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Committee on Legal Affairs and Human Rights

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

Report*

Rapporteur: Mr Klaas de Vries, Netherlands, Socialist Group

Summary

In its eighth report on the implementation of judgments of the European Court of Human Rights, the Committee on Legal Affairs and Human Rights has identified major problems in nine member states with the highest number of unenforced Court judgments (Italy, Turkey, the Russian Federation, Ukraine, Romania, Greece, Poland, Hungary and Bulgaria). The problems include length of judicial proceedings, unlawful detention on remand and/or its excessive length, non-enforcement of domestic judicial decisions, deaths and ill-treatment caused by law enforcement officials and lack of effective investigations into them as well as poor conditions in detention facilities. There is a rising number of judgments concerning complex or structural problems that have not been implemented for more than ten years.

The Committee recommends, inter alia, the prompt implementation of Strasbourg Court judgments, the setting up of effective domestic remedies and the creation of parliamentary procedures to monitor legislative changes needed to comply with the Convention. The Committee also encourages the Committee of Ministers to make use of the "infringement procedure" (Article 46 §§4 and 5 of the Convention) and to take stronger measures in case of dilatory or continuous non-execution of judgments. The Committee of Ministers should also cooperate more closely with civil society and ensure a greater transparency of its supervision process.

* Draft resolution and draft recommendation adopted unanimously by the committee on 23 June 2015.

A. Draft resolution

1. The Parliamentary Assembly is duty-bound to contribute to the supervision of the implementation of judgments of the European Court of Human Rights ("the Court"), on which the efficiency and the authority of the human rights protection system established by the European Convention on Human Rights (ETS No. 5, "the Convention") depends. Whilst, according to Article 46 § 2 of the Convention, the primary responsibility for the supervision of the implementation of Court judgments lies with the Committee of Ministers, the Assembly can also play a key role in this process, in particular by encouraging national parliaments to adopt a proactive approach.

2. The Assembly recalls its previous work on this subject, in particular its Resolutions 1516 (2006) and 1787 (2011) and Recommendations 1764 (2006) and 1955 (2011) on the implementation of judgments of the European Court of Human Rights, its Resolution 1856 (2012) and Recommendation 1991 (2012) on "Guaranteeing the authority and effectiveness of the European Convention on Human Rights", its Resolution 1914(2013) and Recommendation 2007 (2013) on "Ensuring the viability of the Strasbourg: structural deficiencies in States Parties" and Resolution 2055 (2015) and Recommendation 2070 (2015) on "The effectiveness of the European Convention on Human Rights: the Brighton Declaration and beyond".

3. It notes some progress in the implementation of Court judgments, since the entry into force of Protocol No. 14 to the Convention (CETS No. 194) in June 2010 and the introduction, as of 1 January 2011, of the new working methods of the Committee of Ministers. It welcomes the measures taken by the Committee of Ministers and other bodies of the Council of Europe to improve this process as well as the increased interaction between the Committee of Ministers and the Court, in particular through the procedure of pilot or 'quasi-pilot' judgments.

4. However, the Assembly remains deeply concerned about the high number of non-implemented judgments pending before the Committee of Ministers, which remains stable at nearly 11,000 cases. Many of these cases concern structural problems in States Parties, which continue to generate numerous similar applications to the Court (such as serious human rights violations committed by security forces, poor detention conditions, excessive length of judicial proceedings, non-enforcement of final domestic judicial decisions, disproportionate restrictions on property rights and unlawful detention on remand).

5. The Assembly points out, as underlined in Resolutions 1787 (2011) and 1914 (2013), that Bulgaria, Greece, Hungary, Italy, Poland, Romania, the Russian Federation, Turkey and Ukraine have the highest number of non-implemented judgments and still face serious structural problems, which have not been solved for more than 5 years.

6. The Assembly also notes that, in a number of other States (including Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Georgia, the Republic of Moldova, Serbia and the United Kingdom) judgments revealing structural and other complex problems have not been implemented since the Assembly adopted its Resolution 1787 (2011) in January 2011.

7. The Assembly deplores the delays in implementation and the lack of political will of certain States Parties to implement judgments of the Court. It urges all States Parties to observe the legal obligation stemming from Article 46 § 1 of the Convention and fully and rapidly implement Court judgments.

8. As underlined in the Brussels Declaration adopted on 27 March 2015 by the High-level Conference on "the Implementation of the European Convention on Human Rights, our shared responsibility," the Assembly calls on States Parties to fully implement recommendations included therein, and in particular to:

8.1. submit action plans and action reports to the Committee of Ministers in a timely manner;

8.2. create effective domestic remedies to address violations of the Convention;

8.3. provide sufficient resources to national stakeholders responsible for implementing Court judgments;

8.4. ensure a prompt response to judgments raising structural problems;

8.5. take awareness raising measures to promote Convention standards, and

8.6. hold parliamentary debates on the implementation of Court judgments.

9. The Assembly calls on States Parties to provide more funding to Council of Europe projects aimed at improving the implementation of judgments revealing structural problems, in particular through the Human Rights Trust Fund and/or voluntary contributions.

10. The Assembly recalls its Resolution 1823 (2011) on “National parliaments: guarantors of human rights in Europe” and calls on States Parties to implement the “Basic principles for parliamentary supervision of international human rights standards”, reproduced in the Appendix to the said resolution.

11. The Assembly, mindful of the Brussels Declaration inviting it to produce further reports on this subject, resolves to remain seized of this matter and to continue to give it priority, in view of the urgent need to accelerate the implementation of the Court’s judgments.

B. Draft recommendation

1. The Parliamentary Assembly, referring to its Resolution ….. (2015) on the implementation of judgments of the European Court of Human Rights ("the Court"), strongly urges the Committee of Ministers to use all available means to effectively fulfill its tasks related to the supervision of the implementation of Court judgments. Therefore, it calls on the Committee of Ministers:

1.1. to take firmer measures in case of dilatory and/or continuous non-compliance with Court judgments, including those foreseen in Article 46 paragraphs 3-5 of the Convention;

1.2. to consider taking additional measures aimed at improving the effectiveness of the supervision of the implementation of judgments;

1.3. involve, to a greater extent, applicants, civil society, national human rights institutions and other international intergovernmental organisations in the process of implementation of Court judgments, and

1.4. ensure greater transparency of this process.

2. Furthermore, independently of the above proposals, the Assembly recommends that the Committee of Ministers:

2.1. continues to implement the Brussels Declaration adopted on 27 March 2015 by the High-level Conference on "the Implementation of the European Convention on Human Rights, our shared responsibility",

2.2. monitors the implementation of its Decision of 19 May 2015 on "Securing the long-term effectiveness of the supervisory mechanism of the European Convention on Human Rights";

2.3. continues to apply its new working methods in order to accelerate the implementation of Court judgments and reduce its backlog of cases;

2.4. enhance synergies, within the Council of Europe, between the Department for the Execution of the Court's Judgments and all relevant stakeholders;

2.5. increase the resources of the Department for the Execution of Court Judgments, and

2.6. continue to liaise, where appropriate, with the Assembly to ensure rapid and effective implementation of the judgments of the Court.

C. Explanatory memorandum by Mr de Vries, Rapporteur

1. Introduction

1.1. Procedure

1. The issue of implementation of judgments of the European Court of Human Rights ("the Court" or ECtHR) has been on the agenda of the Assembly since 2000 (for more details, see below). In its Resolution 1787 (2011), the Assembly, taking into account major problems encountered in this respect by several Council of Europe member states, decided to "remain seized of this matter and to continue to give it priority".[1] Consequently, on 24 January 2012, the Committee appointed me as the third successive rapporteur on this subject after Messrs Erik Jurgens (Netherlands, SOC) and Christos Pourgourides (Cyprus, EPP/CD). Between April 2012 and January 2013, the Committee held a series of hearings in Strasbourg with the heads of the parliamentary delegations of ten states identified in the 7th report on implementation of judgments, namely Bulgaria, Greece, Italy, the Republic of Moldova, Poland, Romania, Russian Federation, Turkey, Ukraine and United Kingdom. Upon my request, the summary records of these hearings were declassified by the Committee on 19 March 2013.[2]

2. At its meeting in Izmir (Turkey) on 28 May 2013, the Committee considered my progress report and addendum and approved slightly readjusted criteria for the selection of states that I intended to include in the scope of the report, and agreed to declassify the progress report and its addendum.[3]

3. During its meeting in Strasbourg on 30 September 2013, the Committee authorised me to carry out fact-finding visits to Italy, the Russian Federation, Turkey and Ukraine and, if need be, also to Poland and Romania. Consequently, I conducted the following fact-finding visits: to Ankara (Turkey) on 23-25 April 2014, to Rome (Italy) on 22-23 October 2014 and to Warsaw (Poland) on 3-5 December 2014. I have not undertaken a visit to Ukraine due to the political situation in this country and my planned trip to Russia has been cancelled (see Addendum).

1.2. Overview of the Assembly's involvement in the implementation of Strasbourg Court judgments

4. Following the Interlaken (2010) and Izmir Declarations (2011), the High Level Conference on the Future of the European Court of Human Rights held in Brighton, the United Kingdom, in April 2012, underlined the importance of the Assembly in the execution of Strasbourg Court judgments:[4]

> *Each State Party has undertaken to abide by the final judgments of the Court in any case to which they are a party…The Committee of Ministers is supervising the execution of an ever-increasing number of judgments. As the Court works through the potentially well-founded applications pending before it, the volume of work for the Committee of Ministers can be expected to increase further…The Conference therefore…[w]elcomes the Parliamentary Assembly's regular reports and debates on the execution of judgments.* [5]

5. Similarly, the Brussels Declaration adopted on 27 March 2015 by the High-level Conference on the "Implementation of the European Convention on Human Rights, our shared responsibility" recommended once again for the Assembly "to continue to produce reports on the execution of judgments" and encouraged "national parliaments to follow in a regular and efficient manner the execution of judgments". It also stressed the need to find effective solutions to deal with repetitive cases at the level of the Court and in the framework of the execution of judgments. [6]

6 The monitoring of the implementation of the Court's judgments became a key focus of the work of the Assembly and our Committee following the adoption by the Committee, on 27 June 2000, of the first report on the matter by Mr Erik Jurgens. On the basis of this report, the Assembly adopted Resolution 1226 (2000),

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[1] Adopted on 26 January 2011, paragraph 10.6. See also report by our former Committee colleague Mr Christos Pourgorides (Cyprus, EPP) on "Implementation of judgments of the European Court of Human Rights", doc. 12455 of 20 December 2010, hereafter referred to as "Pourgourides report".
[2] Document AS/Jur (2013) 13 declassified.
[3] Document AS/Jur (2013)14 and Document AS/Jur (2013)14 Addendum declassified.
[4] For more information on this subject see the report by our Committee colleague Mr Yves Pozzo di Borgo (France, EPP/CD) on "The effectiveness of the European Convention on Human Rights: the Brighton Declaration and beyond", doc. 13719 of 2 March 2015.
[5] Brighton Declaration, Part F. Execution of judgments of the Court, §§ 26, 28 and 29 e).
[6] Part C.3.f) of the Action Plan and item 8 of the Declaration.

highlighting the need for effective synergy between the Court, the Committee of Ministers and national authorities, and undertaking to play a more prominent role in supervising judgments of the Court.

7. My report is the 8th on this subject. Since 2000, the Assembly has adopted seven reports and resolutions and six recommendations on the subject of the implementation of judgments of the European Court of Human Rights. Between the years 2006 and 2010, the rapporteurs on this issue adopted a relatively proactive approach, conducting *in situ* visits to States Parties with particularly problematic instances of non-implementation (Mr Erik Jurgens visited five states - Italy, the Russian Federation, Turkey, Ukraine and the United Kingdom - in preparation for the sixth report; and Mr Christos Pourgourides visited eight states – Bulgaria, Greece, Italy, the Republic of Moldova, Romania, the Russian Federation, Turkey and Ukraine - in preparation for the seventh report). During these visits the rapporteurs discussed the reasons for failure to execute the Court judgments with members of the national parliaments and government representatives, and underlined the urgent need to find solutions to problems raised. The aim of the visits was to see how, with the aid of parliamentarians in the relevant countries, the national authorities could be 'encouraged' to speed up the implementation of the reforms and measures needed for the prompt and complete execution of judgments.

8. On the basis of the 7th report prepared by Mr Pourgourides, on 26 January 2011, the Assembly adopted Resolution 1787 (2011) and Recommendation 1955 (2011) drawing attention to the difficult situation of non-implementation or delays in full implementation of the Strasbourg Court judgments in a number of states.

9. Five years after the publication of the 7th report on this subject by my predecessor, Mr Pourgourides, I believe that the time has come for a fresh examination of the matter. I would also like to underline that in the meantime, the Assembly and our Committee have worked on a number of issues concerning the reform of the system based on the European Convention on Human Rights("the Convention")[7], including the efficiency of the execution of ECtHR judgments. For example, it has dealt with the issue of structural problems in its Resolution 1914(2013) and Recommendation 2007 (2013) on "Ensuring the viability of the Strasbourg: structural deficiencies in States Parties".[8] In its recent Resolution 2055 (2015) on "The effectiveness of the European Convention on Human Rights: the Brighton Declaration and beyond", it deplored the failure by certain States Parties to discharge their obligations under the Convention[9] and, in its Recommendation 2070 (2015) on the same subject, it called upon the Committee of Ministers ("CM") to use all possible means to accelerate the implementation of Court judgments.[10]

1.3. The parameters of the 8th report

10. The reports presented to the Parliamentary Assembly by my predecessors, Messrs Jurgens and Pourgourides, focused on individual judgments/issues and used certain criteria for their selection. Both reports included in their scope the "judgments (and decisions) raising important implementation issues" as identified, in particular, in the Committee of Ministers' interim resolutions or other documents. Each of them also used one additional selection criterion: "judgments and decisions which have not been fully implemented more than five years after their delivery", for the report by Mr Jurgens, and "judgments concerning violations of a particularly serious nature", for the report by Mr Pourgourides.[11] I have decided to slightly readjust the way in which I proceed with respect to this 8th report.

11. Since 1996 the number of cases requiring oversight by the Committee of Ministers has been on the rise[12], making it more and more difficult for the supervisory body to effectively exercise its functions. My report covers states which have the highest number of judgments pending execution before the Committee of Ministers, according to the statistics in its annual report for the year of 2014. The progress report on this issue that I submitted to the Committee in May 2013[13] was based on data from 2012[14] and focused on the

[7] See Resolution 1856 (2012) and Recommendation 1991 (2012) on "Guaranteeing the authority and effectiveness of the European Convention on Human Rights" and report on this subject by our former Committee colleague Ms. Marie-Louise Bemelmans-Videc (Netherlands, EPP), Doc. 12811 of 3 January 2012 or Resolution 2009 (2014) and Recommendation 2051 (2014) on "Reinforcement of the independence of the European Court of Human Rights" adopted on 27 June 2014 and report on this subject by our Committee colleague Mr Boriss Cilevičs (Latvia, SOC), doc. 13524 of 5 June 2014.
[8] Adopted on 22 January 2013; see report on this subject by our former colleague Mr Serhii Kivalov (Ukraine, EDG), doc. 13087 of 7 January 2013.
[9] Adopted on 24 April 2015, paragraph 4, see report on this subject supra note 4.
[10] Paragraph 1.1.
[11] See § 6 of the 6th report (PACE document 11020) and § 5 of the 7th report (PACE document 12455).
[12] See "Supervision of the execution of judgments and decisions of the European Court of Human Rights – Annual Report 2014", p. 26 At the end of 1996, there were 709 cases pending before the CM, while at the end of 2014 – 10,904.
[13] AS/Jur (2013) 14 declassified, 10 May 2013.

following eight states , in descending order: Italy (2569 cases), Turkey (1861 cases), the Russian Federation (1211 cases), Ukraine (910 cases), Poland (908 cases), Romania (667 cases), Greece (478 cases), and Bulgaria (366 cases).[15] The newest data, from the CM Report on "Supervision of the execution of judgments of the European Court of Human Rights - Annual Report 2014" ("CM 2014 Annual Report"), show the following order: Italy (2622 cases), Turkey (1500 cases), the Russian Federation (1474 cases), Ukraine (1009), Romania (639), Greece (558 cases), Poland (503 cases), Hungary (331 cases) and Bulgaria (325 cases)[16]. Although Hungary was not within the eight states examined in my progress report, it is now the country with the 8th highest number of non-implemented judgments of the Court, before Bulgaria. However, the difference between Hungary and Bulgaria is very small (only six judgments). Thus, I will examine the situation of both states.

12. As an aside, it is to be noted that the above statistics do not necessarily correspond to the 'reality', if considered from the angle of the number of cases pending before the Court, either in absolute numbers or in proportion to population size. In terms of the number of cases pending consideration by the Court at the end of 2014, the following eight states accounted for 75% of the total caseload: Ukraine (19.5%), Italy (14.4%), the Russian Federation (14.3%), Turkey (13.6%), Romania (4.9 %), Serbia (3.6%), Georgia (3.3%), and Hungary (2.6%).[17] As one can easily see, the order of importance is not the same as in the statistics on execution provided by the Committee of Ministers; Poland ranks 9th (with 2,6% of pending applications, followed by Slovenia with 2,4%) and Greece is absent from the list . If we were to look at the number of applications allocated by the Court's Registry to a judicial formation as of 31 December 2014, presented in proportion to the population of the states concerned, the picture changes again drastically: the eight biggest contributors would be Serbia (3.90 *per* 10,000 inhabitants), Liechtenstein (3.24), Ukraine (3.14), the Republic of Moldova (3.11), Croatia (2.58), Montenegro (2.53), Hungary (2.43) and Romania (2.22).[18] Three states from the above list of the biggest "offenders" as identified by the Committee of Ministers – Ukraine, Hungary and Romania – would also find themselves in this group. Other statistics included in the CM 2014 Report are interesting in this context and show the number of complex cases pending execution per State, concerning 11 states with the highest number of cases under "enhanced supervision"[19] (on the basis of the number of leading cases, i.e. cases that reveal structural problems[20]). With the exception of Hungary, all member states analysed in the Addendum are high on this particular list, namely: the Russian Federation (16%), Ukraine (13%), Turkey (8%), Bulgaria (8%), Italy (8%), the Republic of Moldova (8%), Romania (6%), Greece (5%), Azerbaijan (4%), Serbia (3%), and Poland (3%).[21]

2. Non implementation of ECtHR judgments: main problems

2.1. The situation in Italy, Turkey, the Russian Federation, Ukraine, Greece, Romania, Poland, Hungary and Bulgaria

13. All of the nine states selected on the basis of the Committee of Ministers' annual statistics, with the exception of Hungary, were already identified as having difficulties with the implementation of the Court's judgments in the 2010 report prepared by Mr Pourgourides and were the subject of hearings before our Committee between April 2012 and January 2013 (see paragraph 1, above). The main issues detected for each of the above states are as follows:

Italy:

- excessive length of judicial proceedings and lack of an effective remedy in that regard,
- expulsion of foreign nationals in violation of the Convention,
- poor conditions of detention.

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[14] CM, Supervision of the execution of judgments and decisions of the European Court of Human Rights – 6th Annual Report 2012.
[15] Ibid, pp. 30-31.
[16] The 10th country on this list is Slovenia with 302 pending cases.
[17] Followed by Poland (2.6 %) and Slovenia (2.4%). See "Annual Report 2014 of the European Court of Human Rights, Council of Europe", p. 167.
[18] Ibid, p. 156-157. The Council of Europe member states had a combined population of approximately 822 million inhabitants on 1 January 2012. The average number of applicants allocated to a judicial formation per 10,000 inhabitants was 0.79 in 2012.
[19] See below for more information about this procedure.
[20] Pp. 28 and 51. The following cases concerning the same problem are called « repetitive cases ». For the purposes of statistics, possibly "isolated cases" (cases revealing isolated errors or shortcomings) are usually included among leading cases.
[21] CM 2014 Report, supra note 12, p. 41.

Turkey:
- failure to re-open unfair criminal proceedings,
- repeated imprisonment for conscientious objection to military service,
- violations of the right to freedom of expression and freedom of assembly,
- excessive length of detention on remand,
- actions of security forces,
- issues concerning the northern part of Cyprus.

Russian Federation:
- 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",
- poor conditions of detention on remand, in particular in pre-trial detention centres,
- excessive length of and lack of relevant and sufficient reasons for detention on remand,
- torture and ill-treatment in police custody and lack of effective investigation in that respect
- actions of the security forces in North Caucasus,
- various violations of the Convention related to secret extraditions to former Soviet republics in Central Asia,
- prohibition of LGBT assemblies.

Ukraine:
- non-enforcement of domestic judicial decisions,
- excessive length of judicial proceedings and lack of an effective remedy in that regard,
- poor conditions of detention,
- ill-treatment by police and lack of effective investigations in this respect,
- issues concerning detention on remand,
- unfair trials, inter alia, due to lack of impartiality and independence of judges.

Romania:
- failure to restore or compensate for nationalised property,
- excessive length of judicial proceedings and lack of an effective remedy in that regard,
- non-enforcement of domestic judicial decisions,
- poor conditions of detention,
- ill-treatment by police and lack of effective investigations in this respect.

Greece:
- excessive length of judicial proceedings and lack of an effective remedy in that regard,
- use of lethal force and ill-treatment by law enforcement officials and lack of effective investigation of such abuses,
- shortcomings in the asylum procedure and poor conditions of detention of irregular migrants,
- violations of the freedom of association of the Turkish minority.

Poland:
- excessive length of judicial proceedings and lack of an effective remedy in that regard,
- poor conditions of detention.

Hungary
- excessive length of proceedings.

Bulgaria
- deaths and ill-treatment taking place under the responsibility of law enforcement officials and lack of effective investigation of such abuses,
- excessive length of judicial proceedings and lack of an effective remedy in that regard,
- violations of the right to respect for family life due to deportation/orders to leave the territory,
- poor conditions of detention.

14. The above issues are described in more detail in the Addendum to the present document. The Addendum also deals with delays in the implementation of certain judgments against the United Kingdom, an issue which was first pointed out by my predecessor Mr Pourgourides. I focus mainly on the issue of general measures (i.e. measures aimed at preventing new similar violations), although the issue of individual measures (i.e. measures aimed at ensuring *restitution in integrum* for the applicant or eradicate the negative consequences of the violation for him/her) and/or the payment of just satisfaction raise serious issues of

implementation in certain cases (see, for instance, the lack of investigations in the "Chechen cases" concerning Russia or the problem of payment of just satisfaction by Turkey in certain cases concerning issues in the northern part of Cyprus).

15. The Addendum shows that the vast majority of cases presented in Mr. Pourgourides' report have not been closed by the CM (with the exception of some cases against Poland, the excessive length of proceedings in Turkey, and some aspects concerning problems with the expulsion of foreigners in Italy and Bulgaria), although there has been some progress in many cases. This is especially true for groups of cases for which the Court delivered pilot judgments or judgments under Article 46, urging the respondent states to provide for an effective remedy against specific violations of the Convention (mainly against excessive length of proceedings or poor conditions of detention). There have been signs of progress in Italy, where lengthy judicial proceedings are an endemic problem. But the domestic remedy provided in the Pinto law turned out to be ineffective due, again, to delays in the payment of compensations. On a more positive note, Italy has reacted to the newly identified problem of prison overcrowding and has taken awareness raising measures to prevent expulsions of foreigners in breach of the Convention.

16. Although the issue of excessive length of proceedings has been closed by the CM in respect of Turkey, many unresolved problems still persist: – lack of legislation on conscientious objectors, violations of the freedoms of assembly and expression, impunity of law enforcement officers and abusive use of detention on remand. Some progress has been achieved with the adoption of the third and fourth reform packages. But the problem of the implementation of the judgment in *Cyprus v. Turkey* and some other judgments concerning the northern part of Cyprus still has a long way to go. Progress will depend on the political will of the Turkish authorities, and on continuing peer pressure within the Committee of Ministers.

17. Despite making some progress in certain cases, the Russian Federation has a long list of outstanding issues concerning implementation of ECtHR judgments, most of which concern particularly serious human rights violations. The lack of progress in the implementation of the Chechen cases or the cases concerning extraditions of foreigners to former Soviet republics in Central Asia show a clear lack of political will to execute the Court's judgments and to follow the CM's recommendations. The same must be said about the *Alekseyev v. Russia*[22] judgment, concerning LGBT groups' right to freedom of assembly; one could even say that the situation in this area has worsened since this judgment was delivered by the Court.

18. Almost no progress has been noted regarding Ukraine, which could be partly explained by the recent turmoil in this country, the annexation of Crimea by the Russian Federation and the violent conflict in eastern Ukraine, which recently prompted Ukraine to derogate from certain articles of the Convention under Article 15. Ukraine is nevertheless legally obliged to implement the Court's judgments and the Council of Europe is ready to assist it in accomplishing this task.

19. Greece has taken some steps to eradicate the excessive length of proceedings, but its passive attitude towards the issue of the freedom of association of the Turkish minority reveals a lack of political will in this respect. Moreover, it is confronted with huge and growing influx of illegal migrants from Africa and Asia, a phenomenon which raises serious human rights concerns in Europe and doubts about the efficiency of the EU's Dublin Regulation for asylum seekers. These problems are well- illustrated by the judgments from the group *M.S.S. v. Belgium and Greece*.

20. As regards the remaining states, Romania has still a number of serious issues to deal with, although it has made significant progress in setting up a system of compensation for owners whose properties had been nationalised under the communist regime. It has also reformed its civil and criminal codes. Poland has successfully tackled the problem of excessive length of detention on remand,[23] but it is still confronted with the problem of excessive length of proceedings, although it was one of the first States to introduce a domestic remedy against this type of violations of the Convention. Hungary has to cope with the excessive length of proceedings. Despite some progress, Bulgaria has to make more efforts in most of the areas identified in the Addendum to this report, especially regarding conditions of detention and the abuse of force by law enforcement officials.

[22] Application no. 4916/07, judgment of 21 October 2010.

[23] See the draft report on "Abuse of pre-trial detention in States Parties to the Convention on Human Rights" (Rapporteur: Mr Pedro Agramunt, Spain, EPP) , which is on the Committee's agenda for adoption during the June 2015 part-session.

2.2. The situation in other selected states

2.2.1. Criteria for examination

21. In his report, Mr Pourgourides examined briefly the non-implementation of judgments concerning some member states, which had only recently joined the Council of Europe (Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Georgia and Serbia). He also examined in detail the non-implementation problems concerning the Republic of Moldova. The CM Annual Report 2014 confirms that structural/complex problems in most of these member states persist: in Albania – non-restitution of nationalised properties (the *Driza* group[24]), in Armenia – poor conditions of detention (the *Kirakosyan* group[25]) and Georgia – lack of effective investigations into ill-treatment by police (the *Gharibashvili* group[26]). In Bosnia and Herzegovina, the judgment *Sejdić and Finci v. Bosnia and Herzegovina*[27] (concerning discrimination of persons belonging to ethnic minorities due to legal restrictions to stand for parliamentary and presidential elections) remains non-executed, despite three interim resolutions of the CM.[28]

22. Although these problems remain important, I am not in position to analyse in detail the situation in all these states in the framework of this report. I will focus on a few countries, which according, to the latest CM statistics, are within the "top eleven" of countries with the highest number of "cases under the enhanced supervision of the CM" (on the basis of leading cases).

2.2.2. The Republic of Moldova

23. The issue of non-implementation in respect of this State Party was analysed in detail in Mr Pourgourides' report, which focused on the following problems: non-enforcement of domestic judgments, unlawful pre-trial detention, ill-treatment by police and poor conditions of detention on remand.[29] According to the CM 2014 Report, there were 256 non-implemented judgments against the Republic of Moldova as of 31 December 2014, placing this country 11th on the list of countries with the highest number of non-implemented judgments. Moreover, 8% of the overall number of judgments under the enhanced supervision process concerned this small State and they related mainly to the three main problems already flagged in the Pourgourides report: poor conditions of detention (over 30 cases), abuse of force by police officers (nearly 30 cases) and unlawful detention on remand. As regards cases concerning non-enforcement of domestic decisions (the *Olaru* group), some progress has been observed since 2010, as they have been transferred to the standard supervision procedure, following the creation of an effective domestic remedy in July 2011.[30]

2.2.3. Azerbaijan

24. 114 unexecuted cases were pending against Azerbaijan as of 31 December 2014. 4% of the cases under enhanced supervision concern this country: these belong to five groups of cases (concerning freedom of expression, the right to free elections, non-enforcement of domestic decisions, evictions of internally displaced persons, excessive use of force by police during demonstrations and ill-treatment in police custody) and the recent judgment in the case of *Ilgar Mammadov v. Azerbaijan*[31] concerning the applicant's politically-motivated detention (violations of Articles 5 and 18).[32] I would like to point out in this context that the applicant has still not been released, despite several calls from the CM[33], the President of the Assembly, and the competent rapporteurs.[34] It should also be noted that the CM examined the group of cases of *Mahmudov and Agazade*[35] and *Fatullayev v. Azerbaijan*[36] concerning convictions for defamation, four times,

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[24] Application no. 33771/02, judgment of 13 November 2007.
[25] Application no. 31237/08, judgment of 2 December 2008.
[26] Application no. 11830/03, 29 judgment of July 2008.
[27] Application no. 27996/06, judgment of 22 December 2009 (Grand Chamber).
[28] Interim Resolutions CM/ResDH(2011)291, CM/ResDH(2012)233, CM/ResDH(2013)259
[29] Paragraphs 60-74.
[30] Decision adopted at the CM 1136th (DH) meeting, 6-8 March 2012, *Olaru and Others v. Moldova,* application no. 476/07+, judgment of 28 July 2009, and similar cases.
[31] Application no. 15172/13, judgment of 22 May 2014.
[32] P. 60 and 61.
[33] See Interim Resolution CM/ResDH(2015)43 adopted by the CM on 12 March 2015 at its 1222nd (DH) meeting.
[34] See, for instance, statement by PACE President Ms Anne Brasseur of 10 December "Pressure on Ilgar Mammadov's lawyer is unacceptable, " statement by our Committee colleague Ms Mailis Reps (Estonia, ALDE) of 20 June 2014, "Azerbaijan: rapporteur expresses concern at human rights defenders' situation" or the recent report by the co-rapporteurs of the Monitoring Committee, Messrs Pedro Agramunt (Spain, EPP/CD) and Tadeusz Iwiński (Poland, SOC) on "The functioning of democratic institutions in Azerbaijan", Doc. 13801 of 5 June 2015, paragraphs 56 and 57
[35] Application no. 35877/04, judgment of 18 March 2009.
[36] Application no. 40984/07, judgment of 22 April 2010.

i.e. at every Human Rights (DH) meeting in 2014. Persistent problems concerning non-enforcement of domestic judgments and freedom of expression were already pointed out in the Pourgourides report.[37]

2.2.4.Serbia

25. As of 31 December 2014, 194 cases were pending before the CM concerning Serbia. Serbian cases represent 3% of the overall number of cases under the enhanced supervision process. These are cases from the group *EVT Company*[38] (40 cases concerning non-enforcement of final court and administrative decisions, already mentioned in the Pourgourides report[39]), the pilot judgment *Ališić and Others v. Serbia and Slovenia*[40], concerning failure by the governments of the successor states of the Socialist Federative Republic of Yugoslavia (SFRY) to honour "old" foreign-currency savings deposited outside Serbia and Slovenia, the judgment *Grudić v. Serbia*[41] concerning suspension of payment of pensions earned in Kosovo[42] and the judgment *Zorica Jovanović v. Serbia*[43] concerning failure to provide information on the fate of new-born babies alleged to have died in maternity wards. Serbia is also within the 10 countries with the highest number of applications pending before the ECtHR.

3. Recent general data concerning implementation of ECtHR judgments

26. The CM 2014 Report sounds optimistic about the overall progress in the implementation of ECtHR judgments – in particular the decrease in the number of pending cases and the increased number of cases that have been closed (including many cases concerning structural problems), although it also points out certain problems.[44] I would remain cautious about this apparently good news and will have a closer look at the main statistical data contained in the CM 2014 Report.

27. At the end of 2014, there were **10,904 cases** pending before the CM. Compared with the two previous years, there has been a very slight decrease (11,099 in 2012 and 11,019 in 2013). However, this number is still higher than the number of cases pending before the CM at the end of 2011 (10,689), when the workload of the CM reached its peak.[45] Therefore, one should rather say that the CM's huge workload has not changed much since 2012.

28. As of 31 December 2014, out of the 10,904 pending cases, 6,718 cases were examined under the **enhanced procedure** (while in 2013, there were 6,707).[46] Thus, the number of complex cases has not decreased. Moreover, the number of cases under enhanced supervision for more than 5 years has increased (from 128 in 2014 to 160 in 2015), which confirms the existence of "pockets of resistance".[47]

29. In 2014, the CM **closed 1,502 cases** (compared with 1,398 in 2013), but at the same time it received 1,389 new cases (compared with 1,328 in 2013).[48] Thus, the number of closed cases slightly exceeded the number of new ones. It is positive that the number of closed cases has increased almost threefold in comparison with the number of cases closed in 2010 (455) and this increase has been gradual since that year. In the meantime, the number of new cases received every year was slightly decreasing (in 2010, the CM received 1,710 new judgments finding violations of the Convention, which was the highest number since 1996). Within the 1,502 closed cases, 169 cases were subject to the enhanced supervision procedure (compared with 14 cases closed in 2013).[49]

30. As regards the main themes under enhanced supervision (on the basis of the number leading cases), at the end of 2014, half the cases concerned three major problems: actions of security forces (20%), poor detention conditions (14%) and excessive length of proceedings (11%). Then followed: non-enforcement of domestic judicial decisions (7%), disproportionate restrictions to property rights (6%), unjustified detention (5%), violations of the right to life (4%), unjustified expulsions (4%), specific cases of ill-treatment (3%),

[37] Supra note 1, para. 178.
[38] Application no. 3102/05, judgment of 21 September 2007.
[39] Supra note 1, para 183.
[40] Application no.60642/08, judgment of 16 July 2014.
[41] Application no. 31925/08, judgment of 17 April 2012.
[42] All reference to Kosovo in this document, whether the territory, institutions or population, shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.
[43] Application no. 21794/08, judgment of 26 March 2013.
[44] Supra note 12, p. 7 and 9.
[45] Ibid, p. 27.
[46] Ibid, p. 30.
[47] Ibid, p. 11.
[48] Ibid, pp. 27 and 26.
[49] Ibid, p. .31.

violations of freedom of expression (3%) and discrimination (3%).[50] Thus, in almost a half the cases in this category concern particularly serious human rights violations (Article 2 and/or 3).

31. There are also interesting statistics concerning the average duration of the execution in leading cases, which have been closed. In 2014, the general average was 4.1 years (4.1 years for cases under standard supervision and 4.8 years for cases under enhanced supervision). However, there are cases against certain States Parties, where much more years elapsed before they could be closed (against the Russian Federation – with a general average of 9.7 years, against the Republic of Moldova – 8.3 years and against Ukraine – 7.4 years).[51] The CM's statistics look too positive and seem not to reflect properly the delays in execution or even the reluctance of certain states to implement ECtHR judgments. As indicated in the Addendum, there are many judgments, which have not been implemented for more than 10 years.

32. As regards **payment of just satisfaction**, the CM 2014 Annual Report points out that payments are made within the deadlines in 84% of cases; however, in the majority of cases the authorities are lagging behind with providing information on payment to the Department for the Execution of ECtHR Judgments (in two thirds of such cases the information is still missing after six months have passed after the deadline for the payment).[52]

4. New tools aimed at improving implementation of ECtHR judgments since the Pourgourides report

4.1. Article 46 paragraphs 3, 4 and 5 of the Convention

33. Following the entry into force of Protocol no. 14[53] to the Convention on 1 June 2010, Article 46 on the binding force and execution of ECtHR judgments has been strengthened by the addition of three new paragraphs:

3. If the Committee of Ministers considers that the supervision of the execution of a final judgment is hindered by a problem of interpretation of the judgment, it may refer the matter to the Court for a ruling on the question of interpretation. A referral decision shall require a majority vote of two thirds of the representatives entitled to sit on the committee.
4. If the Committee of Ministers considers that a High Contracting Party refuses to abide by a final judgment in a case to which it is a party, it may, after serving formal notice on that Party and by decision adopted by a majority vote of two thirds of the representatives entitled to sit on the committee, refer to the Court the question whether that Party has failed to fulfil its obligation under paragraph 1.
5. If the Court finds a violation of paragraph 1, it shall refer the case to the Committee of Ministers for consideration of the measures to be taken. If the Court finds no violation of paragraph 1, it shall refer the case to the Committee of Ministers, which shall close its examination of the case.

34. Thus, paragraph 3 of the Article 46 provides for a so-called "advisory opinion procedure", while paragraphs 4-5 set up "the infringement procedure", allowing the CM to request the Court to provide an official determination of non-compliance with its judgments.[54] The latter provisions do not provide for additional sanctions, besides for another Court judgment finding a violation of Article 46 §1 of the Convention. These new procedures have not been used so far by the Committee of Ministers.

4.2. New procedure for the CM supervision of the implementation of judgments

35. As pointed out in the CM 2014 Report, the implementation of ECtHR judgments benefits from the working methods introduced as of 1 January 2011[55]; as stressed in the Brussels Declaration, they strengthen the subsidiarity of the supervisory mechanism established by the Convention. The reform introduced in 2011 consisted mainly in the introduction of a two-track procedure for better prioritisation of cases. Judgments revealing complex/structural problems, pilot judgments, judgments delivered in inter-state cases and judgments requiring urgent individual measures are examined in the "enhanced supervision" procedure; all other judgments are subject to the "standard supervision" procedure. However, all cases are under the continuous supervision of the CM. Respondent States have to submit action plans/reports for the implementation of judgments within 6 months since the judgments became final.

[50] Ibid, p. 40.
[51] Ibid, pp. 49-50.
[52] Ibid, p. 10.
[53] CETS No. 194
[54] Article by Başak Cali and Anne Koch, *Foxes Guarding the Foxes? The Peer Review of Human Rights Judgments by the Committee of Ministers of the Council of Europe,* 'Human Rights Law Review', 2014, 0, pp. 1-25, see at p. 10.
[55] Supra note 12, pp. 9, 17 and 208-213.

36. The CM 2014 Report praises an increased capacity of response on the part of the CM to the problems that may arise (with an increase of 20% in the number of its interventions to assist execution), the more frequent transfers between the two supervision tracks (standard and enhanced), the increased reactivity of governments through the submission of action plans/reports (with a total of 266 action plans and 481 action reports submitted in 2014)[56] and the increased transparency of the process (through the rapid publication of all information received and the decisions adopted by the CM)[57]. Statistics show a decrease of almost 20% in the number of cases pending in less than 5 years, which might be related to the introduction of the new working methods in 2011.

4.3. Greater visibility: publication of action plans/reports and NGOs submissions

37. The reform introduced in 2011 also improved the transparency of CM documents concerning execution of ECtHR judgments.[58] Usually actions plans/reports submitted by governments are rapidly published on the website of the Department for Execution of Judgments (see Rule 8 on access to information, Rules of the CM for the supervision of the execution of judgments and of other terms of the friendly settlements). The same applies to submissions by applicants, their representatives or NGO, made under Rule 9 of the said Rules. This is particularly important as applicants do not have standing before the Committee of Ministers in the procedure of supervision of the implementation of the judgments concerning them. Under Rule 9.1 of the abovementioned Rules, they can only make written submissions to the CM on individual measures and the payment of just satisfaction. NGOs and national human rights institutions (NHRIs) can make submissions to the Committee of Ministers on any aspect of the implementation of a judgment, including general measures. This gives the Committee of Ministers access to information from both sides –governments and civil society – on issues such as comprehensive reforms aimed at eradicating structural problems.[59]

38. Moreover, greater accessibility of CM documents and submissions from member states, applicants and NGOs has been ensured by IT improvements in the Department for the Execution of ECtHR judgments.[60] Further improvements are possible. People who are not well-acquainted with the CM procedures (even lawyers) still find it difficult to access relevant information.

4.4. Other measures

39. The CM 2014 Annual Report also points out other activities which turned out to be helpful in improving the efficiency of the process of implementation of ECtHR judgments. Firstly, efficient coordination between the Department for Execution of judgments and the Council of Europe cooperation programmes contributes to the elimination of structural problems, by enhancing dialogue with the authorities and providing expertise. This should be a priority for the Secretary General of the Council of Europe.[61] Since 2006, the CM has provided additional support to the Department for the Execution of ECtHR Judgments for its "special targeted cooperation activities" (providing legal expertise, organising round tables and other activities).[62] Secondly, many activities aimed at providing expertise to national stakeholders have been funded by the Human Rights Trust Fund since it was established in 2009[63] (such as round tables, seminars, translation of judgments or other training activities; for example a project on freedom of expression in Turkey and a multi-lateral project on detention on remand). Thirdly, some activities have also been organised thanks to voluntary contributions from certain member states (Denmark, Netherlands and Sweden) or Norway Grants.[64] Fourthly, one should not forget the efforts undertaken by the Council of Europe in the framework of the training activities of the HELP programme, whose role has recently been stressed by the Assembly in its Resolution 1982 (2014) and Recommendation 2039 (2014) on "The European Convention on Human Rights: the need to reinforce the training of legal professionals".[65]

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[56] Ibid, p. 41
[57] Ibid, pp. 9-11.
[58] Ibid, p. 212.
[59] For a more detailed analysis, see article by Agnieszka Szklanna, *The Standing of Applicants and NGOs in the Process of Supervision of ECtHR Judgments by the Committee of Ministers,* article (in English) published in: 'European Yearbook on Human Rights 2012', ed. W. Benedek and others, Vienna, pp. 269-280.
[60] Supra note 12, p. 12.
[61] Ibid, pp. 13 and 23
[62] Ibid, p. 21.
[63] Ibid, pp. 22 and 23.
[64] Ibid, p. 23
[65] Both adopted on 7 March 2014 by the Standing Committee. See report by our former Committee colleague Mr Jean-Pierre Michel (France, SOC), doc. 13429 of 18 February 2014.

4.5. Strengthened interaction between the Court and the CM

40. Since the entry force of Protocol no. 14, the Court has taken a more proactive approach as regards the implementation of its judgments. As pointed out in the CM 2014 Report, thanks to indications given by the Court in its pilot judgments or judgments under Article 46 ("quasi-pilot judgments")[66], the CM was able to focus on cases raising structural problems and respondent states received more indications as to the measures required to implement judgments.[67] The implementation of many pilot and "quasi-pilot" judgments seems to have been efficient and, following the responses of the domestic authorities (mainly concerning the introduction of effective remedies), the Court returned many new applications to the domestic level.[68] However, such "repatriation" of cases should not absolve the respondent States from addressing the core problems.[69] For example, the adoption of an effective remedy against excessive length of proceedings should not prevent the State from taking measures to eradicate the phenomenon of protracted procedures.

5. Parliamentary support in implementing ECtHR judgments

5.1. The role of national parliaments

41. The role of parliamentary oversight in implementing ECtHR judgments has been pointed out by the Assembly and my predecessors[70] on many occasions (namely in Resolution 1787(2011) on the implementation of judgments and Resolution 1823 (2011) on "National parliaments: guarantors of human rights in Europe"[71]). It was also discussed by our Committee on 27 June 2013 during a joint hearing with the Committee on Political Affairs and Democracy on "Implementation of the Strasbourg Court judgments: the parliamentary dimension"[72] and at a parliamentary seminar in Madrid on 31 October 2014. An overview of the existing models is provided by the Secretariat's background memorandum on "The role of parliaments in implementing ECHR standards: overview of the existing structures and mechanisms"[73]. Therefore, I will not go into more detail on this subject-matter.[74]

42. Since the Pourgourides report, there has been some progress in this respect in several countries. For example, in Poland, in February 2014, the Justice and Human Rights Committee and the Foreign Affairs Committee of the Sejm (the lower house) jointly established a permanent Sub-Committee on the execution of judgments of the ECtHR.[75] During my visit to Warsaw in December 2014, I met some members of the Justice and Human Rights Committee and members of the new Sub-committee. Whilst representatives of NGOs complained about the inactivity of the Sub-committee since the end of August 2014, MP's explained that this was due to the changes in its composition following the reorganization of the government at that time. During my visit to Turkey in April 2014, I raised the issue of establishing a parliamentary structure to monitor implementation of ECtHR judgments with the Chairpersons of the Committee on Justice and the Committee on Human Rights Inquiries, who showed interest in this proposal. During my visit to Italy (October 2014), my interlocutors informed me that the Prime Minister was regularly reporting to Parliament about progress made in this respect. According to the CM 2014 Annual Report, a permanent committee was created within the Greek Parliament in December 2013 and, in Bulgaria, the Government reports to Parliament on progress in this respect each year.[76]

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[66] Supra note 12, p. 11. In the last few years, the Court developed a practice of giving judgments with a special part on Article 46 containing indications/recommendations about the measures (individual and/or general) to be taken by the respondent state in order to implement the judgment and solve structural problems. In 2013, it delivered 16 such judgments and in 2014 – 24. For examples, see Addendum.

[67] For a more detailed analysis of this proactive approach of the Court, see, for instance, article by Linos-Alexander Sicilianos, *The Involvement of the European Court of Human Rights in the Implementation of its Judgments: Recent Developments under Article 46,* 'Netherlands Quarterly of Human Rights', Vol. 32/3, 2014, pp. 235-262.

[68] Supra note 12, p. 7.

[69] As stressed by the CDDH, see p. 19 of the CM Report.

[70] Pourgourides report, supra note 1, paragraphs 195-208.

[71] Adopted on 23 June 2011. See report on this subject by Mr Pourgourides, Doc. 12636 of 6 June 2011.

[72] AS/Jur synopsis, document AS/Jur (2013) CB 05 rev, at p.3.

[73] PPSD (2014) 22 of 13 October 2014.

[74] For more information, see for instance: *Parliaments and Human Rights* by Murray Hunt and others (ed.), Hart Publishing, Oxford, March 2015 and A. Drzemczewski, *Recent Parliamentary Initiatives to Ensure Compliance with Strasbourg Court Judgments,* in 'L'homme et le droit. En hommage au Professeur Jean-François Flauss', Editions Pédone, Paris, 2014, pp.265-276.

[75] The new Sub-committee is composed of 10 MPs, and its terms of reference include: detailed examination of information submitted by the Council of Ministers on the state of execution of ECtHR judgments, and preparation of draft opinions for the Sejm Committee on Justice and Human Rights and Committee on Foreign Affairs.

[76] Supra note 12, p. 206.

43. It should be noted that setting up specialized parliamentary structures is not sufficient; they should be proactive in fulfilling their tasks. For example, Ukraine, despite a 2006 law on the State's obligations after an ECtHR judgment was delivered, has still not dealt with a number of structural problems.[77] Thus, further awareness raising measures are needed. It should be noted that much work is being done in this respect by the Assembly's Parliamentary Support Division, which, since September 2013, has organized a series of seminars on the Convention for MPs and national parliaments' legal counselors. This activity was also welcomed in the Brussels Declaration.[78]

5.2. The new Sub-committee on the Implementation of Judgments of the ECtHR (in the Committee on Legal Affairs and Human Rights)

44. During the above-mentioned seminar on "The role of national parliaments in the implementation of judgments of the European Court of Human Rights" in Madrid on 31 October 2014, I proposed that our Committee set up a new Sub-Committee on "Implementation of Judgments of the European Court of Human Rights", whose future work could feed into the work of the Committee's rapporteur on the implementation of judgments. The new Sub-Committee was established during the January 2015 part-session and has held two meetings – on 27 January and on 23 April 2015. At its April meeting, I made some proposals concerning its future work. In my opinion, the Sub-committee could, on a regular basis, invite experts both from the parliamentary and inter-governmental side, as well as relevant civil society actors. It could be a forum for sharing good practices and for addressing particularly salient cases of non-implementation, those pointing to the existence of systemic shortcomings or requiring an urgent individual measure in cases concerning serious human rights violations. The Sub-committee could focus on countries covered by my report and on other countries, depending on the complexity and political relevance of the cases.

45. As stressed in the opening speech made by the Assembly's President – Ms Anne Brasseur – during the High-level Conference in Brussels on 26 March 2015, the Sub-committee could also organise exchanges of views with civil society. Moreover, the Subcommittee could hold exchanges of views with representatives of the Committee of Ministers and its Secretariat, the Registry of the Court and the Council of Europe Commissioner for Human Rights.

6. Concluding remarks

46. Although some progress in the execution of ECtHR judgments was reported in the CM 2014 Report, the scale of the outstanding problems is alarming. As pointed out in this report, many pending cases concern structural problems. In some of them there are "pockets of resistance" closely related to economic[79] or political considerations[80] or to social prejudices (as in cases of discrimination against Roma[81] or other minority groups).[82] As indicated in the Addendum, most of these cases require long-term general measures, including comprehensive reforms of the judicial systems (in case of excessive length of proceedings or unfair trials) or the police (in case of systemic abuse of force by them) and additional resources and facilities (for example, for restituting nationalised properties or combatting overcrowding of prisons). It is often difficult to rapidly assess the impact of such measures on the implementation of ECtHR judgments.

47. At its 125th session on 19 May 2015, the CM adopted a decision on "Securing the long-term effectiveness of the supervisory mechanism of the European Convention on Human Rights", in which it endorsed the Brussels Declaration and invited States Parties to implement it. The CM noted that one of the current challenges were the backlog of potentially admissible and well-founded cases pending before the Court, the repetitive applications resulting from non-execution of Court judgments and its increasing workload related to the supervision of the execution of judgments.[83] It invited the States Parties to intensify their efforts to implement ECtHR judgments, giving special attention to structural problems and "to examine, together with the Department for the Execution of Judgments of the ECtHR, all their pending cases, identify those that can be closed and the remaining major problems, and on the basis of this analysis, work towards progressively absorbing the backlog of pending cases".[84] The CM also instructed its Deputies to take a number of steps in this area, including taking stock of the implementation and making an inventory of good

[77] PPSD (2014) 22, supra note 73, p. 9.
[78] Action plan, part C, item 3f).
[79] Like in numerous cases concerning non-enforcement of domestic decisions concerning State bodies as debtors.
[80] For example, *El-Masri v. the "former Yugoslav Republic of Macedonia"*, concerning the CIA secret detentions in Europe, application no. 39630/09, judgment of 13 December 2012 (Grand Chamber).
[81] For example, *D.H. and Others v. the Czech Republic,* concerning segregation of Roma children in schools, Application no. 57325/00, judgment of 13/11/07 (Grand Chamber).
[82] Supra note 12, p. 11. As an example one could mention the situation of LGBT persons in Russia.
[83] Item 3 of the decision.
[84] Item 7 iv) of the decision.

practices in line with its Recommendation CM/Rec(2008)2 on efficient capacity for rapid execution of judgments and exploring ways to further increase the efficiency of the supervision process, including its Human Rights (DH) meetings. They also invited the Secretary General of the Council of Europe to enhance further synergies within the organisation so that all relevant stakeholders take into account issues related to the implementation of ECtHR judgments.[85]

48. The measures proposed above as well as those taken by the CM, the Court and other Council of Europe bodies to improve the implementation of Court judgments should be most welcome. However, the situation is very worrying, as I tried to indicate in the above-referred to statistics and the information contained in the Addendum to my report. Almost 80% of the cases pending before the CM concern only nine States Parties (Italy, Turkey, the Russian Federation, Ukraine, Romania, Greece, Poland, Hungary and Bulgaria). Most of these States have to solve complex/structural problems which are being examined under the enhanced supervision procedure of the CM. Although the latter reacted through strongly worded decisions and/or through interim resolutions in case of persistent non-implementation of certain judgments or delays in their implementation, progress has been very slow or, in certain cases, almost non-existent (see for instance, cases of *Bekir Ousta v. Greece*, the group of cases *Garabayev v. Russia,* cases concerning disappearances in Chechnya or the judgment *Cyprus v. Turkey* and other cases concerning the northern part of Cyprus). Most of the judgments that my predecessor, Mr Pourgourides, quoted in his report of 2010 and that had then been pending for more than 5 years, have now been pending for more than 10 years. Moreover, some of the cases concerning expulsion or extradition of foreigners, show flagrant disrespect for the interim measures ordered by the Court under Rule 39 of its Rules. These trends illustrates very well the scale of the problem of non-implementation as well the fact that there are more and more cases in which States Parties appear reluctant to implement judgments of the Court.

49. Thus, it is perhaps time for the CM to make use of the procedures set up in Article 46 § 3-5 of the Convention and in particular the "infringement procedure." As long as they have not been used, it is impossible to assess their efficiency. At a later stage, the Council of Europe and States Parties could reflect on amending this provision of the Convention, by introducing more severe sanctions against States refusing to abide by ECtHR judgments.

50. Besides this far-reaching proposal, I consider that it is crucial to reinforce the role of applicants and civil society in the process of implementation of ECtHR judgments, which has been, to a certain extent, recognized by the Brussels Declaration ("where appropriate"). For the time being, their engagement with the Committee of Ministers remains insufficient; in the majority of cases, the CM relies mainly on information provided by the respondent States in their action plans/reports. This information is often one-sided, which should be balanced out by the CM, with the latter interacting more intensively with applicants and civil society. The CM could perhaps invite applicants, their representatives or representatives of NGOs for exchanges of views at their DH meetings. Moreover, it should also be noted that Rules 8 and 9 of the CM Rules for the supervision of the execution of judgments and terms of friendly settlements do not contain any reference to international organisations. However, some new problems, such as the horrific situation of irregular migrants reaching Greece or Italy, show that the expertise of other international organisations, such as the United Nations and the Office of their High Commissioner for Refugees (UNHCR), could be useful to provide better guidance as regards implementation of ECtHR judgments.

51. Furthermore, I would like to call on the CM to make further efforts to improve the accessibility of its work, in particular by ensuring that the website of the Department for Execution of the Court's Judgments is regularly and rapidly updated. In this respect, and besides the general need to strengthen the Department's resources (as indicated in the Brussels Declaration), more resources should be dedicated to the Department's IT. Member States of the Council of Europe could also provide more funds for its awareness raising activities via contributions to the Human Rights Trust Fund (HRTF) or *via* voluntary contributions.

52. Within the Council of the Europe, more synergies between the CM, the Secretary General and other entities (including monitoring bodies) of the Organisation are needed to coordinate various cooperation activities in the area of human rights protection and promotion. Other Council of Europe bodies should take into account the Court's judgments in their day-to-day work. The interaction between the Court and the CM, which has considerably increased within the last few years and has led to progress in the execution of some pilot and quasi-pilot judgments, is welcome and it would be useful if the Court were to continue giving indications regarding implementation under Article 46 of the Convention. However, the creation of domestic remedies (often limited to compensation) required by the Court in certain (pilot) judgments does not always solve the root problems revealed by the violations of the Convention found by the Court and should not absolve the respondent States from carrying out comprehensive reforms.

[85] Items 9 and 11 of the decision.

53. To conclude, I would like to stress that States Parties to the Convention are legally obliged to implement judgments of the ECtHR and that they are required to take all necessary measures to do so. Efforts in order to eradicate structural problems must be continued, in cooperation with the Council of Europe. The Assembly and national parliaments have an important role to play here, as pointed out in the Brussels Declaration. Thus, I call again on all States Parties, which have not yet done so, to establish parliamentary structures tasked with scrutinising the Convention compliance of all national legislation and to be actively engaged in the implementation of the Court judgments, by adopting appropriate laws. I also call on my colleagues to make use of the dual role of Assembly members in order to raise awareness about Convention standards in their national parliaments. Most importantly, the Assembly should remain seized on this subject and produce further reports on the implementation of ECtHR judgments, in order to give further impetus to national parliaments' work in this area.