

# THE ROLE OF THE COUNCIL OF EUROPE AND ITS COMMITTEE OF MINISTERS

## ANALYZING THE EFFICIENCY OF MEASURES TAKEN UNDER ARTICLE 46(2) OF THE ECHR

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### 1. INTRODUCTION

According to Article 46 of the European Convention on Human Rights (ECHR), the High Contracting Parties undertake to abide by the final judgment of the European Court of Human Rights in any case to which they are parties. The final judgment is transmitted to the Committee of Ministers of the Council of Europe, which will supervise its execution.<sup>1</sup> In this contribution attention will be paid to the role of the Committee of Ministers in supervising the judgments of the Court, especially in the context of the revision of this role envisaged under Protocol N<sup>o</sup>. 14.

Since the enlargement of the Council of Europe the number of pending cases has grown enormously, necessitating reform of the supervisory mechanisms. The reforms were introduced with the entry into force of Protocol N<sup>o</sup>. 11 (November 1998) and were aimed at enhancing the efficiency of the means of protection, shortening procedures and maintaining the present high quality of human rights protection. Nevertheless, since 1998 the number of applications has increased from 18,164 to 79,400 in 2007. With respect to the remaining cases, the Court delivered 1,503 judgments in 2007. By the end of 2007, 103,850 applications were pending before the Court, approximately one-quarter (some 23,000) of which had yet to be allocated to the appropriate judicial institution (Committee or Chamber).

It goes without saying that the enormous growth of the case-load of the Court also has far-reaching consequences for the supervising task of the Committee of Ministers. Just as the number of applications filed with the Strasbourg institutions has continued to increase very substantially, so too has the number of cases considered by the

Committee of Ministers: 24 cases at the February 1992 meeting; 273 at that of September 1995; an average of 800 cases at each of the six 2-day meetings in 2000. On 30 June 2007, 6,017 cases were pending for execution. During the March session in 2008, the Committee of Ministers examined draft final resolutions to close 121 cases in which the respondent States had complied with their obligations under the Convention. The Committee has also started the supervision of the execution of 185 new judgments of the Court, which were transmitted to the Committee after its special meeting in December 2007. It will, furthermore, supervise the payment by respondent States of just satisfaction awarded by the Court to applicants in 845 cases, the adoption of other individual measures granting redress to the applicants in 139 cases or groups of cases and/or the adoption of general measures aimed at preventing new similar violations in 178 cases or groups of cases.

As a result of this massive increase of individual applications, the effectiveness of the system and thus the credibility and authority of the Court are seriously endangered. Protocol N<sup>o</sup>. 14 was drafted to amend the control system of the Convention, though - unlike Protocol 11 - without radically changing it. It was opened for signature on 13 May 2004, but has not yet entered into force.<sup>2</sup>

The changes it does make relate to the functioning of the system rather than to its structure. Its main purpose is to improve the system, giving the Court the procedural means and flexibility it needs to process all applications in a timely fashion, while allowing it to concentrate on the most important cases which require in-depth examination. The amendments concern the following aspects: (a) reinforcement of the Court's filtering capacity in respect of the influx of un-

meritorious applications; (b) a new admissibility criterion concerning cases in which the applicant has not suffered a significant disadvantage; (c) measures for dealing with repetitive cases. Together, this reform seeks to reduce the time spent by the Court on clearly inadmissible, repetitive and less important applications, in order to enable it to concentrate on cases that raise important human rights issues.

Protocol N<sup>o</sup>. 14 will institute two new procedures regarding the execution phase. The Committee of Ministers will be able to request interpretation of a judgment of the Court. It will also be able to take proceedings in cases where, in its view, the respondent State refuses to comply with a judgment of the Court. In such proceedings, the Court will be asked to determine whether the State has respected its obligation under Article 46 ECHR to abide by a final judgment against it.

In this respect the Committee of Ministers considered that the execution of judgments would be facilitated if the existence of a systemic problem were already identified in the judgment of the Court. Therefore, it invited the Court:

I. as far as possible, to identify, in its judgments finding a violation of the Convention, what it considers to be an underlying systemic problem and the source of this problem, in particular when it is likely to give rise to numerous applications, so as to assist states in finding the appropriate solution and the Committee of Ministers in supervising the execution of judgments;

II. to specially notify any judgment containing indications of the existence of a systemic problem and of the source of this problem not only to the state concerned and to the Committee of Ministers, but also to the Parliamentary Assembly, to the Secretary General of the Council of Europe and to the Council of Europe Commissioner for Human Rights, and to highlight such judgments in an appropriate manner in the database of the Court.<sup>3</sup>

## **2. AMENDMENTS OF THE SUPERVISORY ROLE OF THE COMMITTEE OF THE MINISTERS UNDER PROTOCOL N<sup>o</sup> 14**

With respect to the binding force and execution of judgments, Protocol N<sup>o</sup>. 14 will amend Article 46 ECHR by adding three new paragraphs. The new Article 46, in its paragraph 3, will empower the Committee of Ministers to ask the Court

to interpret a final judgment, for the purpose of facilitating the supervision of its execution. The Committee of Ministers experience shows that disagreement on the interpretation of judgments sometimes causes difficulties for its supervising role. The Court's reply would settle any argument concerning a judgment's exact meaning. The qualified majority vote required on the part of the Committee of Ministers shows that it should use this possibility sparingly, to avoid overburdening the Court. The aim of the new paragraph 3 is to enable the Court to give an interpretation of a judgment, not to pronounce on the measures taken by a High Contracting Party to comply with that judgment. No time-limit has been set for making requests for interpretation, since a question of interpretation may arise at any time during the Committee of Ministers' examination of the execution of a judgment.

The Court would be free to decide on the manner and form in which it wished to reply to the request. Normally, it would be for the same formation of the Court which delivered the original judgment to rule on the question of interpretation. More detailed rules governing this new procedure may be included in the Rules of Court.<sup>4</sup>

Under Protocol N<sup>o</sup>. 14 the Committee of Ministers will have the option to refer to the Court the question of whether a Contracting Party has failed to fulfill its obligations under Article 46 (the new paragraph 4 of Article 46). Thus in cases where a question arises as to whether a High Contracting Party has failed to fulfill its obligation to comply with a judgment, the Court sitting as a Grand Chamber<sup>5</sup> will, after having first served the State concerned with notice to comply, have to decide on such a question. The Committee of Ministers' decision to bring infringement proceedings requires a qualified majority of two-thirds of the representatives entitled to sit on the Committee. This infringement procedure does not aim to reopen the question of violation already decided in the Court's first judgment, nor does it provide for payment of a financial penalty by a High Contracting Party found to be in violation of Article 46, paragraph 1. It is felt that the political pressure exerted by proceedings for non-compliance in the Grand Chamber and by the latter's judgment should suffice to secure execution of the Court's initial judgment by the State concerned.<sup>6</sup>

In fulfilling its supervisory task the Committee of Ministers invited the Court to identify as far as possible, in its judgments finding a violation of the Convention, what it considers to be an underlying systemic problem and the source

of this problem, in particular when it would be likely to give rise to numerous applications, so as to assist States in finding the appropriate solution and the Committee of Ministers in supervising the execution of judgments.<sup>7</sup>

In this respect the Court held in the *Broniowski* case that, above all, the measures adopted must be such as to remedy the systemic defect underlying the Court's finding of a violation so as not to overburden the Convention system with large numbers of applications deriving from the same cause. Such measures should therefore include a scheme which offers to those affected redress for the Convention violation identified in the judgment in relation to the applicant. It falls to the national authorities, under the supervision of the Committee of Ministers, to take, retroactively if appropriate, the necessary remedial measures in accordance with the subsidiary character of the Convention, so that the Court does not have to repeat its finding in a lengthy series of comparable cases. The Court held that, with a view to assisting the respondent State to fulfill its obligations under Article 46, it had sought to indicate the type of measures that might be taken by the Polish State in order to put an end to the systemic situation identified in the *Broniowski* case.<sup>8</sup> Since the applicant belonged to a fairly large group of victims of similar violations, the Court on 4 July 2004 used the 'leading case' procedure for the first time, whereby examination of the many similar cases was suspended until the required measures had been taken by Poland. This procedure is one of the means chosen to reduce the Court's workload.<sup>9</sup>

In the *Sejdovic* case, the Court held that the infringement of the applicant's right to a fair trial had originated in a problem resulting from Italian legislation on the question of trial *in absentia* and had been caused by the wording of the provisions of the Code of Criminal Procedure. The Court stated that, in view of the systemic situation which it had identified, general measures at the national level were called for in the execution of the judgment by Italy. It considered that the measures must be such as to remedy the systemic defect underlying the Court's finding of a violation, so that persons in a comparable situation to Mr. Sejdovic would not have to suffer a similar breach of their rights under Article 6 of the Convention. It found that Italy had to remove the legal obstacles and make provision, by means of appropriate regulations, for a new procedure capable of securing the effective realization of the entitlement in question while ensuring respect for the rights guaranteed by Article 6 of the Convention.<sup>10</sup>

The new paragraphs 4 and 5 of Article 46 introduce the infringement proceedings. The Committee of Ministers may, after serving formal notice on the State concerned and by decision adopted by a majority vote of two-thirds of the representatives entitled to sit on the Committee, refer the State's failure to abide by a judgment to the Court. This provides for a wider range of means of pressure to secure execution of judgments. Currently the ultimate measure available to the Committee of Ministers is recourse to Article 8 of the Council of Europe's Statute that provides for the suspension of voting rights in the Committee of Ministers, or even expulsion from the Organization. According to the Explanatory Report, this extreme measure would prove counter-productive in most cases, since the High Contracting Party which finds itself in the situation envisaged in Article 46(4) continues to need the discipline of the Council of Europe. The new procedure's mere existence, and the threat of using it, should act as an effective new incentive to execute the Court's judgments. According to the Explanatory Report, the Committee of Ministers should bring the proceedings only in exceptional circumstances. It is anticipated that the outcome of infringement proceedings will be expressed in a judgment of the Court.<sup>11</sup>

### 3. THE SUPERVISORY TASK OF THE COMMITTEE OF MINISTERS

States which are found to be in violation of the Convention must, on the one hand, take individual measures in favour of the applicants to put an end to these violations and, as far as possible, erase their consequences (*restitutio in integrum*), and on the other hand, they must take the general measures needed to prevent new, similar violations. According to Article 46(2) ECHR, once the Court's final judgment has been transmitted to the Committee of Ministers, the latter invites the respondent State to inform it of the steps taken to pay the amounts awarded by the Court in respect of just satisfaction and, where appropriate, of the individual and general measures taken to abide by the judgment.<sup>12</sup> Once it has received this information, the Committee examines it closely.

In accordance with Rule 6(2)(a), the Committee of Ministers is to examine whether any just satisfaction awarded by the Court has been paid, including, as the case may be, default interest. If required, the Committee is also to take into account the discretion of the State concerned to choose the means necessary to comply with the judgment. In all cases it will strive to ascertain

whether individual measures have been taken to ensure that the violation has ceased and that the injured party is put, as far as possible, in the same situation as that party enjoyed prior to the violation of the Convention, and/or whether general measures have been adopted, preventing new violations similar to that or those found or putting an end to continuing violations. It is the Committee of Ministers' well-established practice to keep cases on its agenda until the States concerned have taken satisfactory measures, and to continue to require explanations or action.<sup>13</sup> When there is a delay in the execution of a judgment, the Committee of Ministers may adopt an interim resolution assessing the progress towards execution. As a rule, this type of interim resolution contains information about any interim measures taken and indicates a timetable for the reforms designed to resolve the problem or problems raised by the judgment once and for all. If there are obstacles to execution, the Committee will adopt a more strongly worded interim resolution urging the authorities of the respondent State to take the necessary steps in order to ensure that the judgment is complied with.

According to Rule 7(2), if the State concerned informs the Committee of Ministers that it is not yet in a position to inform the Committee that the general measures necessary to ensure compliance with the judgment have been taken, the case will be placed again on the agenda of a meeting of the Committee of Ministers. The Committee may bring its full weight to bear in order to induce the State concerned to comply with the Court's judgment. In practice, the Committee of Ministers rarely resorts to political and diplomatic pressure but tends, instead, to function as a forum for constructive dialogue enabling States to work out satisfactory solutions with regard to the execution of judgments. On a number of occasions, however, interim resolutions have been drafted and adopted in order to pressurize States that have refused to afford applicants just satisfaction or to take specific measures in compliance with judgments. Under the Statute of the Council of Europe, tougher political sanctions could be considered such as suspension or termination of membership of the Council of Europe under Article 8 of the Statute, but obviously these are *ultima remedia* that will be considered only in very exceptional circumstances.

With respect to access to information, Rule 8 provides that without prejudice to the confidential nature of Committee of Ministers' deliberations,<sup>14</sup> information provided by the State to the

Committee of Ministers in accordance with Article 46 ECHR and the documents relating thereto are to be accessible to the public, unless the Committee decides otherwise in order to protect legitimate public or private interests. In deciding such matters, the Committee of Ministers is to take into account reasoned requests by the State or States concerned, as well as the interest of an injured party or a third party not to have their identity disclosed.

In accordance with Rule 16, the Committee of Ministers may adopt interim resolutions in order to provide information on the state of progress of the execution of the judgment or, where appropriate, to express concern and/or to make relevant suggestions with respect to the execution. There may be situations in which the adverse consequences of the violation suffered by an injured party are not always adequately remedied by the payment of just satisfaction. Depending on the circumstances, the execution of the judgment may also require the respondent State to take individual measures in favour of the applicant, such as the re-opening of unfair proceedings if domestic law allows for such re-opening, the destruction of information gathered in breach of the right to privacy or the revocation of a deportation order issued in spite of the risk of inhumane treatment in the country of destination. It may also require general measures, such as an adaptation of legislation, rules and regulations, or of a judicial practice, to prevent new, similar violations. After having established that the State concerned has taken all the necessary measures to abide by the judgment, the Committee will adopt a resolution concluding that its functions under Article 46(2) of the Convention have been exercised.

Finally, Article 17 of the Statute of the Council of Europe provides for yet another tool for the Committee in fulfilling its supervisory powers. According to that Article the Committee of Ministers may set up advisory or technical committees or commissions if it deems this desirable. The Committee of Ministers might proceed to do so for the purpose of taking evidence and other tasks within the context of its function under the Convention.

### 3.1. *Just satisfaction*

If the Court has decided that the respondent State has to pay just satisfaction under Article 41 ECHR within three months of the delivery of its judgment, the Committee of Ministers will examine the case at its meeting following the delivery

of that judgment.<sup>15</sup> In a number of cases against Italy concerning violations of the requirement of a reasonable length of proceedings, the Committee had recommended that the Government pay, within a time-limit of three months, just satisfaction to the applicants. The Italian Government disagreed with the proposals of the Committee of Ministers and refused to pay the applicants. The Committee subsequently noted at its next meeting that, although the time-limit had expired, the Government still had not paid the sums it should have had to pay following the Committee's recommendation. It decided to strongly urge the Government to proceed without delay to pay the specified amount to the applicants. It further decided, if need be, to resume consideration of these cases at each of its forthcoming meetings.<sup>16</sup> In its subsequent session, the Committee of Ministers again adopted resolutions on the Italian cases and now firmly stated that the Government of Italy was to pay the applicants before a fixed date a certain amount in respect of just satisfaction. The Committee of Ministers invited the Government to inform it of the measures taken in consequence of its decision.<sup>17</sup> Finally, on 17 September 1992, the Committee of Ministers ended the consideration of these cases by declaring, after having taken note of the measures taken by the Italian Government, that it had exercised its functions under (former) Article 32 of the Convention.<sup>18</sup>

If the respondent State is unable to prove the payment, the case will remain on the agenda of the Committee of Ministers and will be dealt with at every subsequent meeting of the Committee until it is satisfied that the payment has been made in full. It has become settled practice that, from the expiry of the initial three-month period set for the payment until the final settlement, interest should be payable on the amount at a rate equal to the marginal lending rate of the European Central Bank during the default period.<sup>19</sup>

On the whole, the respondent States are willing to pay the compensation awarded by the Court to the applicant. However, apart from the above-mentioned reasonable-time cases concerning Italy, in a few instances, such as in the *Stran Greek Refineries and Stratis Andreas* case and the *Loizidou* case, the Committee of Ministers has had to deal with the unwillingness of the respondent State to pay compensation.

After delivery of the judgment of the Court in the *Stran Greek Refineries and Stratis Andre-*

*as* case,<sup>20</sup> the Greek Government informed the Committee of Ministers that, considering the size of the just satisfaction awarded to the applicants and the economic problems in Greece, it was not able to make immediate full payment. The Committee of Ministers strongly urged the Greek Government to pay the amount corresponding to the value of just satisfaction as of March 1995 and decided, if need be, to resume consideration of the case at each of its forthcoming meetings.<sup>21</sup> Subsequently, in September 1996, the Chairman of the Committee of Ministers wrote to the Minister of Foreign Affairs of Greece, underlining the fact that the credibility and effectiveness of the mechanism for the collective enforcement of human rights established under the Convention was based on the respect of the obligations freely entered into by the Contracting Parties and in particular on the respect of the decisions of the supervisory bodies. In its Final Resolution of 20 March 1997, the Committee of Ministers was informed that the Greek Government had transferred US\$30,863,828.50 to the applicants, which sum the applicants were entitled to enjoy without any interference whatsoever. The Committee, having satisfied itself that the amount paid, increased in order to provide compensation for the loss of value caused by the delay in payment, corresponded to the just satisfaction awarded by the Court, declared that it had exercised its supervisory function under the Convention.<sup>22</sup>

In its Interim Resolution concerning the judgment in the *Loizidou* case, the Committee of Ministers noted that the Government of Turkey had indicated that the sums awarded by the Court could only be paid to the applicant in the context of a global settlement of all property cases in Cyprus. It concluded that the conditions of payment envisaged by the Government of Turkey could not be considered to be in conformity with the obligations flowing from the Court's judgment. It strongly urged Turkey to review its position and to pay the just satisfaction awarded in the case in accordance with the conditions set out by the Court so as to ensure that Turkey, as a High Contracting Party, met its obligations under the Convention.<sup>23</sup> In its second Interim Resolution, the Committee once more stressed that Turkey had had ample time to fulfill in good faith its obligations in the case concerned. It emphasized that the failure on the part of a High Contracting Party to comply with a judgment of the Court was unprecedented. It declared that the refusal of Turkey to execute the judgment of the Court demonstrated a manifest disregard for its international obligations,

both as a High Contracting Party to the Convention and as a Member State of the Council of Europe. In view of the gravity of the matter, it strongly insisted that Turkey comply fully and without any further delay with the Court's judgment of 28 July 1998.<sup>24</sup> At its subsequent meeting, on 26 June 2001, the Committee declared that it very deeply deplored the fact that Turkey still had not complied with its obligations under the judgment of the Court.<sup>25</sup> At its meeting on 12 November 2003, the Committee urged the Turkish Government to reconsider its position and to pay without any conditions whatsoever the just satisfaction awarded to the applicant by the Court, within one week at the latest. It declared the Committee's resolve to take all adequate measures against Turkey, if the Turkish Government failed once more to pay the just satisfaction to the applicant.<sup>26</sup> On 12 December 2003, the Chairman of the Committee of Ministers announced that the Turkish Government had executed the judgment of 28 July 1998 in the *Loizidou* case by paying to the applicant the sum which had been awarded to her by the Court in respect of just satisfaction.<sup>27</sup>

### 3.2. Individual measures

The need to take individual measures at the domestic level, in addition to the payment of pecuniary compensation if determined by the Court, is considered by the Committee of Ministers where the established breach continues to have negative consequences for the applicant, which cannot be redressed through pecuniary compensation.

The reopening of proceedings at the domestic level may constitute an important means of redressing the effects of a violation of the Convention, where there were serious shortcomings in the procedure followed by the national court. In fact, the reopening of domestic proceedings was also within the powers of the Committee of Ministers to suggest during the period before the entry into force of Protocol N<sup>o</sup>. 11, in cases which had not been referred to the Court and where the Committee of Ministers acted under the former Article 32 as the final arbiter.

In the *Barbara, Messegué and Jarbardo* case, the Court found a violation on the ground that the applicants had not received a fair trial.<sup>28</sup> The Spanish Government informed the Committee of Ministers that the Constitutional Court had ordered the reopening of the proceedings before the *Audiencia Nacional* in the applicants' case. That court acquitted the applicants as there was not su-

fficient evidence against them. The problems of a general nature raised by the Court in its judgment had been resolved by legislative changes and by the development of the case-law of the Constitutional Court and the Supreme Court. The Committee of Ministers agreed and decided that Spain had fulfilled its obligations.<sup>29</sup>

In the *Open Door and Dublin Well Women* case, the Court found a violation of Article 10 ECHR in the High Court's injunction prohibiting the dissemination of information to pregnant women about abortion services in the United Kingdom.<sup>30</sup> The High Court lifted the injunction in so far as Dublin Well Women Centre was concerned. Having taken note of the information supplied by the Irish Government, the Committee of Ministers decided that it had exercised its supervisory function.<sup>31</sup>

In the *Daktaras* case, the Court held that there were insufficient guarantees to exclude all reasonable doubt as to the impartiality of the composition of the Supreme Court which had examined the applicant's cassation petition.<sup>32</sup> The Lithuanian Government informed the Committee of Ministers that the domestic proceedings had been reopened on 29 January 2002 by a decision of the Criminal Chamber of the Supreme Court. This reopening was made possible by the application of the new section of the Code of Criminal Procedure called Reopening of Criminal Cases Following a Judgment of the European Court of Human Rights', which entered into force on 15 October 2001. Following the reopening of the national proceedings, on 2 April 2002 a plenary session of the Criminal Chamber of the Supreme Court annulled the previous cassation judgment. According to the new judgment, the cassation petition submitted by the President of the Criminal Chamber of the Supreme Court was not taken into account. The cassation petition submitted by Mr Daktaras, as well as that of his legal representative, was rejected.<sup>33</sup>

Sometimes, reopening the domestic proceedings is the only form of *restitutio in integrum* regarding a violation of Article 6 by previous proceedings. In view of the problem raised in certain cases of the lack of appropriate national legislation, the Committee of Ministers has adopted a recommendation to Member States on the re-examination or reopening of certain cases at the domestic level following judgments of the Court. In the recommendation, the Committee of Ministers invites the Contracting Parties to ensure that there exist at national level adequate possibilities

of achieving, as far as possible, *restitutio in integrum*. It further encourages them:

to examine their national legal systems with a view to ensuring that there exist adequate possibilities of re-examination of the case, including reopening of proceedings, in instances where the Court has found a violation of the Convention, especially where:

(i) the injured party continues to suffer very serious negative consequences because of the outcome of the domestic decision at issue, which are not adequately remedied by the just satisfaction and cannot be rectified except by re-examination or reopening, and

(ii) the judgment of the Court leads to the conclusion that

(a) the impugned domestic decision is on the merits contrary to the Convention, or

(b) the violation found is based on procedural errors or shortcomings of such gravity that a serious doubt is cast on the outcome of the domestic proceedings complained of.<sup>34</sup>

In the explanatory memorandum to this recommendation it is indicated that, as regards the terms used, the recommendation uses 're-examination' as the generic term. The term 'reopening of proceedings' denotes the reopening of court proceedings, as a specific means of re-examination. Violations of the Convention may be remedied by different measures ranging from administrative re-examination of a case (for example granting a residence permit previously refused) to the full reopening of judicial proceedings (for example in cases of criminal convictions). The recommendation applies primarily to judicial proceedings where existing law may pose the greatest obstacles to reopening. The recommendation is, however, also applicable to administrative or other measures or proceedings, although legal obstacles will usually be less serious in these areas.

Sub-paragraph (i) of the recommendation is intended to cover the situation in which the injured party continues to suffer very serious negative consequences, not capable of being remedied by just satisfaction, because of the outcome of domestic proceedings. It applies in particular to persons who have been sentenced to lengthy prison sentences and who are still in prison when the Court examines the 'case'. It applies, however, also in other areas, for example, when a person is unjustifiably denied certain civil or political rights (in particular, the loss, or non-recognition of legal ca-

capacity or personality, bankruptcy declarations, or prohibitions of political activity), if a person is expelled in violation of his or her right to family life, or if a child has been unjustifiably forbidden contact with his or her parents. It is understood that a direct causal link must exist between the violation found and the continuing suffering of the injured party. Subparagraph (ii) is intended to indicate, in cases where the above-mentioned conditions are met, the kinds of violations in which re-examination of the case or reopening of the proceedings will be of particular importance. Examples of situations mentioned under item (a) are criminal convictions violating Article 10, because the statements characterized as criminal by the national authorities constitute a legitimate exercise of the injured party's freedom of expression, or violating Article 9 because the behavior characterized as criminal is a legitimate exercise of freedom of religion. Examples of situations mentioned under item (b) are those where the injured party did not have the time and facilities to prepare his or her defense in criminal proceedings, where the conviction was based on statements extracted under torture or on material which the injured party had no possibility of verifying, or where in civil proceedings the parties were not treated with due respect for the principle of equality of arms. As appears from the text of the recommendation, any such shortcomings must be of such gravity that serious doubt is cast on the outcome of the domestic proceedings. The recommendation does not deal with the problem of who ought to be empowered to ask for reopening or re-examination. Considering that the basic aim of the recommendation is to ensure adequate redress for the victims of certain grave violations of the Convention found by the Court, the system implies that the individuals concerned should have the right to submit the necessary requests to the competent court or other domestic organ. Considering the different traditions of the Contracting Parties, no provision to this effect has, however, been included in the recommendation. The recommendation also does not address the special problem of 'mass cases', for example cases in which a certain structural deficiency leads to a great number of violations of the Convention. It was considered preferable to leave it to the State concerned to decide whether in such cases reopening or re-examination would be a realistic solution or whether other measures would be more appropriate.

There are numerous examples where the Committee of Ministers has formulated individual measures to be taken by the States, such as the

non-execution of a sentence, or the lifting of the effects of an expulsion order.

In the *Van Mechelen* case, the Court had found a violation of Article 6(3)(d) on the ground that the applicants' conviction was based to a decisive extent on statements given by unidentified witnesses who were members of the police and whose reliability could not be tested by the defense.<sup>35</sup> The applicants were provisionally released and were subsequently informed that they would not be required to serve the remainder of their sentences. Furthermore, the reasons why the sentences were not executed in their entirety were mentioned in their criminal records.<sup>36</sup>

In the *Yaacoub* case, a friendly settlement was reached as the Belgian Government had decided to lift the effects of an expulsion order.<sup>37</sup>

In the case of *D. v. United Kingdom*, the Court had held that the applicant's proposed removal from the United Kingdom to St. Kitts would place him at risk of reduced life expectancy, inhuman and degrading treatment and invasion of his physical integrity.<sup>38</sup> The applicant was granted indefinite leave to remain which would permit him to remain in the country, where he would continue to receive adequate medical treatment and palliative care.<sup>39</sup> In the case of *A.P., M.P. and T.P. v. Switzerland*, the Court had found a violation of Article 6(2) since, irrespective of any personal guilt, the applicants had been convicted, as heirs, of an offence allegedly committed by a deceased person.<sup>40</sup> The Swiss Government informed the Committee of Ministers that by a judgment of the Federal Court the case of the applicants had been revised.<sup>41</sup>

In the *Vasilescu* case relating to, firstly, the unlawful seizure and the continued retention of valuables with respect to which the domestic courts had accepted the applicant's property rights and, secondly, the lack of access to an independent tribunal that could order their return, the Court had found a violation of Article 6(1) and Article 1 of Protocol N<sup>o</sup>. 1.<sup>42</sup> The Romanian Government informed the Committee of Ministers that the Constitutional Court of Romania had rendered a decision declaring that, in order to comply with the Constitution, Article 278 of the Code of Criminal Procedure - concerning the right to appeal against decisions of the public prosecutor-would be interpreted to the effect that a person who had an interest could challenge before a court any measure decided by the prosecutor. This decision became final and binding under Romanian law with its publication in the Official Journal of

Romania and accordingly enforceable *erga omnes*. The Government considered that similar cases - where the valuables in question had been confiscated without any order from a competent judicial authority - were not likely to recur.<sup>43</sup>

In the *Kalashnikov* case, concerning the poor conditions in which the applicant was held in detention before trial between 1995 and 2000, due in particular to severe prison overcrowding and to an insanitary environment, and concerning the excessive length of both this detention and the criminal proceedings, the Court had found a violation of Articles 3, 5(1) and 6(1).<sup>44</sup> The Russian Government, in its information to the Committee of Ministers, referred in particular to no major reforms which had already resulted in significant improvement of the conditions of pre-trial detention and their progressive alignment with the Convention's requirements. The Committee of Ministers decided to examine at one of its meetings not later than 2004, whether further progress had been achieved in the adoption of the general measures necessary to prevent this kind of violation of the Convention.<sup>45</sup>

In the area of the execution of the Court's judgments, positive developments were taken note of in the *Sadak, Zana, Dicle* and *Dogan* cases against Turkey. After the decision by the Ankara Court of Cassation suspending the prison sentences of the four former Turkish members of Parliament, this court decided to quash the Ankara State Security Court's verdict in the retrial of four former Kurdish MPs, and to order a fresh hearing in an ordinary court. The Committee of Ministers noted that the Court of Cassation had found that shortcomings identified by the European Court of Human Rights in the 1994 trial had not been properly addressed in the retrial proceedings. It considered this to be a convincing example of the positive impact of recent constitutional amendments, which were aimed at ensuring the direct application of the European Convention on Human Rights in the Turkish legal system.<sup>46</sup>

With respect to the fourth inter-State case of *Cyprus against Turkey*, the Committee of Ministers had noted that after a period of some years during which little progress had seemed to be made, at recent meetings concrete information had been presented making it possible to register progress towards the execution of this complex and controversial judgment. In particular, the Committee of Ministers had been informed that a school had opened for Greek Cypriot pupils in the north of the island and that the Committee on Missing Persons had taken steps to bring its terms of re-

ference further into line with the requirements of the Court judgment. That said, there were obviously still serious issues to be resolved.<sup>47</sup>

### 3.3. General measures

In certain cases the circumstances indicate that the violation resulted from particular domestic legislation or the absence of legislation. In such cases, compliance with the Court's judgments requires either an amendment of existing law or the introduction of new legislation. In many cases, however, the structural problem that led to a violation lies not in an obvious conflict between domestic law and the Convention, but rather in case-law of the national courts. In that situation, a change of case-law of the national courts may preclude possible future violations. When courts adjust their legal stance and their interpretation of national law to meet the demands of the Convention, as reflected in the Court's judgments, they implement these judgments by virtue of their domestic law. In this way further similar violations may be effectively prevented. It is a precondition, however, that the judgment is published and circulated among the national authorities, including the courts, accompanied, where appropriate, by an explanatory circular.<sup>48</sup>

In the *Vogt* case, the Court had held that the exclusion from the public service on account of the applicant's political activities as a member of the German Communist Party constituted a violation of her right to freedom of expression and of her freedom of association and also discrimination in the enjoyment of these rights.<sup>49</sup> The German Government informed the Committee of Ministers that the German Federal Ministry of the Interior had transmitted the judgment of the Court with a letter to the Länder indicating that the authorities would have to examine all future cases of this kind in detail, in the light of the Court's judgment, in order to prevent the repetition of violations similar to those found in the present case.<sup>50</sup>

In the *Gaygusuz* case, a Turkish national complained about a refusal to grant emergency assistance to the applicant, an unemployed man who had exhausted entitlement to unemployment benefit, on the ground that he did not have Austrian nationality.<sup>51</sup> In consequence the Austrian Constitutional Court had annulled with immediate effect the two provisions in question insofar as they reserved the right to emergency assistance to Austrian nationals. It had found it appropriate in the circumstances to deviate from its

usual practice of postponing the full effects of its judgment to a future date. Immediately after this judgment, the Austrian Parliament had adopted a new law providing that the amendments to the Unemployment Insurance Act entered into force on 1 April 1998 and not on 1 January 2000.<sup>52</sup>

With respect to the length of proceedings in Italy the Court has been faced with continuous problems. In the *Bottazzi* case, the Court drew attention to the fact that since 25 June 1987, the date of the *Capuano* case, it had delivered 65 judgments in which it had found violations of Article 6(1) in proceedings exceeding a 'reasonable time' in the civil courts of the various regions of Italy. Such breaches reflected a continuing situation that had not yet been remedied and in respect of which litigants had no domestic remedy. This accumulation of breaches accordingly constituted a practice that was incompatible with the Convention.<sup>53</sup> The Committee of Ministers underlined that excessive delays in the administration of justice constituted an important danger, in particular for the respect of the rule of law. It further noted that the question of Italy's adoption of general measures to prevent new violations of the Convention of this kind had been before the Committee of Ministers since the judgments of the Court in the 1990s, and therefore highlighted the existence of serious structural problems in the functioning of the Italian judicial system.<sup>54</sup>

At its session in October 2000, the Committee noted that the reforms, undertaken by the Italian authorities, had included three different lines of action:

1. deep structural modernization of the judicial system for better long-term efficiency (notably through the introduction of Article 6 of the Convention into the Italian Constitution, the streamlining of the jurisdictions of the civil and administrative courts, the increased reliance on the single judge, the creation of the office of justices of the peace and also the subsequent extension of their competence to minor criminal offences, new simplified dispute settlement mechanisms, and the modernization of a number of procedural rules);
2. special actions dealing with the oldest cases pending before the national civil courts or aiming at improvements which, while being of a structural nature, could produce positive effects in the near future (in particular the creation of provisional court chambers composed of honorary judges, entrusted with the solution of civil cases pending since N4ay

1995, a significant increase in the number of judges and administrative personnel and two important resolutions by the Supreme Council of the Magistrature laying down a number of monitoring mechanisms and guidelines for judges in order to prevent further unreasonably long proceedings and also in order to speed up those which had already been declared to be in breach by the European Court of Human Rights); and

3. reduction of the flow of applications to the Court and the speeding up of compensation procedures by means of the creation of a domestic remedy in cases of excessive length of procedures.<sup>55</sup>

The Committee acknowledged that the measures of the first group, aiming at a structural reform of the entire Italian judicial system, could not be expected to produce major effects before a reasonable time had elapsed, although it was already possible to see the first signs of a positive trend in the statistics recently provided to the Committee of Ministers by the Italian authorities. The Committee concluded that Italy, while making undeniable efforts to solve the problem and having adopted measures of various kinds which allowed real hope for an improvement within a reasonable time, had not, so far, thoroughly complied with its obligations to abide by the Court's judgments and by the Committee of Ministers' decisions finding violations of Article 6 of the Convention on account of the excessive length of judicial proceedings. Meanwhile, the Committee of Ministers resumed its consideration of the progress made, at least at yearly intervals, on the basis of a comprehensive report to be presented each year by the Italian authorities.<sup>56</sup>

In concluding its examination of the third annual report presented by the Italian authorities, on 29 September 2004, the Committee of Ministers noted with concern that an important number of reforms announced since 2000 were still pending for adoption and/or for effective implementation, and reminded the Italian authorities of the importance of respecting their undertaking to maintain the high priority initially given to the reforms of the judicial system and to continue to make rapid and visible progress in the implementation of these reforms. As regards the effectiveness of the measures adopted to that point, the Committee of Ministers deplored the fact that no stable improvement could yet be seen: with a few exceptions, the situation had generally worsened

between 2002 and 2003<sup>57</sup> with an increase in both the average length of the proceedings and the backlog of pending cases. The Committee of Ministers accordingly confirmed its willingness to pursue the monitoring until a reversal of the trend at the national level could be fully confirmed by reliable and consistent data. In the light of this situation, the Committee of Ministers took note of the information provided by Italy concerning a follow-up plan aimed at ensuring the respect of the expected execution objectives.<sup>58</sup>

In the cases of *Akdivar, Aksoy, Çetin, Aydın, Montes, Kaya, Yılmaz, Selçuk and Asker, Kurt, Tekin, Güleç, Ergi, and Yasa*, the Court had found various violations of the Convention by Turkey, which all resulted from the actions of its security forces in the south-east of the country, a region subject to a state of emergency for the purposes of the fight against terrorism. The Turkish Government informed the Committee of Ministers that it had engaged in an important process, including notably the drafting of measures in respect of regulations and training, in order to implement fully and in all circumstances the constitutional and legal prohibition of the use of torture and ill-treatment. The Committee of Ministers noted that the actions of the security forces challenged in these cases took place in a particular context, i.e. the rise of terrorism during the years 1991-1993.

The Committee of Ministers called upon the Turkish authorities to complete rapidly the announced reform of the existing system of criminal proceedings against members of the security forces, in particular by abolishing the special powers of the local administrative councils to undertake criminal proceedings, and by reforming the prosecutor's office in order to ensure that prosecutors would in the future have the independence and necessary means to ensure the identification and punishment of agents of the security forces who abused their powers by the violation of human rights.<sup>59</sup>

In its follow-up resolution, the Committee of Ministers expressed appreciation of the Government's efforts to implement effectively the existing laws and regulations concerning police custody, through administrative instructions and circulars issued to all personnel of the Police and Gendarmerie which, *inter alia*, provided for stricter supervision of their activities. It noted with concern that, three years after the adoption of Interim Resolution DH(99)434, Turkey's undertaking to engage in a global reform of basic, in-service and management training of the Police and

Gendarmerie remained to be fulfilled and stressed that real and visible progress in the implementation of the Council of Europe's Police Training Project was very urgent. The Committee of Ministers urged Turkey to accelerate without delay the reform of its system of criminal prosecution for abuses by members of the security forces, in particular by abolishing all restrictions on the prosecutors' competence to conduct criminal investigations against State officials, by reforming the prosecutor's office and by establishing sufficiently deterrent minimum prison sentences for persons found guilty of grave abuses such as torture and ill-treatment. It called upon the Turkish Government to continue to improve the protection of persons deprived of their liberty in the light of the recommendations of the Committee for the Prevention of Torture (CPT) and decided to pursue the supervision of the execution of the judgments concerned until all necessary measures had been adopted and their effectiveness in preventing new similar violations had been established.<sup>60</sup>

In 27 judgments against Turkey, the Court had found that the criminal convictions of the applicants on account of statements contained in articles, books, leaflets or messages addressed to, or prepared for, a public audience, had violated their freedom of expression guaranteed by Article 10 of the Convention. At its subsequent meeting, having examined the significant progress achieved in a series of reforms undertaken with a view to aligning Turkish law and practice with the requirements of the Convention in the field of freedom of expression, the Committee of Ministers welcomed the changes made to the Turkish Constitution. It noted also the recent, important legislative measures adopted as a result of these reforms, in particular the repeal of Article 8 of the Anti-terrorism Law and the modification of Articles 159 and 312 of the Turkish Criminal Code. The Committee of Ministers welcomed in this context the 'train the trainers' programme currently being carried out in the framework of the 'Council of Europe/European Commission Joint Initiative with Turkey: to enhance the ability of the Turkish authorities to implement the National Programme for the Adoption of the Community Acquis (NPAA) in the accession partnership priority area of democratization and human rights', noting that this programme aimed, among other things, at devising a long-term strategy for integrating Convention training into the initial and in-service training of judges and prosecutors. The Committee of Ministers expressed appreciation in this context of the recent establishment of the Judicial

Academy, as well as many Convention awareness-raising and training activities for judges and prosecutors initiated by the Turkish authorities. It welcomed furthermore the amendment of Article 90 of the Constitution, recently adopted by the Turkish Parliament, aimed at facilitating the direct application of the Convention and case law in the interpretation of Turkish Law. The Committee of Ministers decided to resume consideration of the general measures in these cases within nine months, and outstanding individual measures concerning the respective applicants at its 897<sup>th</sup> meeting (September 2004), it being understood that the Committee's examination of those cases involving applicants convicted on the basis of former Article 8 of the Anti-terrorism Law would be closed upon confirmation that the necessary individual measures had been taken.<sup>61</sup>

In the *Scozzari and Giunta* case, the Court found two violations of Article 8 of the Convention by Italy on account, on the one hand, of the delays in organizing contact visits and the limited number of such visits between the first applicant and her children, after they had been taken into public care and, on the other hand, of the placement of the children in a community among whose managers were persons convicted for ill-treatment and sexual abuse of handicapped persons placed in the community.<sup>62</sup> The Committee of Ministers noted that, following Ms Scozzari's taking up residence in Belgium, the Belgian Government had approached the Italian authorities in order to examine the possibilities of organizing, by judicial means, the placement of the children in Belgium, near the mother's place of residence, under the guardianship of the competent youth court.<sup>63</sup> At its next session, the Committee of Ministers expressed regret that, more than one year after the Court's judgment, the latter had still not been fully executed.<sup>64</sup> The Committee of Ministers noted that certain general measures remained to be taken and that further information and clarifications were outstanding with regard to a number of other measures, including, where appropriate, information on the impact of these measures in practice. It recalled that the obligation to take all such measures is all the more pressing in cases where procedural safeguards surrounding investigations into cases raising issues under Article 2 of the Convention are concerned. It resumed consideration of these cases, as far as individual measures were concerned, at each of its DH meetings, and, as far as outstanding general measures were concerned, it decided to review their adop-

tion at the latest within nine months from the date of its interim resolution.<sup>65</sup>

Following the idea submitted in the context of the Committee of Ministers' supervision of the implementation of the *Ryabykh v. Russia* judgment, a high-level seminar was held with participation by the Russian highest judiciary, *prokuratura*, executive authorities and advocacy to discuss the prospects for further reforms of the supervisory review procedure, one of the topics at the heart of the Russian judicial reform.<sup>66</sup> Subsequently, the Russian Federation adopted some general measures with a view to remedying the systemic problem at the basis of the violation. While these measures were welcomed by the Committee of Ministers, doubts were expressed as to whether the measures taken were sufficient to prevent new similar violations of the principle of legal certainty. The Russian authorities were thus invited to continue the reform of the supervisory review procedure, bringing it into line with the Convention's requirements, as highlighted, *inter alia*, by the *Riabykh* judgment. Given the complexity of the issue and the ongoing reflection on the matter in Russian legal circles, it was suggested, at the Committee of Ministers' meeting (8-9 December 2004), holding a high-level seminar with a view to taking stock of the current *nadzorpractice* and to discussing prospects for further reform of this procedure in conformity with the Convention's requirements.<sup>67</sup>

#### 4. CONCLUSION

In the great majority of cases, the Committee is able to fulfill its function under Article 46 without difficulty. In some cases, however, problems do arise. Political motives or strongly held cultural ideas may render difficult or delay the passing of legislation, as may pressures on parliamentary time. Given the increased number and complexity of the execution problems posed, the Committee is increasingly facing difficulties in ensuring States' rapid compliance with judgments. Moreover, in recent years some States have challenged, on the occasion of several individual cases, the authority of the Court's judgments with regard either to 'just satisfaction' or to specific measures required by the judgments. The Committee's position has, however, always remained that States have, under Article 46 ECHR, unconditionally undertaken to comply with the judgments of the Court.

If, in case of problems, the confidential scrutiny by the other governments at the Committee's meetings should fail to achieve the necessary re-

sult, the Chairman-in-Office of the Committee can be invited to make direct, usually confidential, contacts (letters, meetings, etc.) with the Minister of Foreign Affairs of the respondent State. Furthermore, public interim resolutions may be adopted, notably to convey the Committee's concerns to interested States, organizations and parties and to make relevant suggestions to the authorities of the respondent State. If there are serious obstacles to execution, the Committee will adopt a more strongly worded interim resolution urging the authorities of the respondent State to take the necessary steps in order to ensure that the judgment is complied with. The Rome Ministerial Conference called upon the Committee of Ministers to seek further measures that might be taken in this connection.

According to the Rules for the application of Article 46, the Committee's agenda is public (Rule 1<sup>a</sup>). Information provided by the State to the Committee of Ministers and the documents relating thereto are also accessible to the public (Rule 5). This Rule has the advantage of ensuring that applicants and their lawyers are kept duly informed about the state of proceedings before the Committee. The Deputies recently decided that, in the application of these Rules, the annotated Agenda and Order of Business of each meeting, which contains information on the progress of execution of judgments, would be rendered public a few days after the meeting. According to Article 21 of the Statute of the Council of Europe, the Committee's deliberations remain confidential. On each of the last three points, the Committee can decide otherwise.

In order to save valuable Committee of Ministers' time, cases raising similar problem(s) *vis-à-vis* a certain State are examined together *en bloc* and payment control and other routine control (such as publication and dissemination of judgments) are usually dealt with through written procedure, for example without any debate. Despite these efforts, it is the general experience that, because of the sheer volume of material to be dealt with, not all cases raising problems, and thus requiring debate, receive as much attention as they might need.

On 28 September 2000 the Parliamentary Assembly adopted Resolution 1226(2000) on 'Execution of Judgments of the European Court of Human Rights', in which it underlined that the responsibility for the problems of execution of the Court's judgments lay primarily with the States, but also pointed out that it lay partly with the Court, its judgments being at times not sufficien-

tly clear, and partly with the Committee of Ministers, 'which ... [did] not exert enough pressure when supervising the execution of judgments'.<sup>68</sup> In its report, the European Commission for Democracy through Law (Venice Commission) noted its impression that it often takes a long time before Governments provide the Secretariat with pertinent and exhaustive information on both factual development of cases and the legal situation pertaining in the country. In the Commission's opinion, this insufficient and unsatisfactory cooperation by Member States constitutes another major shortcoming in the procedure before the Committee of Ministers.<sup>69</sup>

The Inter-American Commission on Human Rights plays a role which to a certain extent is comparable to that of the Committee of Ministers of the Council of Europe. It has three categories of powers: one with respect to all Member States of the Organization of American States; another *vis-à-vis* the State Parties to the American Convention on Human Rights and a third with regard to the OAS Member States not Parties to the American Convention. Thus, apart from its quasi judicial character, it also acts as a political body, while the Inter-American Commission on Human Rights fully meets the requirements of independence. In this respect, the drafters of Protocol N<sup>o</sup>. 11 completely neglected the role which the Inter-American Commission on Human Rights has played and continues to play in enforcing respect for human rights and fundamental freedoms on the American continent.

The main tool at the disposal of the Committee of Ministers is peer pressure. It has also had recourse, and recently increasingly so, to pressure by publicity.<sup>70</sup>

The Council of Europe lacks a mechanism under which the Member States can be kept under constant surveillance on their compliance with the commitments accepted within the Council of Europe. On 10 November 1994 the Committee of Ministers tried to fill this gap and adopted a declaration on compliance with commitments. This declaration envisaged a political mechanism under which the Members of the Council of Europe, its Secretary General or its Parliamentary Assembly might refer questions

of implementation of commitments concerning democracy, human rights and the rule of law to the Committee of Ministers. On 20 April 1995, the Committee of Ministers adopted the procedure for implementing this declaration. This mechanism does not affect the existing procedures arising from statutory or conventional control mechanisms. The discussions will be confidential and held in camera 'with a view to ensuring compliance with commitments, in the framework of a constructive dialogue'. Finally, the Committee of Ministers in cases requiring specific action may decide to request the Secretary General to make contacts, collect information or furnish advice; to issue an opinion or recommendation; forward a communication to the Parliamentary Assembly or take any other decision within its statutory powers. Whatever opinion may be given on this mechanism it certainly does not provide the Committee of Ministers with more powers than it already had. It will also probably result in even less willingness on the part of the Member States to make use of the already existing inter-State complaint mechanism under Article 33 ECHR.

The mechanism has, however, the advantage that it creates a platform for the Committee and the Member States to discuss and examine on a structural basis the human rights situation in all Member States of the Council of Europe, while previously this could only have taken place on an *ad hoc* basis. It also provides a more convenient tool for the Member States to give room to an 'early warning system' when there are indications that one of the Member States is not fulfilling its obligations. In the more than fifty years of its existence, there have been situations where silent diplomacy could have achieved a better result than the existing complaint procedures.<sup>71</sup> This monitoring role of the Committee of Ministers could also be used as a procedure for monitoring the respect of commitments by a State which refuses to execute a judgment of the Court. As *ultimum remedium*, the application of Article 8 in conjunction with Article 3 of the Statute of the Council of Europe (suspension or termination of membership) is available to the Committee of Ministers.<sup>72</sup>

## NOTES

1. See in more detail LEO ZWAAK, 'The Procedure Before the European Court of Human Rights', in PIETER VAN DIJK *et. al.* (eds.). *Theory and Practice of the European Convention on Human Rights*. 4<sup>a</sup> ed., (Antwerpen: Intersentia, 2006), Chapter 3, pp. 291-322.
2. The Russian Federation is still failing to ratify.
3. Committee of Ministers, *Resolution on Judgments Revealing an Underlying Systemic Problem*, Res(2004)3. 12 May 2004.
4. Protocol N<sup>o</sup>. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Amending the Control System of the Convention, CETS 194, Explanatory Report, available from <http://conventions.coe.int/Treaty/EN/Reports/Html/194.htm>, par. 96-97.
5. New Article 31(b).
6. Explanatory Report to Protocol N<sup>o</sup>. 14, *supra* note 4, par. 98.
7. Committee of Ministers, Resolution Res(2004)3, *supra* note 3.
8. ECtHR 22 June 2004, *Broniowski v. Poland*, Appl. N<sup>o</sup>. 31443/96, par. 193-194.
9. Human Rights Information Bulletin. H Inf(2005)1. p.23.
10. ECtHR 10 November 2004, *Sejdovic v. Italy*. Appl. N<sup>o</sup>. 56581/00, par 46-47.
11. Explanatory Report to Protocol N<sup>o</sup>. 14, *supra* note 4, par. 99-100.
12. See Committee of Ministers, *Rules of the Committee of Ministers for the Supervision of the Execution of Judgments and of the Terms of Friendly Settlements*, adopted by the Committee of Ministers on 10 May 2006, for the application of Article 46(2) of the Convention; <https://wcd.coe.int.ViewDoc.jsp?id=999329&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75>. Unless indicated otherwise, in this chapter the Rules refer to this set of Rules.
13. Rule 7(1) provides that, until the State concerned has provided information on the payment of the just satisfaction awarded by the Court or concerning possible individual measures, the case will be placed on the agenda of each human rights meeting of the Committee of Ministers, unless the Committee decides otherwise.
14. See article 21 of the Statute of the Council of Europe.
15. The three month time-limit has become standing practice since ECtHR 28 August 1991, *Moreira de Azevedo v. Portugal*. Appl. N<sup>o</sup>. 11296/84, under 1 of the operative part of the judgment.
16. Res. DH(91) 12 of 6 June 1991, *Azzi*; Res. DH(91) 13 of 6 June 1991, *Lo Giacco*; Res. DH(91) 21 of 27 September 1991. *Savoldi*; Res. DH(91) 22 of 27 September 1991, *Van Eesbeek*; Res. DH(91) 23 of 27 September 1991, *Sallustio*; Res. DH 91(24) of 27 September 1991, *Minniti*.
17. Res. DH(92) 3 of 20 February 1992, *Lo Giacco*; Res. DH(92) 4 of 20 February 1992, *Savoldi*; Res. DH(92) 5 of 20 February 1992, *Van Eesbeek*; Res. D11 (92) 6 of 20 February 1992, *Sallustio*, Res. DH(92) 7 of 20 February 1992, *Minniti*.
18. Res. DH(92) 45 of 17 September 1992, *Azzi*; Res. DH(92) 46 of 17 September 1992, *Lo Giacco*. Res. DH(92) 47 of 17 September 1992, *Savoldi*; Res. DH(92) 48 of 17 September 1992, *Van Esbeek*; Res. DH(92) 49 of 17 September 1992, *Sallustio*, Res. DH(92) 50 of 17 September 1992, *Minniti*.
19. Judgment of 18 June 2002, *Onyerildiz*, par. 168; judgment of 30 November 2004. *Gumusten*, par. 34; judgment of 30 November 2004, *Klyakhin* par. 134; judgment of 2 December 2004, *Yaroslavtsev*, par. 42.
20. ECtHR 9 December 1994, *Case of Stran Greek Refineries and Stratis Andreadis v. Greece*. Appl. N<sup>o</sup>. 13427/87.
21. Interim Resolution of 15 May 1996, DH(96)251.
22. Final Resolution of 20 March 1997. DH(97)184.
23. Interim Resolution of 6 October 1999, DH(99)680.
24. Interim Resolution of 24 July 2000. DH(2000)105.
25. Interim Resolution of 26 June 2002, DH(2001)80.
26. Interim Resolution of 12 November 2003, DH(2003)174.

27. Press Release Council of Europe: [http://press.coe.int/cp/2003/620a\(2003\).htm](http://press.coe.int/cp/2003/620a(2003).htm).
28. ECtHR 6 December 1988, *Barbara Messegué and Jarbardo v. Spain*. Appl. N<sup>o</sup>. 10590/83. (merits), par. 89; judgment of 13 June 1994 (question of just satisfaction), par. 16.
29. Resolution of 16 November 1994, DH(94)84.
30. ECtHR 29 October 1992. *Open Door and Dublin Well Women v. Ireland*. Appl. N<sup>o</sup>. 14234/88, 14235/88, par. 80.
31. Resolution of 25 June 1996, DH(96)368.
32. ECtHR 10 October 2000. *Daktaras v. Lithuania*. Appl. No.42095/98, par. 38.
33. Resolution of 6 July 2004. DH(2004)43.
34. Committee of Ministers. Recommendation. N<sup>o</sup>. R(2000)2 of the Committee of Ministers to Member States on the Re-Examination or Reopening of Certain Cases at Domestic Level following judgments of the European Court of Human Rights. adopted on 19 January 2000. under II.
35. ECtHR 23 April 1997, *Van Mechelen end others v. The Netherlands*. Appl. N<sup>o</sup>. 21363/93, 21364/93, 21427/93 and 22056/93, par. 66.
36. Resolution 19 February 1999. DH(99)124.
37. ECtHR 27 November 1987, *Yaacoub v. Belgium*. Appl. N<sup>o</sup>. 9976/82, par. 14.
38. ECtHR 2 May 1997, D. n. *United Kingdom*. App1. N<sup>o</sup>. 30240/96, par. 54.
39. Resolution of 18 February 1998. DH(98)10.
40. ECtHR 29 August 1997 A.P., M.P. and T. P. v. *Switzerland*. Appl. N<sup>o</sup>. 19958,92, par. 48.
41. Interim Resolution of 18 January 1999. DH(99)110.
42. ECtHR 22 May 1998, *Vasilescu v. Romania*, Appl. N<sup>o</sup>. 27053/95, par. 41 and 54.
43. Interim Resolution of 8 October 1999. DH(99)676.
44. ECtHR R 15 October 2002. *Kalashnikov v. Russia*. Appl. N<sup>o</sup>. 47095/99, par. 103, 121 and 135.
45. Interim Resolution of 4 June 2003. DH(2003)123.
46. Documents of the Committee of Ministers CM/AS (2004)9 of 4 October 2004.
47. Ibidem
48. See ECtHR 23 September 1991, *Jersild v. Denmark*. Appl. N<sup>o</sup>. 15890/89. In a later judgment, the Danish Supreme Court made a special reference to the *Jersild* judgment as the latest authority in acquitting a journalist who had been charged with invasion of privacy by entering without permission an area which was not accessible to the public: Resolution of 11 September 1995. DH(95)212.
49. ECtHR 26 September 1995, *vogt v. Germany*. Appl. N<sup>o</sup>. 17851/91, par. 61 and 68.
50. Resolution of 28 January 1997, DH(97)12.
51. ECtHR 16 September 1996, *Gaycusuz v. Austria*. Appl. N<sup>o</sup>. 17371/90. par. 52
52. Resolution of 12 November 1998. DH(98)372.
53. ECtHR 28 July 1999, *Bottazzi v. Italy*, Appl. N<sup>o</sup>. 34884/97, par. 22; see also 28 July 1999, *Di Mauro v. Italy*, Appl. N<sup>o</sup>. 34256/96, par. 23.
54. See in this respect Resolution of 11 July 1997, DH(97)336; Interim Resolutions of 15 July 1999, DH(99)436 and DH(99)4137.
55. Res DH(2000)135.
56. Interim Resolution DH(2000)135 of 25 October 2000.
57. See CM/Inf(2004)23 rev.
58. Documents of the Committee of Ministers. CM/AS (2004)9 of 4 October 2004.
59. Interim Resolution of 9 June 1999, DH(99)434.
60. Interim Resolution of 10 July 2002, DH(2002)98.
61. Interim Resolution of 2 June 2004, DH(2004)38.
62. Judgment of 13 July 2000, par. 183 and 216.
63. Interim Resolution of 29 May 2001, DH(2001)65.
64. Interim Resolution of 3 October 2001. DH(2001)151.
65. Interim Resolution of 23 February 2005, DH(2005)20.
66. Judgment of 24 July 2003. par. 57-58.
67. [http://www.coe.int/T/E/Human\\_rights/execution](http://www.coe.int/T/E/Human_rights/execution).
68. According to the statistics made available by the Department for the Execution of Judgments of the European Court of Human Rights, Directorate II, Council of Europe, the average time between a judgment and its execution for all States was 399.5 days for the years 1985-1991, and 345.85 days for the years 1995-2001. Cases currently before the Committee of Ministers have been pending for an average of 731.64

days. New cases before the Committee of Ministers have been 1.060 (estimates) July 2002), 755 in 2001, and 504 in 1999.

69. Council of Europe, Opinion N<sup>o</sup>. 209/2002, 18 December 2002. CDL-AD (2002) 34, p. 8.

70. See in particular Rule 1(a), and Rule 5 of the new Rules for the Application of Article 46(2) of the ECHR, approved by the Committee of Ministers on 10 January 2001 at its 736h meeting of Ministers Deputies.

71. See in this respect: ANDREW DRZEMCZEWSKI, 'Monitoring by the Committee of Ministers of the Council of Europe: A Useful 'Human Rights' Mechanism?', (2002) 2 *Baltic Yearbook of International Law*, pp. 83-103.

72. See Resolution DH(70) 1 of 15 April 1970 concerning the inter-State applications of Denmark, Norway, Sweden and the Netherlands v. Greece, *Yearbook of the European Convention on Human Rights*. Volume 12. *The Greek Case*, p. 511-515.