in particular with regard to the functioning of the new domestic remedy.⁴⁹

28. I agree with the Committee of Ministers' approach. It is crucial that States Parties uphold and fulfil their political commitment to resolving the problem of the excessive length of judicial proceedings, as well as take all necessary technical and budgetary measures to do so. I strongly encourage States dealing with this problem to undertake interdisciplinary action co-ordinated at the highest political level, involving all main judicial actors, with a view to urgently drawing up an effective strategy.⁵⁰

41. As indicated by the Polish parliamentary delegation, the Polish authorities regularly translate, publish and disseminate Court judgments and also applies some of the additional measures mentioned below. In Turkey, the website www.inhak.adalet.gov.tr was launched in order to facilitate access to the Court's case law in Turkish.

42. Action plan concerning the Ceteroni group of cases, op. cit. According to the information received from the Turkish delegation, the Turkish Judicial Network (UYAP), an electronic network connecting courts, public prosecutors' and law enforcement offices and the Ministry of Justice, allows easy access to relevant judicial documents.

43. Ibid.

44. Ibid.

45. [www.coe.int/t/dghl/monitoring/execution/Reports/pendingCases_en.asp?CaseTitleOrNumber=gaglione&StateCode=ITA&SectionCode=.](http://www.coe.int/t/dghl/monitoring/execution/Reports/pendingCases_en.asp?CaseTitleOrNumber=gaglione&StateCode=ITA&SectionCode=)

46. *Zwozniak v. Poland*, Application No. 25728/05, judgment of 13 November 2007.

47. For example, see Action plan concerning the Fuchs group of cases v. Poland (Application No. 33870/96), *DH-DD(2011)1073E* of 24 November 2011.

48. "Supervision of the execution of judgments and decisions of the European Court of Human Rights," *Annual report, 2011* by the Committee of Ministers, April 2012, p. 70.

49. Ibid.

50. See "Execution of judgments of the European Court of Human Rights concerning the excessive length of judicial proceedings in Italy", interim resolution by the Committee of Ministers, *CM/ResDH(2010)224* of 2 December 2010.

3.2.2. Chronic non-enforcement of domestic judicial decisions

29. The problem of non-enforcement of final domestic judgments is a major problem in the Republic of Moldova,⁵¹ Romania,⁵² Russia⁵³ and Ukraine,⁵⁴ and concerns the absence of effective legal remedies for such violations (such as compensation for the violation).

30. Possible causes of this structural/systemic problem are:

- deficient legislation and administrative practices;
- delays in legislative changes;
- inefficiency of the bailiff system;
- lack of co-ordination between enforcement agencies;
- failure of the courts to identify the debtor clearly.

31. The following examples of general measures show how States Parties tackle this structural problem:

- The Moldovan government has taken concrete measures to eliminate this systemic problem by introducing special legislation in July 2011 regarding non-enforcement of final domestic judgments and unreasonable length of proceedings.⁵⁵ Non-enforcement nevertheless remains a reality in the Moldovan bailiff system.⁵⁶
- Similarly, the Romanian authorities have adopted some positive measures in this area. In October⁵⁷ and November 2011,⁵⁸ they submitted two revised action plans with information on the reforms carried out in response to the Strasbourg Court's judgments. It is indicated in particular that an inter-ministerial group prepared a draft law with a view to rendering the restitution and compensation process more effective, and a calendar for the adoption of the draft law was provided. At this stage, however, the calendar provided does not indicate whether the anticipated measures can be put in place before the expiry of the 18-month deadline set by the pilot judgment. As regards the progress of the restitution and compensation process, the data submitted do not afford a clear view of the overall number of claims that are yet to be satisfied, as they only concern part of the restitution laws which have governed these issues thus far. Since Mr Pourgourides' above-mentioned report of December 2010, the *Proprietatea Fund*, set up by Romania to deal with the payment of compensation awarded to owners of nationalised property, remains unlisted on the stock exchange (a measure which was due to take place in 2005, according to Romania Law No. 247/2005). The Fund has, however, been paying dividends to its shareholders since 2007, and since March 2008 its shares may be sold by means of direct transactions under the supervision of the stock exchange regulatory authority.⁵⁹

51. In response to the Moldovan situation as regards the non-enforcement of local judgments, the Strasbourg Court delivered a pilot judgment in the case of [Olaru and Others v. Moldova](#), Applications Nos. 476/07, 22539/05, 17911/08, and 13136/07, judgment of 28 July 2009.

52. Similarly, the Strasbourg Court issued pilot judgments in response to Romania's problems with non-enforcement. See [Sabin Popescu v. Romania](#), Application No. 48102/99, judgment of 2 March 2004, and [Sacaleanu v. Romania](#), Application No. 73970/01, judgment of 6 September 2005.

53. The importance of this issue for the Russian Federation was underlined in the pilot judgment of [Burdiv v. Russian Federation \(No. 2\)](#), Application No. 33509/04, judgment of 15 January 2009. See also "Execution of the judgments of the European Court of Human Rights in 145 cases against the Russian Federation relative to the failure of serious delay in abiding by final domestic judicial decisions delivered against the State and its entities as well as the absence of an effective remedy", interim resolution by the Committee of Ministers, [CM/ResDH\(2009\)43](#) of 19 March 2009, and "Execution of the pilot judgment of the European Court of Human Rights in the case of Burdiv No. 2 against the Russian Federation relative to the failure or serious delay in abiding by final domestic judicial decisions delivered against the State and its entities as well as the absence of an effective remedy", interim resolution by the Committee of Ministers, [CM/ResDH\(2009\)158](#) of 3 December 2009.

54. In October 2009, the Strasbourg Court delivered a pilot judgment on this issue in the case of [Yuriy Nikolayevich Ivanov v. Ukraine](#), Application No. 40450/04, judgment of 15 October 2009, where the Court ordered Ukraine to introduce an effective remedy for what it identified as structural problems in the country's legal system, namely, the prolonged non-enforcement of final domestic judgments and the absence of an effective domestic remedy to deal with this situation. On 21 February 2012, the Strasbourg Court took the decision to resume the examination of applications raising similar issues.

55. [Balan v. Moldova](#), judgment of 12 February 2012:

<http://cmiskp.echr.coe.int/tkp197/view.asp?action=open&documentId=900507&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>.

- The Committee of Ministers recognised as a delayed but positive and effective remedy the Russian Federation’s adoption of two federal laws providing a new domestic remedy for excessive length of judicial proceedings and delayed enforcement of domestic judgments delivered against the State (“the Compensation Act”), as well as the Russian authorities’ (in particular the federal Supreme Court, the Supreme Commercial Court, the Ministry of Finance, and Federal Treasury’s) implementation of measures to guarantee the effectiveness of the new compensation remedy at a domestic level. In addition, the Committee of Ministers welcomed the comprehensive measures taken by the Russian Federation with a view to settling similar individual applications lodged prior to the pilot judgment *Burdov v. Russian Federation (No. 2)*, allowing the Court to strike 800 cases from its docket. The Committee of Ministers recalled nevertheless that the Russian Federation remained under the obligation to adopt other general measures, bearing in mind the Court’s findings as set out in the pilot judgment, in order to fully address the issue of non-execution of judicial decisions under examination in the context of the Timofeyev group of cases, to which the *Burdov No. 2* case was henceforth joined.⁶⁰
- The law “on State guarantees concerning execution of judicial decisions”, adopted by the Ukrainian Parliament on 5 June 2012 and which will come into force on 1 January 2013, provides a new procedure for the enforcement of judicial decisions delivered against the State. The essence of this new procedure would be that the State would undertake to execute a judgment at the expense of the State budget if the debtor concerned, that is the State, local body, or enterprise, failed for whatever reason to comply with the judgment. If some delay still occurred, automatic compensation would be payable. At its 1144th June 2012 human rights meeting, the Committee of Ministers welcomed the adoption of this law and encouraged the Ukrainian authorities to continue their efforts with a view to resolving the problem of non-execution of domestic judicial decisions.⁶¹

3.2.3. Deaths and ill-treatment attributable to law enforcement officials, and a lack of effective investigations thereof

32. Mr Pourgourides’ above-mentioned report identified chronic violations of Article 3 of the Convention, particularly in Turkey and the Russian Federation. In its latest observations on Bulgaria, the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), noted that ill-treatment by police remains a widespread phenomenon; consequently, the Bulgarian authorities have taken comprehensive (legislative) measures to deal with it.⁶² According to Mr Pourgourides, the cases of death and ill-treatment attributable to law enforcement officials concern the shortcomings of national procedures (some of which are still pending) and/or investigations conducted into abuses committed by security forces, particularly the mistreatment or deaths of applicants or their relatives in circumstances engaging State responsibility. Furthermore, in most of those cases, the States were found to have failed to conduct effective investigations.⁶³

33. The European Court of Human Rights pointed out procedural deficiencies of the investigations, which have resulted in virtual impunity of members of the security forces, as possible causes of this structural/systemic problem. Those procedural deficiencies are:

- the excessive length of investigations against State officials involved;
- the lack of independence of the authorities who conducted those investigations;
- the impossibility for applicants to have access to the records of the investigations;
- the impossibility for the applicants to interview witnesses and accused officers;
- impunity resulting from the application of statutes of limitations and amnesty laws;

56. See also Ministers’ Deputies information document [CM/Inf/DH\(2010\)15](#), 22 March 2010, Round Table on “Effective remedies against non-execution or delayed execution of domestic court decisions”.

57. Revised action plan (October 2011) DH-DD(2011)908F (in French): <https://wcd.coe.int/ViewDoc.jsp?id=1859303>.

58. Revised action plan (November 2011) DH-DD(2011)1039F (in French): <https://wcd.coe.int/ViewDoc.jsp?id=1870679>.

59. *Maria Atanasiu and others v. Romania*, Application No. 30767/05, judgment of 12 December 2010, paragraph 78.

60. Supervision of the Execution of Judgments 2011, Annual Report, p. 73.

61. Decision of 6 June 2012: [https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/Dec\(2011\)1144/25](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/Dec(2011)1144/25).

62. See, in particular, amendments to the Minister of Interior Act, which entered into force on 1 July 2012. They introduced an “absolute necessity” standard on the use of weapons, physical force and auxiliary means by police staff.

63. Concerning Bulgaria, see Interim Resolution CM/ResDH(2007)107 of 17 October 2007: [https://wcd.coe.int/ViewDoc.jsp?Ref=CM/ResDH\(2007\)107&Language=lanEnglish](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/ResDH(2007)107&Language=lanEnglish).

- decisions of deferment of judgment or stays of execution of sentences issued against the accused officers;
 - failure to suspend State officials from their duties despite the existence of proceedings against them for abuse;
 - the lack of medical expertise prepared in good time;
 - the lenient sentences imposed on police officers;
 - conditional dismissals that applied to officers convicted of abuse.⁶⁴
34. In addition, general measures have been proposed, such as:
- The Committee of Ministers has recommend that the Bulgarian Government take further measures to ensure the proper investigation of certain individual cases, procedural safeguards during police custody and civil society monitoring mechanisms. Bulgaria has also been requested to provide further information on the content of training and awareness-raising measures on human rights standards for law enforcement officials.⁶⁵ Certain recently adopted or amended decrees and other legislation⁶⁶ were regarded as falling short of Convention standards⁶⁷ and more detailed information regarding measures envisaged or already adopted to ensure the effectiveness of investigations was requested.⁶⁸ The Committee for the Prevention of Torture stressed that the problem of ill-treatment by police officers persisted, and recommended that the Minister of Internal Affairs of Bulgaria deliver a firm message of “zero tolerance” of ill-treatment to all police staff, to be backed up by appropriate training programmes.⁶⁹ According to the Bulgarian parliamentary delegation,⁷⁰ the Ministry of Interior is taking several awareness-raising measures on human rights standards, in particular through its Academy, which trains the Ministry’s staff in the area of the protection of security and public order.
 - The Moldovan authorities adopted a number of measures, notably in response to the concerns raised by the CPT. Amendments were introduced to the Criminal Code, and in 2006 the Code of Police Ethics was approved by the government.⁷¹
 - The Russian Federation’s new law on police enforcement entered into force in March 2011. In its last specific decision of December 2010, the Committee of Ministers encouraged the Russian authorities to fully seize the opportunity offered by Russia’s ongoing comprehensive reform to ensure that the legal and regulatory framework for police activities contains all necessary safeguards against police arbitrariness and abuses, like those found by the European Court of Human Rights in its judgments. The new system put in place is presently under examination by the Committee of Ministers.
 - Turkey’s Ministry of Justice organised the “High Level Conference and Workshop on Decisions of the European Court of Human Rights on Turkey, Issues and Solutions” in November 2011. At the meeting, Turkey notified the participants that questions concerning effective investigations and prosecutions would be reconsidered in the framework of professional training projects for judges and prosecutors, in collaboration with the High Council of Judges and Prosecutors and the Academy of Justice. The authorities also noted that according to the provisions of the new Criminal Code, the prescription periods

64. Appendix for the group of cases Batý: [https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/OJ/DH\(2010\)1100&Language=lanEnglish&Ver=prel0019&Site=](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/OJ/DH(2010)1100&Language=lanEnglish&Ver=prel0019&Site=).

65. See Ministers’ Deputies Information Documents on the Velikova group against Bulgaria, CM/Inf/DH(2011)23, 10 May 2011: <https://wcd.coe.int/ViewDoc.jsp?id=1785037>;

and on the group of cases Nachova against Bulgaria, CM/Inf/DH(2011)24rev, 30 May 2011: <https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Inf/DH%282011%2924>.

66. Bulgaria Decree on the use of force and arms by the military police, adopted on 9 September 2009 and Section 74 of the 2006 Ministry of Internal Affairs Act concerning use of fire-arms by the police. For a detailed discussion see in particular: www.bghelsinki.org/en/publications/obektiv/obektiiv/2011-08/police-brutality-between-collegial-solidarity-and-public-interest/.

67. Communication from an NGO and reply of the government, DD(2011)298, 26 April 2011: <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=1831918&SecMode=1&DocId=1731112&Usage=2>.

68. See decisions concerning these two groups of cases taken at 1115th (DH) meeting on 7-8 June 2011, in CM/Del/Dec(2011)1115 of 10 June 2011, pp. 20 and 23: <https://wcd.coe.int/ViewDoc.jsp?id=1799029&Site=CM>.

69. CPT report of 15 March 2012: www.cpt.coe.int/documents/bgr/2012-09-inf-eng.htm.

70. Letter of 10 September 2012, on file with the Secretariat.

71. The CPT published its further report on 12 January 2012: www.cpt.coe.int/documents/mda/2012-03-inf-fra.htm (in French).

for different crimes linked with ill treatment and torture had been increased to a significant degree.⁷²The *Batý v. Turkey*⁷³ group of cases, however, highlights the problem of impunity of law enforcement officials.

- Similarly, the Ukrainian authorities have adopted a number of measures to prevent new, similar violations. On 12 January 2005, a number of amendments were introduced to the Law on the Militia. Ukraine is also expecting improvements stemming from the recent adoption of the new Code of Criminal Procedure, whose new Articles 176-179, 181, 203, 204, 207, 211, 212, 214 specifically target “the practice of unregistered detention by police” and “the use of administrative arrest for criminal investigation purposes”.⁷⁴ In addition, measures have been taken to strengthen professional and in-service training of police officers in human rights by including the study of the Convention's requirements and the case law on Article 3 in the curriculum of educational establishments under the Ministry of Internal Affairs and the National Academy of Prosecutors. Problems of ill-treatment were also discussed during training programmes for judges and law-enforcement bodies organised by the Office of the Government Agent and NGOs.

3.2.4. Unlawful detention and excessive length of detention on remand

35. The problem of illegal detention and excessive length of detention on remand is common in criminal cases, and is usually accompanied by a lack of effective remedies. The problem of detention in the Republic of Moldova has been featured in the leading case of *Brega v. Moldova*,⁷⁵ which unites seven pending cases. Similarly, the *Trzaska* group of cases,⁷⁶ consisting of 151 pending cases, concerns the excessive length of detention on remand in Poland. In Ukraine, unlawful and/or excessively long pre-trial detention is also a structural deficiency. The Court delivered a “quasi-pilot” judgment in February 2011 in the case of *Kharchenko v. Ukraine*.⁷⁷ With respect to Turkey, the leading group of cases identifying violations of the Convention due to excessively long periods of detention on remand as a major problem is *Halise Demirel v. Turkey*⁷⁸ and the Court rendered a quasi-pilot judgment in *Cahit Demirel v. Turkey*.⁷⁹ Moreover, there have been numerous cases against the Russian Federation, as identified in Interim Resolution CM/ResDH(2010)35,⁸⁰ concerning violations of Article 5 of the Convention due to the unlawful detention of the applicants, its excessive length in the absence of relevant and sufficient grounds for prolonged detention and the lack of effective judicial review of the lawfulness of detention.

36. Possible causes of this structural/systemic problem are:

- the prevailing mentality, professional practice in the judiciary, and lack of motivation;
- the domestic courts’ failure to provide “relevant and sufficient” grounds for their decisions ordering or prolonging detention on remand;
- the domestic courts rendering judgments without taking into consideration the Convention’s requirements;
- the police’s wide-spread practice of unregistered detention;
- failure to bring the arrested person before a judge promptly;
- failure to consider alternative preventive measures;
- inadequate domestic legislation;
- lack of a clear procedure allowing for the speedy review of the lawfulness of detention on remand;

72. According to the information provided by the Turkish delegation, an “Action Plan on Preventing Human Rights Abuses” was prepared by the Ministry of Justice following the high-level conference.

73. Main cases *Baty* group and other similar cases, Application No. 33097/96 judgment of 3 June 2004, see DH-DD(2011)559. Number of cases concerned: 71.

74. http://portal.rada.gov.ua/rada/control/en/publish/article/info_left?art_id=307141&cat_id=105995.

75. *Brega v. Moldova*, Application No. 52100/08, judgment of April 20, 2010.

76. *Trzaska v. Poland*, Application No. 25792/94, judgment of 11 July 2000.

77. *Kharchenko v. Ukraine*, Application No. 40107/02, judgment of 10 February 2011.

78. Main cases *Demirel* group; *Demirel v. Turkey* and other similar cases, Application No. 39324/98, judgment final on 28 April 2003, DH-DD(2011)578. Number of cases concerned: 152.

79. *Cahit Demirel v. Turkey*, Application No. 18623/03, judgment of 7 July 2009, paragraph 46.

80. Interim Resolution CM/ResDH(2010)35 of 4 March 2010, Execution of the judgments of the European Court of Human Rights in 31 cases against the Russian Federation mainly concerning conditions of detention in remand prisons.

- absence of a domestic remedy letting applicants challenge the lawfulness of their detention on remand;
- absence of a right to compensation for unlawful detention on remand.

37. The States Parties concerned have implemented or plan to implement the following general measures to solve this structural problem:

- The Polish authorities have made substantial changes in their State's legal system in order to clarify the rules on the imposition and extension of detention, and to introduce and promote alternative measures. For instance, the Code of Criminal Procedure was reformed in 1997, 2000 and 2007. In 2011, in addition to their regular monitoring of the overall detention situation, the authorities also introduced closer supervision of the grounds for and length of detention, as well as of the efficient conduct of the relevant criminal proceedings.⁸¹
- The Code of Criminal Procedure, Law No. 5271, which came into force on 1 June 2005 in Turkey, provides safeguards intended to prevent future violations of the same kind.
- On 9 November 2011, the Ukrainian authorities presented an action plan that provided a strategy for taking legislative measures, as well as administrative measures aimed at changing detention practices. Emphasis was put on the adoption of a new Code of Criminal Procedure in 2012, which, according to the authorities, would eliminate the legislative shortcomings underlying the recurrent violations of Article 5, paragraphs 1, 3, and 4 of the Convention. The new Code of Criminal Procedure was adopted in April 2012.
- Similarly, on 9 February 2012, the Russian authorities submitted an action plan.⁸² The Constitutional Court and the Supreme Court also adopted a number of decisions in an effort to remedy the existing uncertainty as to the legal provisions governing detention pending extradition.⁸³ They provided the lower courts with guidelines and clarifications on how to apply the general provisions to suspects and to accused persons in detention on remand, as well as to persons detained pending extradition. Since 2008, these decisions have been supplemented by instructions issued by the General Prosecutor's Office. The General Prosecutor's Office also clarified how a detainee's risk of possible ill-treatment in countries requesting extradition should be assessed by prosecutors when issuing an extradition order. In addition, the Russian authorities are currently considering the need for legislative amendments with a view to bringing the Code of Criminal Procedure into line with the Convention's requirements.

38. Moreover, States Parties, if they have not yet done so, should take the general measures needed to change detention enforcement practices. Domestic courts must give relevant and sufficient reasons to justify continued detention, and take into consideration the particular circumstances of each case. Domestic courts are also expected to refrain from giving formulaic decisions and take into account the case law of the Strasbourg Court.

- In Turkey, for example, when deciding whether to extend detention on remand, a domestic judge should indicate the presence of "relevant and sufficient reasons" for doing so, that is explain to what extent the applicant's release would still pose a risk after the passage of some time, in particular in the later stages of the court proceedings.⁸⁴
- The decisions of the Supreme Court of Justice of the Republic of Moldova upholding the need for judicial decisions to be made in light of the Strasbourg Court's findings are a welcome step. These decisions demonstrate the increased attention paid by the Moldovan judicial community to resolving this important issue. However, increased efforts are needed to effectively change the judiciary's daily practice,⁸⁵ and it is not yet clear whether the guidelines contained in the decisions of the Supreme Court of Justice are binding on lower courts. Clarification with regard to this matter would be useful. Consequently, the Republic of Moldova was invited to submit to the Committee of Ministers an action plan on the implementation of the relevant judgments of the Court. Such an action plan is still awaited from the Moldovan authorities.

81. A summary of measures adopted up to 2007 is set out in Interim Resolution CM/ResDH(2007)75 and the subsequent measures are listed in the action plan submitted by the authorities on 21 November 2011.

82. DH-DD(2012)152.

83. Decision of 1 March 2007 and by the Supreme Court ruling of 29 October 2009.

84. See, for example, *Mehmet Yavuz v. Turkey*, paragraphs 39 and 40.

85. See Ministers' Deputies information document CM/Inf/DH(2009)42 rev, 30 November 2009, Measures required to comply with the judgments concerning detention on remand in Moldova.

- At its 1136th human rights meeting in March 2012, the Committee of Ministers noted with satisfaction the progress achieved by the Polish authorities.⁸⁶ A positive trend is visible in recent detention statistics, and Polish courts increasingly appear to be applying alternative measures to detention. The Committee of Ministers also welcomed the commitment of the authorities to resolving this issue, as shown by the continued monitoring of the length of and grounds for pre-trial detention, as well as by the training activities for judges and prosecutors. The Committee of Ministers invited the authorities to continue their efforts in relation to training and awareness-raising measures, in particular as regards the promotion of alternate measures to detention and the further reduction of the use of medium- and long-term detention. As a result of the significant progress achieved and the commitment shown by the Polish authorities, it was decided that the supervision of the execution of this group of detention cases would continue under the standard procedure.⁸⁷ In addition, Polish authorities have taken steps to improve the judiciary's awareness of the Strasbourg Court's judgments concerning the excessive length of detention on remand.⁸⁸ The Ministry of Justice has contacted all the presidents of the appellate courts, and provided an analysis of the Strasbourg Court's case law pertaining to the requirements for the reasoning behind placing individuals in detention on remand.
- According to the most recent information, concerning the execution of the judgment in the case of *Kharchenko v. Ukraine*,⁸⁹ provided by the Ministry of Justice of Ukraine to our committee on 26 April 2012, the Ukrainian government has published and translated the judgment and has sent copies to the Supreme Court, the High Specialised Court of Ukraine for civil and criminal cases, and every Court of Appeal. It has also organised round table discussions on this matter with judges who decide whether pre-trial detention should be granted.

3.3. Parliamentary control

39. Over time, particularly from [Resolution 1226 \(2000\)](#) to [Resolution 1787 \(2011\)](#) on the implementation of Court judgments,⁹⁰ the Parliamentary Assembly's focus and recommendations shifted from being generalised towards being country-specific. Concurrently, single-country resolutions, such as [Resolution 1297 \(2002\)](#), and [Resolution 1381 \(2004\)](#) regarding Turkey, have given way to cluster resolutions examining implementation problems across several or all member States. The latter breed of resolutions has come to be focused on systemic implementation problems, and the legal and administrative structural deficiencies that underlie those problems. For background research, the Assembly continues to rely on its Committee on Legal Affairs and Human Rights, which remains seized of the subject.

40. A national parliamentary supervision system of the implementation of Strasbourg Court judgments is still an exceptional rather than a widespread practice. The United Kingdom's and the Netherlands' systems, which are most often referred to, are described in Mr Pourgourides' above-mentioned report.

41. The achievements in the sphere of national parliamentary scrutiny of four States Parties with structural deficiencies need to be mentioned:

- Romania has a parliamentary subcommittee, established in 2005, of the Committee on Legal Matters, Discipline and Immunities of the Lower Chamber, which monitors the implementation of adverse judgments of the European Court of Human Rights. This subcommittee organises joint hearings on legislative remedies with the governmental commission tasked with the implementation of the above-mentioned pilot judgment in *Maria Atanasiu and Others v. Romania*, monitors the implementation of other judgments finding violations of the Convention by Romania, and promotes and assists in legislative reforms. Since 2011, the government is legally obliged to submit a draft remedial law within three months

86. Decision of 8 March 2012 in the cases of *Trzaska and Kauczor v. Poland*: <https://wcd.coe.int/com.instranet.InstraServlet?Index=no&command=com.instranet.CmdBlobGet&InstranetImage=2047576&SecMode=1&DocId=1866074&Usage=2>.

87. www.coe.int/t/dghl/monitoring/execution/Reports/pendingCases_en.asp?CaseTitleOrNumber=Trzaska&StateCode=POL&SectionCode=

88. Interim Resolution CM/ResDH(2007)75 concerning the judgments of the European Court of Human Rights in 44 cases against Poland (see Appendix II) relating to the excessive length of detention on remand at: <https://wcd.coe.int/ViewDoc.jsp?Ref=CM/ResDH%282007%2975&Language=lanEnglish>.

89. Application No. 40107/02, judgment of 10 February 2011.

90. See also [Resolution 1516 \(2006\)](#) on the implementation of judgments of the European Court of Human Rights.

of any adverse judgment that requires such a law, and to provide an accompanying statement on Romania's compliance with the Convention for each draft law affecting human rights, which it submits to parliament.

- Italy has a “joint permanent committee”, established in 2009, of both the legislative and the executive branches, tasked with guiding parliament in its legislative work, by informing parliament about the specific requirements of the Convention and of relevant judgments of the Strasbourg Court, and by advising parliament on the need for the adoption or amendment of specific laws in order to comply with the Convention as interpreted by the Court. The government is legally obliged to continuously brief the parliament on Strasbourg Court judgments finding violations of the Convention by Italy, and, separately, to supply the parliament with an annual report on the state of the execution of these judgments. Specialised parliamentary committees are tasked with examining this information.
- Since 2006, the Ukrainian Parliament examines draft remedial laws tabled by the government and suggestions for the parliament's own drafting of legislation. The Parliamentary Ombudsman is also briefed on adverse European Court of Human Rights' judgments. In addition, building on the experience of two draft laws⁹¹ that purported to bring about comprehensive national parliamentary control over law enforcement, a joint memorandum of understanding between the Committee on Justice of the Ukrainian Parliament and the then rapporteur of the Assembly's Committee on Legal Affairs and Human Rights, Mr Christos Pourgourides, was signed in 2009 that introduced an experimental mechanism for limited parliamentary scrutiny of Strasbourg Court judgments' implementation. This mechanism was to take the form of Committee on Justice meetings with the Government agent at the European Court of Human Rights and representatives of the Ministry of Justice, and result in the drafting of remedial laws and amendments based on the information and recommendations provided by the participants in those meetings. Moreover, the draft law “On amendments to the Law of Ukraine ‘On the execution of judgments and implementation of practice of the European Court of Human Rights’”⁹² is awaiting its second reading. It will introduce a new clause stipulating that the Verkhovna Rada exercises parliamentary control over the implementation of Court judgments. Those responsible for representing Ukraine before the Strasbourg Court and co-ordinating the implementation of its judgments⁹³ will be obliged to report to the Verkhovna Rada annually, no later than 1 March, about the state of implementation of the Court's judgments. They will also have to present proposals concerning general measures, particularly legislative amendments. The adoption of this draft law will establish procedures in line with the Council of Europe's standards.
- In Bulgaria, a Bill put forward by a group of parliamentarians (Civil Advocacy Initiative of the Institute of Modern Politics) ascribes similar obligations to the Bulgarian Assembly.⁹⁴ It will therefore be useful to follow closely this positive initiative.

4. Conclusion and proposals

42. The States Parties to the European Convention on Human Rights should amend their legislation to reflect the case law of the European Court of Human Rights, and should ensure that their relevant authorities, and in particular the judiciary, apply its case law, by giving priority to the judgments of the European Court of Human Rights over any national legislation that was found to be in contradiction with the Convention.

4.1. Measures to be taken at the stage of evaluating the admissibility of applications before the Court

43. The preparation of this report has shown that statistical information documenting a case's progression in the European Court of Human Rights, as well as a case's status as a “pilot judgment”, “a quasi-pilot” judgment, or “leading case”, is either not available or difficult to access. This means that at the stage of a case's “allocation to a judicial formation” and of making a decision on its admissibility, States Parties are in fact unable to take early, preventive action to eliminate structural/systemic deficiencies.

91. Draft laws Nos. 3472(1999) and 3201(2003) on the basic principles of parliamentary scrutiny in Ukraine, proposed by the rapporteur.

92. Registration No. 9458, 15 November 2011.

93. At present, this body is the Government agent at the European Court of Human Rights.

94. Bill No. 254-01-41, document on file with the Secretariat [of 25 April 2012].

44. The creation of a general, comprehensive database of pending cases, applications, judgments, and information concerning the enforcement of judgments could remedy this lacuna. Such a database could use the comprehensive statistics of the Committee of Ministers, the European Court of Human Rights, as well as of the States Parties themselves. The Committee of Ministers, the European Court of Human Rights, and States Parties should all have full access to this database. States are in the dark about the Strasbourg Court's current volume of work, and the effectiveness of the various measures employed to address structural weaknesses. This database should help increase transparency with regards to structural weaknesses, eligibility criteria of the Court, and the statistics of the various governmental and inter-governmental bodies.

45. To reduce the number of applications lodged before the Court against certain States Parties to the Convention, several measures aimed at preventing the submission of obviously inadmissible applications could be taken, such as:

- establishing centres for the analysis of applications, with the help of non-governmental human rights organisations and in close co-operation with the Court's Registry, that are better equipped than the "Warsaw lawyer" project,⁹⁵ and contact national authorities, such as parliamentary committees, Ombudspersons, and government agents, to address the issues contained in applications, provide free expert assessments of applications' admissibility to the Court, and familiarise applicants with the Court's criteria and procedures;
- opening Council of Europe offices in all States Parties with major structural/systemic problems and/or with a high number of applications before the Court;
- organising meetings with civil society, bar associations, representatives of the academic community, delegations to the Parliamentary Assembly of the Council of Europe, former and/or present judges of the Court.

46. An effective remedy at the national level (preferably a compensatory one) should be available for individuals alleging that their rights guaranteed in the Convention have been violated. The existence of such a remedy is primordial in cases of alleged violations of the reasonable time principle in criminal, civil, and administrative proceedings.⁹⁶ Constitutional complaints could be an additional remedy that would need to be exhausted before lodging an application to the Strasbourg Court.

4.2. Measures to be taken at the stage of proceedings before the Strasbourg Court

47. The defending government should have the possibility to assess the prospects of success of the case against it on its merits at the initial communication stage, and to resolve the case by concluding a friendly settlement, paying just satisfaction, or applying to the competent national court for a review of the case. As stressed in the Izmir Declaration adopted at the High Level Conference on 26 and 27 April 2011, the viability of the Convention system falls within the scope of the shared responsibility of both the Court and the States Parties.⁹⁷ In the Izmir Declaration, States Parties to the Convention were also invited to "give priority to the resolution of repetitive cases by way of friendly settlements or unilateral declarations where appropriate".⁹⁸ While friendly settlements and unilateral declarations may certainly relieve the Court, they will not solve the major structural problems of States Parties in the long-term. More robust and comprehensive measures are needed at the national level.

48. To ensure that cases are dealt with within a reasonable amount of time, States Parties should make sure that the Registry of the Court has sufficient staff, and that the number of secondments is related to the number of applications lodged against the respondent State. The secondment of national judges to the Registry of the Court could be beneficial both to the Court and to domestic legal systems, as it would improve mutual understanding and enhance the national judges' knowledge of the Convention. The fact that an experienced national judge could work for a certain period at the Registry also has the potential to reinforce the operational

95. The Warsaw Lawyer. A Pilot project of the European Court of Human Rights, by Katarzyna Lakoma, Advocate, lawyer at the Information Office of the Council of Europe in Warsaw, 2004-2009, Third Informal seminar for government agents and other institutions on pilot judgment procedure in the European Court of Human Rights and the future development of human rights' standards and procedures. Warsaw, 14-15 May 2009, pp. 212-225.

96. In particular, the experience of some countries, like Poland, which introduced in 2004 a remedy against excessive length of judicial proceedings, should be considered. As indicated by the Turkish delegation, it is now possible for Turkish citizens to complain about human rights violations before the Constitutional Court.

97. Paragraph 6. Available at: www.coe.int/t/dghl/standardsetting/conferenceizmir/Declaration%20Izmir%20E.pdf.

98. Ibid., Part E, paragraph 1.

efficiency of the latter. The secondment of national judges, as well as of other highly qualified lawyers, should therefore be strongly encouraged in the future, notably by simplifying administrative procedures.⁹⁹ It is important to note, however, that seconded national judges shall not receive instructions from their national governments.

4.3. Measures to be taken at the stage of the execution of Court judgments

49. Competent authorities need to be defined in order to facilitate the execution of judgments. I agree with the conclusion in Mr Pourgourides' report:

"The problems revealed by the judgments of the Court are large-scale and complex in nature. Their resolution may sometimes go beyond the execution of a particular judgment. This can only be achieved through the setting up of a comprehensive strategy co-ordinated at the highest political level. Any delays in the setting up of such a strategy should be subject to close monitoring by parliament which should have appropriate means to compel the government to solve these issues as a matter of priority."

50. A possible conflict of interest is created when the government agent for issues relating to the European Court of Human Rights is responsible both for representing the government before the Court and for the execution of the Court's judgments. To avoid such a conflict, a new position of agent for the execution of the judgments of the European Court of Human Rights could be created at the national level, mandated to:

- authoritatively systematise and generalise the Strasbourg Court's case law;
- assist in supervising the execution of the Court's judgments by the relevant authorities, in particular through parliamentary oversight;
- analyse and verify the causes leading to the violations of the Convention identified in the Court's judgments;
- implement individual and general measures, including through the elaboration of draft laws aimed at making States' legislation conform with the Convention and the Court's case law.

51. It is recommended that States with structural deficiencies establish a dual system of parliamentary control, with national parliamentary oversight as a primary instrument and the Parliamentary Assembly's monitoring as backup.

52. The criteria for assessing the efficiency of a State's national parliamentary oversight mechanism will be prescribed by the Assembly to all member States experiencing structural deficiencies, and shall include: regular information supplied by the government to the national parliament as prescribed by law, the parliament's assessment of the effectiveness of implementation measures taken by the executive, and the utilisation of both sources of information in legislative activity aimed at remedying and removing structural deficiencies.

53. The Assembly's duties would include:

- providing appropriate training opportunities;
- considering the reports provided by national delegations on the effectiveness of measures taken by States Parties to address their structural deficiencies, and the implementation of the Convention in law and in practice;
- providing advice on legislative provisions establishing these national parliamentary monitoring mechanisms in charge of overseeing the implementation of Strasbourg Court judgments and eliminating structural/systemic deficiencies, based on recognised best practices drawn from other States Parties.

99. In the Interlaken Declaration of 19 February 2010, the High Level Conference on the Future of the European Court of Human Rights called upon the States Parties to the Convention to consider the possibility of seconding national judges or other high-level independent lawyers to the Registry of the Court, as part of the efforts to increase the awareness of national authorities of the Convention standards and to implement the Convention at the national level. This call was repeated in the Izmir Declaration of 27 April 2011, and was repeated in the Brighton Declaration, 19 and 20 April 2012.

54. This Committee's previous work has demonstrated the need for giving national parliaments an increased role in the execution of judgments.¹⁰⁰ Therefore, I believe that national parliaments, and in particular parliamentary committees on legal issues and justice, should be granted the authority to supervise the activities of the States' executive bodies, to enforce the judgments of the European Court of Human Rights, to elaborate special means, both organisational and legal, to exert influence on States Parties' governments in the face of recurring violations, in particular in cases of delayed execution of the Court's judgments. Parliamentary committees on legal issues should also be responsible for providing legislative support to the Court's pilot judgments, and supervising their execution.

55. Any restrictions to applicants' access to national courts for the review of their case after a final judgment of the Court should be eliminated, and a time period for such a review should be established in the relevant criminal and civil legislation.

4.4. Measures aimed at the elimination of structural/systemic deficiencies in States Parties

56. Most of the measures aimed at the elimination of structural/systemic problems may be taken within the framework of the execution of judgments of the European Court of Human Rights, under the supervision of the Committee of Ministers.

57. The Court could identify structural/systemic issues at a national level more directly and join applications related to the same systemic problem. If the Court adjudicates repetitive cases separately, it could standardise and shorten judgments in order to save its resources for more challenging cases. The judge from the relevant State Party should identify the cases raising important, systemic legal issues in order to prioritise these cases, secure prompt consideration and put an end to continuing violations.

58. However, the legal guarantees for the independence of the Court's judges must be strengthened. Under Article 51 of the Convention, the judges of the Court are entitled to the privileges and immunities provided for in Article 40 of the Statute of the Council of Europe (ETS No. 1) and in the agreements made thereunder. Similarly, under Article 1 of the Sixth Protocol to the General Agreement on Privileges and Immunities of the Council of Europe (ETS No. 162), the judges of the Court and their families are granted the privileges, immunities, exemptions, and facilities accorded to diplomatic envoys in accordance with international law, in addition to the privileges and immunities specified in Article 18 of the General Agreement (ETS No. 2). In practice, however, some issues remain unsettled, and sometimes the authorities act in contravention of the above provisions. Thus, all States Parties' legislation should clearly indicate that judges of the European Court of Human Rights and their families have diplomatic immunity *ad vitam*, as well as possess diplomatic passports, and States Parties should strictly comply with requirements related to that diplomatic immunity by providing to judges of the Court immunities, exemptions, and facilities accorded to diplomatic envoys and to judges of the highest level. A judge's term of office at the Court should be included in the national employment record in judicial or other occupation. After the replacement of a judge of the Court, the relevant State Party should secure the former judge a similar position if he or she has not yet reached retirement age. States can take as a model, in particular, the good practice of the United Kingdom, where a former judge is entitled to the position of a judge of the highest court or a similar position. When the former judge reaches retirement age, he or she should be entitled to a pension equivalent to that of judges of the highest courts or of State agents of similar positions.

59. Legal education and awareness-raising measures are also necessary to avoid further violations of the Convention, particularly in States Parties that joined the Council of Europe relatively recently and where knowledge of human rights issues remains scarce amongst decision makers and State organs.

60. The lack of systemic comprehension of the European Court of Human Rights' case law demonstrated by national authorities, particularly courts, law-enforcement bodies, and bar associations, points to those authorities' lack of knowledge and skills with regard to implementing the Strasbourg Court's case law. As stated by Mr Kotlyar at the committee meeting in Oslo on 7 June 2011, "profound changes in legal education and training of legal professionals are required to alter this in a long-term perspective".¹⁰¹

100. See, in particular, Mr Pourgourides' report on "National parliaments: guarantors of human rights in Europe", [Doc. 12636](#).

101. Text of the speech on file with the Secretariat.

61. Thus, it would be advisable for member States to create a special official website and accessible database, containing official translations of the European Court of Human Rights case law, in particular those decisions, judgments, advisory opinions as well as guidelines (maybe even academic research) which are most pertinent to the country in question. Experts – lawyers by profession – should assist in the preparation of these translations in order to avoid the arbitrary use of legal terms and conflicting interpretations.

Appendix 1 – Total number of new applications allocated to a judicial formation¹⁰²

No.	State	Applications allocated to a judicial formation in 2011	Allocated applications in 2011/ population (10 000)
1	Russian Federation	12 465	0.88
2	Turkey	8 702	1.18
3	Romania	5 207	2.43
4	Poland	5 035	1.32
5	Italy	4 733	0.78
6	Ukraine	4 621	1.01
7	Serbia	3 730	5.10
8	Sweden	1 899	2.02
9	Germany	1 754	0.21
10	France	1 600	0.25
Total number of new applications		64 547	-

102. Extract from the Court's Analysis of Statistics 2011, p. 12.

Appendix 2 – List of the 29 pilot judgments delivered by the Court (data as at 12 November 2012)

Application No.	Case title	State	Decision body	State of proceedings	Subject	Judgment delivery date
31443/96	BRONIOWSKI v. Poland	POL	Grand Chamber	finished	compensation for property left beyond the Bug River	22/06/2004
23032/02	LUKENDA v. Slovenia	SVN	Chamber	finished	civil length of proceedings	06/10/2005
35014/97	HUTTEN-CZAPSKA v. Poland	POL	Grand Chamber	finished	state rent control	19/06/2006
33509/04	BURDOV v. Russia (No. 2)	RUS	Chamber	finished	non enforcement	15/01/2009
45219/06	KAUCZOR v. Poland	POL	Chamber	finished	length of judicial detention	03/02/2009
13136/07	RACU v. Moldova	MDA	Chamber	finished	non enforcement	28/07/2009
17911/08	LUNGU v. Moldova	MDA	Chamber	finished	non enforcement	28/07/2009
22539/05	GUSAN v. Moldova	MDA	Chamber	finished	non enforcement	28/07/2009
476/07	OLARU v. Moldova	MDA	Chamber	finished	non enforcement	28/07/2009
40450/04	YURIY NIKOLAYEVICH IVANOV v. Ukraine	UKR	Chamber	finished	non enforcement	15/10/2009
17885/04	ORCHOWSKI v. Poland	POL	Chamber	finished	conditions of detention	22/10/2009
27912/02	SULJAGIC v. Bosnia and Herzegovina	BIH	Chamber	finished	savings in BIH	03/11/2009
46344/06	RUMPF v. Germany	GER	Chamber	finished	civil length of proceedings	02/09/2010
30767/05	ATANASIU and POENARU v. Romania	ROM	Chamber	finished	restitution claims	12/10/2010
33800/06	SOLON v. Romania	ROM	Chamber	finished	non-payment of compensations due, restitution laws	12/10/2010
60041/08	GREENS v. the United Kingdom	UK	Chamber	finished	prisoners' right to vote	23/11/2010
60054/08	M.T. v. the United Kingdom	UK	Chamber	finished	prisoners' right to vote	23/11/2010
50973/08	VASSILIOS ATHANASIOU AND OTHERS v. Greece	GRC	Chamber	finished	administrative proceedings length	21/12/2010
2708/09	HAMANOV v. Bulgaria	BGR	Chamber	finished	criminal length of proceedings	10/05/2011
48059/06	DIMITROV v. Bulgaria	BGR	Chamber	finished	criminal length of proceedings	10/05/2011
37346/05	FINGER v. Bulgaria	BGR	Chamber	finished	civil length of proceedings	10/05/2011
42525/07	ANANYEV AND OTHERS v. Russia	RUS	Chamber	finished	conditions of detention	10/01/2012
60800/08	BASHIROV AND BASHIROVA v. Russia	RUS	Chamber	finished	conditions of detention	10/01/2012
24240/07	UMMUHAN KAPLAN v. Turkey	TUR	Chamber	awaiting referral request	civil length of proceedings	20/03/2012
54447/10	MICHELIOUDAKIS v. Greece	GRC	Chamber	awaiting referral request	civil length of proceedings	03/04/2012
26828/06	KURIC and Others v. Slovenia	SVN	Grand Chamber	finished	the erased	26/06/2012

604/07	MANUSHAQE PUTO AND OTHERS v. Albania	ALB	Chamber	awaiting referral request	non-enforcement of administrative decisions awarding compensation for confiscated property	31/07/2012
40150/09	GLYKANTZI v. Greece	GRC	Chamber	awaiting referral request	length of civil proceedings	30/10/2012
60642/08	ALISIC and others v. Bosnia and Herzegovina, Croatia, "the former Yugoslav Republic of Macedonia", Serbia and Slovenia	BIH	Chamber	awaiting referral request	foreign currency savings	06/10/2012