

Pending cases against Romania

Application Number	English Case Title	Date of Judgment	Date of Final Judgment	Meeting Number	Meeting Section
48254/99	COBZARU v. Romania	26/07/2007	26/10/2007	1020	2
65402/01	RADU v. Romania	12/07/2007	12/10/2007	1020	2
1818/02	DORNEANU v. Romania	26/07/2007	26/10/2007	1020	2
29294/02	HIRSCHHORN v. Romania	26/07/2007	26/10/2007	1020	2
34011/02	HERTZOG AND OTHERS v. Romania	26/07/2007	26/10/2007	1020	2
42061/02	IONESCU v. Romania	26/07/2007	26/10/2007	1020	2
1696/03	SAVULESCU v. Romania	12/07/2007	12/10/2007	1020	2
3864/03	SPANOCHE v. Romania	26/07/2007	10/12/2007	1020	2
24681/03	POPESCU AND DASOVEANU v. Romania	19/07/2007	19/10/2007	1020	2
4198/04	RUSU AND OTHERS v. Romania	19/07/2007	19/10/2007	1020	2
49234/99	POPESCU v. Romania (no. 1)	26/04/2007	26/07/2007	1020	3.A, 4.2
57884/00	KALANYOS and others v. Romania	26/04/2007	26/07/2007	1020, 1028	3.A, 4.2
57885/00	GERGELY v. Romania	26/04/2007	26/07/2007	1020, 1028	3.A, 4.2
67703/01	HAULER v. Romania	12/07/2007	12/10/2007	1020, 1028	3.A, 4.2
77193/01	DRAGOTONIU v. Romania	24/05/2007	24/08/2007	1020	3.A, 5.3A
77217/01	CLEJA and MIHALCEA v. Romania	08/02/2007	08/05/2007	1020	3.A, 4.2
5048/02	MACOVEI and others v. Romania	21/06/2007	21/09/2007	1020	3.A
10793/02	DURA v. Romania	21/06/2007	21/06/2007	1020	3.A
21740/02	BOCK and PALADE v. Romania	15/02/2007	15/05/2007	1020	3.A, 4.2
22626/02	SCHREPLER v. Romania	15/03/2007	15/06/2007	1020, 1028	3.A, 4.2
27086/02	POPESCU AND TOADER v. Romania	08/03/2007	08/06/2007	1020	3.A, 4.2
6098/03	DURDAN v. Romania	26/04/2007	24/09/2007	1020, 1028	3.A, 4.2
19215/04	GHEORGHE v. Romania	15/03/2007	15/06/2007	1020	3.A, 4.2
32925/96	CRETU v. Romania	09/07/2002	09/10/2002	1020	3.Aint
34647/97	RUIANU v. Romania	17/06/2003	17/09/2003	1020, 1028	3.Aint, 4.2
34992/97	BASACOPOL v. Romania	09/07/2002	09/10/2002	1020	3.Aint
35831/97	BALANESCU v. Romania	09/07/2002	09/10/2002	1020	3.Aint
54062/00	ANDRONE v. Romania	22/12/2004	06/06/2005	1020	3.Aint, 4.2
63945/00	WEISSMAN and others v. Romania	24/05/2006	23/10/2006	1020	3.Aint, 4.2

30324/96	SMOLEANU v. Romania	06/04/2006	06/04/2006	1020	3.B
31549/96	POPOVICI AND DUMITRESCU v. Romania	04/03/2003, 06/04/2006	06/04/2006	1020	3.B
31678/96	GHEORGHIU Theodor and Dinu Ioan v. Romania	17/12/2002	21/05/2003	1020, 1028	3.B, 4.1
32927/96	SEGAL v. Romania	17/12/2002, 27/07/2004	27/10/2004	1020	3.B
32943/96	FALCOIANU and others v. Romania	09/07/2002	09/10/2002	1020	3.B
33358/96	OPREA ET AUTRES v. Romania	16/07/2002	16/10/2002	1020	3.B
33912/96	PETRESCU and BUDESCU v. Romania	02/07/2002	02/10/2002	1020	3.B
34642/97	BUZATU v. Romania	01/06/2004, 27/01/2005	06/06/2005	1020	3.B
35671/97	LINDNER and HAMMERMAYER v. Romania	03/12/2002, 06/04/2006	06/04/2006	1020	3.B
36782/97	IONESCU AND MIHAILA v. Romania	14/12/2006	14/03/2007	1020	3.B
38608/97	IONESCU v. Romania	02/11/2004, 10/11/2005	10/02/2006	1020	3.B
40670/98	TODORESCU v. Romania	30/09/2003	30/12/2003	1020, 1028	3.B, 4.1
41138/98	MOLDOVAN and others v. Romania	05/07/2005, 12/07/2005	30/11/2005	1020, 1028	3.B, 4.2
46596/99	ZAMFIRESCU v. Romania	14/12/2006	14/03/2007	1020	3.B
46639/99	BAN v. Romania	07/12/2006	07/03/2007	1020	3.B
49781/99	FLORICA v. Romania	25/01/2005	25/01/2005	1020	3.B
57001/00	STRAIN and others v. Romania (+ 37 cases)	21/07/2005	30/11/2005	1020	3.B, 4.2
58472/00	DIMA v. Romania	16/11/2006	26/03/2007	1020	3.B, 5.3A
59892/00	MASZNI v. Romania	21/09/2006	21/12/2006	1020	3.B, 4.2
60957/00	VELCEA v. Romania	22/12/2005	22/12/2005	1020	3.B
62276/00	NICHIFOR v. Romania (no 1)	13/07/2006	13/10/2006	1020	3.B, 4.2
62710/00	LUNGOCI v. Romania	26/01/2006	26/04/2006	1020	3.B, 4.2
68479/01	RADOVICI and STANESCU v. Romania	02/11/2006	02/02/2007	1020	3.B
73970/01	SACALEANU v. Romania	06/09/2005	06/12/2005	1020, 1028	3.B, 4.2
75101/01	GRECU v. Romania	30/11/2006	28/02/2007	1020, 1028	3.B, 4.1
75129/01	ROSCA v. Romania	06/07/2006	06/07/2006	1020	3.B
78037/01	CARACAS v. Romania	29/06/2006	11/12/2006	1020	3.B, 4.2
1295/02	NICOLAU v. Romania (+ 5 cases)	12/01/2006	03/07/2006	1020	3.B, 4.2
1434/02	LUPAS and others v. Romania (no. 1)	14/12/2006	14/03/2007	1020, 1028	3.B, 4.2
5050/02	PANTEA v. Romania	15/06/2006	15/09/2006	1020, 1028	3.B, 4.2
5060/02	MIHAESCU v. Romania	02/11/2006	26/03/2007	1020, 1028	3.B, 4.2
7893/02	GHIBUSI v. Romania	23/06/2005	12/10/2005	1020	3.B

12050/02	BARTOS v. Romania	20/07/2006	20/10/2006	1020	3.B
21118/02	KONNERTH v. Romania	12/10/2006	12/01/2007	1020, 1028	3.B, 4.1
37284/02	LAFARGUE v. Romania	13/07/2006	13/10/2006	1020, 1028	3.B, 4.1, 4.2
41124/02	FILIP v. Romania	14/12/2006	14/03/2007	1020, 1028	3.B, 4.2
42872/02	CORNIF v. Romania	11/01/2007	11/04/2007	1020	3.B
6248/03	POPEA v. Romania	05/10/2006	05/01/2007	1020, 1028	3.B, 4.1
13028/03	SIMION v. Romania	14/12/2006	14/02/2007	1020, 1028	3.B, 4.1
21351/03	STINGACIU and TUDOR v. Romania	03/08/2006	03/11/2006	1020, 1028	3.B, 4.1
28104/03	RAICU v. Romania	19/10/2006	19/01/2007	1020, 1028	3.B, 4.1
7198/04	IOSUB CARAS v. Romania	27/07/2006	11/12/2006	1020, 1028	3.B, 4.2
10337/04	LUPSA v. Romania	08/06/2006	08/09/2006	1020, 1028	3.B, 4.2
33970/05	KAYA v. Romania	12/10/2006	12/01/2007	1020, 1028	3.B, 4.2
25632/02	STERE and others v. Romania	23/02/2006	23/05/2006	1028	4.1
28341/95	ROTARU v. Romania	04/05/2000	04/05/2000	1020	4.2
28871/95	CONSTANTINESCU v. Romania (+ 3 other cases)	27/06/2000	27/06/2000	1020	4.2
31679/96	IGNACCOLO-ZENIDE v. Romania	25/01/2000	25/01/2000	1028	4.2
33343/96	PANTEA v. Romania	03/06/2003	03/09/2003	1020	4.2
42066/98	BURSUC v. Romania	12/10/2004	12/01/2005	1020	4.2
42860/98	NOTAR v. Romania	20/04/2004	20/04/2004	1020	4.2
46430/99	BARBU ANGHELESCU v. Romania (no 1)	05/10/2004	05/10/2004	1020	4.2
48102/99	POPESCU v. Romania (+ 19 cases)	02/03/2004	02/06/2004	1028	4.2
60868/00	VASILESCU v. Romania	08/06/2006	08/09/2006	1028	4.2
71099/01	MONORY v. Romania and Hungary	05/04/2005	05/07/2005	1028	4.2
71525/01	POPESCU v. Romania (no. 2)	26/04/2007	26/07/2007	1020	4.2
77517/01	STOIANOVA v. Romania (+ 3 cases)	04/08/2005	04/11/2005	1020	4.2
1486/02	ORHA v. Romania	12/10/2006	12/01/2007	1028	4.2
4227/02	IORGA v. Romania	25/01/2007	25/04/2007	1020	4.2
19997/02	BOLDEA v. Romania	15/02/2007	15/05/2007	1020	4.2
23468/02	SISSANIS v. Romania	25/01/2007	25/04/2007	1020	4.2
23878/02	STRUNGARIU v. Romania	29/09/2005	29/12/2005	1028	4.2
28333/02	SC RUXANDRA TRADING SRL v. Romania	12/07/2007	12/10/2007	1028	4.2
43247/02	MELINTE v. Romania	09/11/2006	09/02/2007	1020	4.2
28114/95	DALBAN v. Romania	28/09/1999	28/09/1999	1020	5.1
33348/96	CUMPANA and MAZARE v. Romania	10/06/2003, 17/12/2004	17/12/2004	1020	5.1
46572/99	SABOU and PIRCALAB	28/09/2004	28/12/2004	1020	5.1

	v. Romania				
57808/00	ALBINA v. Romania	28/04/2005	28/07/2005	1020	5.3A
38565/97	COTLET v. Romania	03/06/2003	03/09/2003	1020	5.3B
53037/99	IONESCU Virgil v. Romania	28/06/2005	28/09/2005	1020	5.3B

Cases against Romania the examination of which has been closed in principle on the basis of the execution information received and awaiting the preparation of a final resolution

Application Number	English Case Title	Date of Judgment	Date of Final Judgment	Meeting Number	Meeting Section
32926/96	CANCIOVICI and others v. Romania	26/11/2002	24/09/2003	1020	6.2
33176/96	MOSTEANU and others v. Romania	26/11/2002	26/02/2003	1020	6.2
33627/96	BARAGAN v. Romania	01/10/2002	01/01/2003	1020	6.2
41134/98	GLOD v. Romania	16/09/2003	16/12/2003	1020	6.2
42930/98	CRISAN v. Romania	27/05/2003	27/08/2003	1020	6.2
61302/00	BUZESCU v. Romania	24/05/2005	24/08/2005	1020	6.2
78028/01	PINI and BERTANI v. Romania	22/06/2004	22/09/2004	1020	6.2
22687/03	SC MASINEXPORTIMPORT INDUSTRIAL GROUP SA v. Romania	01/12/2005	01/03/2006	1020	6.2

Main pending cases against Romania

1013 (December 2007) section 4.1

31678/96	Gheorghiu T. and D.I., judgment of 17/12/2002, final on 21/05/2003
21118/02	Konnerth, judgment of 12/10/2006, final on 12/01/2007
6248/03	Popea, judgment of 05/10/2006, final on 05/01/2007
28104/03	Raicu, judgment of 19/10/2006, final on 19/01/2006
13028/03	Simion, judgment of 14/12/2006, final on 14/03/2007
40670/98	Todorescu, judgment of 30/09/03, final on 30/12/03

These cases concern the Supreme Court's annulment of final court decisions delivered at first instance establishing the validity of the applicants' titles to real estate that had been previously nationalised. The Supreme Court intervened following applications for nullity lodged by the Procurator General on the ground of Article 330 of the Code of Civil Procedure which, at the relevant time, allowed him at any moment to challenge final court decisions. The European Court considered that by acting in this way, the Supreme Court had failed to acknowledge the principle of legal certainty and accordingly violated the applicants' right to a fair trial (violations of Article 6§1 in all cases except the Simion case). In the Gheorghiu T. and D.I. and Todorescu cases it also took the view that the Supreme Court had infringed the applicants' right of access to a tribunal in that it had not recognised courts' jurisdiction over disputes concerning recovery of property.

Finally, the European Court found that the Supreme Court's decisions had violated the applicants' right to respect for their possessions by annulling without justification and without compensation final court decisions that recognised the applicants' property rights to the apartments at stake (violation of Article 1 of Protocol No. 1).

Individual measures: Under Article 41, the respondent state was to return the property at issue to the applicants and to pay them the sums awarded as just satisfaction in respect of non-pecuniary damage and costs. Failing such restitution, the state was to pay the applicants within the same deadlines further sums corresponding to the value of the property.

The applicants in the Gheorghiu T. and D.I. and Todorescu cases agreed to waive payment of the just satisfaction pending the outcome of the recovery proceedings, the contested property having in the meantime been sold by the state to the sitting tenants.

• *Information is awaited on the current state of the proceedings in the Gheorghiu T. and D.I. and Todorescu cases, still pending before the Romanian courts, as well as on measures envisaged or taken, having regard to the time already elapsed, in order to accelerate them as much as possible as well as on the current situation of the applicants in other cases.*

General measures: These cases present similarities to that of Brumărescu against Romania (judgments of 28/10/1999 and 23/01/2001) (Resolution CM/ResDH(2007)90), in which the Romanian authorities indicated that Article 330 of the Romanian Code of Civil Procedure had been repealed by an emergency ordinance adopted by the government and published in the Official Gazette on 28/06/2003. This reform was approved by Parliament on 25/05/2004.

The Deputies decided to resume consideration of these items:

1. at their 1020th meeting (4-6 March 2008) (DH), in the light of information to be provided concerning payment of the just satisfaction, if necessary;
2. at the latest at their 1028th meeting (3-5 June 2007) (DH), in the light of further information to be provided concerning individual measures, if necessary.

1013 (December 2007) section 4.1

75101/01 Grecu, judgment of 30/11/2006, final on 28/02/2007

The case concerns the unfairness of certain proceedings before Bucharest County Court related to the applicant's criminal-law appeal seeking to have a prosecutor's order of 1985 set aside. The effect of this order was to absolve the applicant of any criminal responsibility but nonetheless to order him to pay an administrative fine and to order confiscation of certain property for infringement of the currency regulations (violation of Article 6). All the applicant's complaints against this decision were dismissed by higher prosecution services since at the material time the Code of Criminal Procedure provided no possibility of appeal to a court against such decisions of prosecutors. In February 2000 the applicant, invoking Decision No. 486/1997 of the Constitutional Court, appealed to the Bucharest County Court which on 20/06/2000 dismissed his appeal and confirmed the legality of the order.

The European Court noted that the Bucharest County Court, sitting in its single-judge composition, did not have full jurisdiction as, not being competent either to examine the merits of the charges against the applicant or to pronounce his acquittal, it did not satisfy the definition of a tribunal “established by law” and in the absence of applicable procedural rules on the question did not provide any of the procedural guarantees required in criminal matters.

The European Court also noted that at the material time the applicant was deprived of the possibility to appeal against the Bucharest County Court's decision of 20/06/2000 (violation of Article 2§1 of Protocol No. 7).

Individual measures: The European Court awarded the applicant just satisfaction in respect of pecuniary and non-pecuniary damage.

• *Clarification is awaited as to whether the applicant may request reopening of the proceedings at issue.*

General measures:

1) Violation of Article 6§1: At the material time, Article 278 of the Code of Criminal Procedure did not provide an appeal against public prosecutor's orders to a court. This problem was resolved, following the adoption in December 1997 of Decision No. 486/1997 of the Constitutional Court finding this Article unconstitutional, by Law No. 281 of 26/06/2003, which introduced a new Article 278¹ in the Code of Criminal Procedure (in force since 01/01/2004). This Article provides that anyone whose legitimate interest is violated by a prosecutor's decision to discontinue proceedings has a right to appeal to a court which is competent, according to criminal procedure, to deal with the case as a court of first instance. The judgment of the court in such cases should be based on the case-file and any new written evidence submitted to it.

2) Violation of Article 2§1 of Protocol No. 7: The European Court noted that the question had been resolved by the new Article 278 mentioned above which provides a twofold jurisdiction on such questions.

The Deputies decided to resume consideration of this item:

1. at their 1020th meeting (4-6 March 2008) (DH), in the light of information to be provided concerning payment of the just satisfaction, if necessary;
2. at the latest at their 1028th meeting (3-5 June 2008) (DH), in the light of further information to be provided concerning individual measures.

1013 (December 2007) section 4.1

25632/02 Stere and others, judgment of 23/02/2006, final on 23/05/2006

21351/03 Stîngaciu and Tudor, judgment of 03/08/2006, final on 03/11/2006

These cases concern the Supreme Court's annulment of final court decisions following the application for nullity lodged by the Prosecutor General on the ground of Article 330 of the Code of Civil Procedure which allowed him at any moment to challenge final court decisions (violations of Article 1 of Protocol No. 1).

Following the applicants' actions against the Ministry of Defence, in 2001 the domestic courts ordered the Ministry to pay the sums withheld in tax. However, the Supreme Court, following the applications lodged by the Procurator-General, decided in 2002 and 2003 to set aside the final judgements and ordered the reimbursement of the sums lawfully obtained by the applicants from the Ministry of Defence. The Court concluded that although the state's powers in the taxation field were wide, the exercise of those powers, in the circumstances of the case, had infringed the principles of legal certainty and the rule of law.

Individual measures:

1) Stere and others: The National Agency for Fiscal Administration (Alba Iulia Branch) informed the government agent that the enforcement proceedings against the applicants have been dropped.

2) Stîngaciu and Tudor: In December 2005 the Ministry of Defence requested the enforced execution of the Supreme Court's judgment. Consequently, a third of the applicants' retirement pension was deducted in favour of the Ministry of Defence. The European Court held that within three months from the date on which the judgment became final, Romania was to return the sums concerned to the applicants. It also awarded them just satisfaction in respect of non-pecuniary damage.

• *Confirmation is expected of the return of the sums concerned.*

General measures: This case presents similarities to that of Brumărescu (Resolution CM/ResDH(2007)90), in the framework of which the Romanian authorities have indicated the repeal of

Article 330 of the Romanian Code of Civil Procedure by an emergency ordinance adopted by the government and published in the *Official Gazette* on 28/06/2003. This reform was approved by Parliament on 25/05/2004.

The Deputies decided to resume consideration of these items:

1. at their 1020th meeting (4-6 March 2008) (DH), in the light of information to be provided concerning payment of the just satisfaction, if necessary;
2. at the latest at their 1028th meeting (3-5 June 2008) (DH), in the light of further information to be provided concerning individual measures, if necessary.

1007 (October 2007) section 4.2

28341/95 Rotaru, judgment of 04/05/00 - Grand Chamber, Interim Resolution ResDH(2005)57
The case concerns a breach of the applicant's right to respect for his private life in that the relevant national legislation does not contain sufficient safeguards against abuse as regards the way in which the Romanian Intelligence Service (RIS) gathers, keeps and uses information. The European Court has thus concluded that the holding and use by the RIS of information on the applicant's private life were not "in accordance with the law" within the meaning of the Convention (violation of Article 8). The case also concerns an infringement of his right to an effective remedy before a national authority that could rule on his application to have the file amended or destroyed (violation of Article 13). Lastly, the case concerns a breach of the applicant's right to a fair trial on account of the Court of Appeal's failure to consider the claim for damages and costs (violation of Article 6§1).

Individual measures: The Romanian delegation has indicated that there was no individual file on the applicant. Following the judgment of the European Court, the document that was in the possession of the RIS, based on which the applicant was erroneously designated as a member of an extreme-right organisation, was modified in order to avoid any confusion (another person bearing the same name as the applicant was listed there).

The Romanian authorities have indicated that the judgment of the European Court has been included in the file of the Romanian intelligence service, in order to avoid that any such confusion could occur again.

General measures:

1) Progress in the adoption of legislative reforms:

• *Information has been requested concerning the legislative reform to redress the shortcomings of Law No. 14/1992 on the organisation and operation of the Romanian intelligence service found by the European Court (especially concerning the way in which the RIS stores and uses the archives taken over from the former secret services) and on the progress of the reform of the law on national security which contains provisions (in particular those related to the procedure allowing to collect information concerning the national security) relevant to the execution of this case.*

• *Adoption of Interim Resolution:* On 05/07/2005, the Committee of Ministers adopted Interim Resolution ResDH(2005)57, in which it noted with interest the provisions of Law No. 535/2004 on the prevention and repression of terrorism which provide a procedure of judicial supervision of all secret surveillance measures, including cases involving threats to the national security. Nevertheless, the Committee noted with regret that, more than five years after the date of the judgment, several shortcomings identified by the European Court still did not seem to have been remedied, in particular concerning the procedure to be followed in order to have access to the archives taken over by the RIS from former secret services (other than the *Securitate*), the absence of a specific regulation concerning the age of the information which could be stored by the authorities, or the lack of any possibility to contest the holding of this information and, save for the cases provided for by Law No. 187/1999, their truthfulness.

The Committee therefore called upon the Romanian authorities rapidly to adopt the legislative reforms needed to respond to the criticism made by the Court in its judgment concerning the Romanian system of gathering and storing of information by the secret services.

• *Information provided by the Romanian authorities after the adoption of Interim Resolution ResDH(2005)57(letters of 2/02/2006 and 4/12/2006):* The ongoing reform in the field of national security does indeed respond to the aspects identified as sources of violation in the judgment of the European Court.

The package of related draft laws included, among other things:

- a Law on national security,
- a Law on the organisation and functioning of the Romanian Information Service,

- a Law on the external Information Service,
- a Law on information activities, counter-information and protection of information and
- a Law on the professional status and carrier of information officers.

This package was the subject of consultations in public debate and then sent to the competent ministries. It has subsequently been adopted by the Chamber of Deputies and is currently under debate before the second chamber (Senate).

• *More concrete information is expected on the provisions of the draft laws contained in the reform package, including their translations, their relevance to the violations found by the European Court and the possible timetable for their adoption.*

2) Violation of Article 8: According to the information provided by the Romanian authorities, under the draft *Law on information activities, counter-information and protection of information* the Romanian intelligence services have an obligation to assure information and to take measures necessary to guarantee the constitutional order, human rights and fundamental freedoms (Article 2). It should be also noted that the objectives of intelligence activities include: defence of democracy and constitutional order, rights and fundamental freedoms of the citizens, as guaranteed by the Romanian Constitution, and protection of an unlimited exercise of rights and fundamental freedoms. The draft Law contains provisions related to the collection of information, in particular, the procedure for a judicial authorisation. It also provides that the competent authorities are obliged to delete personal data from their files if it does not relate to any threat to Romanian national security (Article 70§1). Information concerning personal data, private life, honour and reputation of individuals obtained accidentally in the course of collecting information necessary for the protection of national security cannot be presented publicly, stored or archived. Thus, it should be destroyed as soon as it is established that that it has no relation to any threat to national security (Article 70§2).

• *Bilateral contacts are under way to assess this information.*

3) Violation of Article 13: Certain provisions of the draft *Law on information activities, counter-information and protection of information* might make it possible to challenge the holding by the intelligence services of information on private life or to refute the truth of such information. Thus, everyone should have a right to ask the competent authorities to provide access to information which concerns him/her exclusively (Article 68). The draft Law also provides a possibility to request the administrative authorities to verify, correct or delete personal data if they are incorrect, incomplete or obtained illegally (Article 69). The competent authorities are obliged to respond to such requests within specific time-limits (Articles 68-69). Finally, Article 70 provides a possibility of judicial recourse in circumstances foreseen in those Articles, including compensation for damage sustained.

• *Bilateral contacts are under way to assess this information.*

4) Violation of Article 6§1: The Romanian authorities observe that domestic courts will give direct effect to the Rotaru judgment, so as to avoid new violations, similar to that found in the present case, in which the Bucharest Court of Appeal failed to consider the applicant's claim for compensation and for the reimbursement of the costs incurred in order to obtain the rectification of the data at issue.

5) Publication and dissemination: The judgment of the European Court has been translated and published in the *Official Gazette*.

The Deputies

1. recalled Interim Resolution ResDH(2005)57, in which the Committee of Ministers called upon the Romanian authorities rapidly to adopt the legislative reform necessary to respond to the criticism made by the Court in its judgment concerning the Romanian system of gathering and storing of information by the secret services;
2. regretted that, more than seven years after the date of the judgment of the European Court, the necessary general measures had not yet been adopted and insisted on the urgency of fully executing this judgment;
3. took note in this respect of the ongoing legislative reform in the field of national security;
4. noted with interest the draft provisions relating to the possibility to challenge the holding, by the intelligence services, of information on private life or to refute the truth of such information;
5. urged the Romanian authorities to provide more concrete information on the provisions contained in the announced draft laws relating to other shortcomings identified by the European Court, and to continue to inform the Committee about progress in their adoption;
6. decided to resume consideration of this item at their 1st DH meeting of 2008, if appropriate on the basis of a new draft interim resolution;

1007 (October 2007) section 4.2

28871/95 Constantinescu, judgment of 27/06/00

77364/01 Ilişescu and Chiforec, judgment of 01/12/2005, final on 01/03/2006

These cases concern the absence of an oral hearing on appeal in criminal proceedings (violations of Article 6§1).

The Constantinescu case concerns the applicant's criminal conviction (in 1994) for defamation. Having been acquitted by the first-instance court, he was convicted upon appeal by a court which was entitled to make a "thorough assessment of the question of his guilt or innocence", without being given the opportunity to provide evidence and defend his case before the court which convicted him.

The Ilişescu and Chiforec case concerns the conviction of both applicants in 2000-2001, without being heard in person either during the first-instance proceedings or at appeal. In this respect the European Court stressed in particular that the appellate court had had the "possibility to correct the failure to hear the applicants at first instance, either by quashing the judgement and remitting the case to the courts below, or by ruling on merits of the charges against them, after having devoted itself to a complete appreciation of the question of the guilt or innocence of the interested parties, while proceedings, if necessary, with new measures of instruction" (§40 of the judgment).

Individual measures:

1) Constantinescu: No individual measure is required since, following an extraordinary appeal, the applicant was acquitted by the Supreme Court of Justice on 04/02/2000.

2) Ilişescu and Chiforec: The applicants were sentenced to three months' imprisonment and a fine. The European Court awarded the applicants just satisfaction in respect of the non-pecuniary damage suffered.

By a letter of 12/06/2006 the Government Agent informed the applicants that they might request reopening of the proceedings in question under Article 408-1 of the Code of Criminal Proceedings.

They were also informed about the publication of the judgment in the *Official Gazette*.

General measures: Information has been requested since 2000 concerning the measures envisaged by the Romanian authorities to ensure that the hearing of accused persons on appeal follows the principles established by the European Court, and in particular to ensure that those in the same situation as the applicant are heard by appeal (*recurs*) courts.

1) Training and awareness raising measures: According to information provided by the Romanian delegation, periodic meetings have been established between the Government's agent and the Presidents of Appeal Courts relating to the judgments delivered by the European Court, and a course on the "Court's case-law" has been introduced into the training of judges. Moreover, the judgment of the European Court was published in the *Official Gazette* in May 2001.

2) Legislative measures: The Romanian authorities have indicated that the Code of Criminal Procedure was amended in 2006 (Law No. 356/2006). According to the provisions currently in force, the appeal court is obliged to hear the defendant provided that he/she has not been heard by the first-instance court or the first-instance court has not convicted him/her. Similarly, as regards appeals on points of law, the court is obliged to hear the defendant provided that he/she has not been heard by the first- and second-instance courts or he/she has not been convicted by these courts. Nevertheless, the law does not seem to provide for a hearing in the case of defendants who are convicted by the inferior court after being heard, even if the appeal lodged with the higher court is based on an alleged erroneous assessment of the facts. Therefore, doubts were expressed in the Committee about the compatibility of these provisions with the case-law of the European Court, according to which an appellate court, which must examine a case as to the facts and the law and must make a full assessment of the issue of guilt or innocence, cannot determine the issue without a direct assessment of the evidence given in person by the accused (see, among many others, the case of Tierce against San Marino, judgment of 25/07/2000, §95).

• *Bilateral contacts are under way to assess the measures adopted and to determine the necessity of further measures.*

In this respect, the Secretariat recalls Recommendation Rec(2004)5 on the verification of the compatibility of draft laws, existing laws and administrative practice with the standards laid down in the European Convention on Human Rights, adopted by the Committee of Ministers on 12/05/2004.

The Deputies decided to resume consideration of these items at their 1013th meeting (3-5 December 2007) (DH), in the light of information to be provided on the payment of the just satisfaction, if necessary, as well as, in the light of clarification to be provided concerning the general measures taken and their conformity with the requirements of the European Convention.

1013 (December 2007) section 4.2

31679/96 Ignaccolo-Zenide, judgment of 25/01/00

This case concerns the absence of adequate and sufficient measures taken by the Romanian authorities to enforce a court injunction (issued in December 1994 based on the Hague Convention) requiring the applicant's children to be returned to her. In spite of this finding of a violation, court decisions affording visitation rights to the applicant were not enforced due to the fact that the father of the children refused to abide by them and appealed them before the superior courts, obtaining their suspension (violation of Article 8).

Individual Measures: No measure is required since the children have reached their majority (the younger daughter in September 2002). The European Court awarded the applicant just satisfaction for non-pecuniary damage.

General Measures:

1) Violation of Article 8:

- *Law No. 369/2004 on the implementation of the Hague Convention* was adopted by the Parliament on 15/09/2004, with a view to enhancing the efficiency of proceedings concerning the return of abducted children. Among the new measures mentioned are the creation of a special court (the Bucharest court for children and family issues) competent to deal with requests for the return of children under the Hague Convention, and the establishment of a procedure through which the court may impose a deterrent fine on a parent who refuses voluntarily to fulfil his or her obligation to return a child or to allow access rights. Study of the provisions and the application of Law No. 369/2004 is a part of the initial training of legal trainees in family law and “European Convention of Human Rights”. Trainees analyse the Court's judgment in *Ignaccolo-Zenide* in relation to the provisions of the Hague Convention. The application of Law No. 396/2004 is also a priority in continuous training and is an element of the subjects of the seminars organised by the Institute in the series of training on “Justice for minors” and “The European Convention - civil aspects”.

Nevertheless it seemed that the law did not explicitly provide the possibility for the abducted child to undergo psychological therapy in order to prepare him or her for being reunited with the bereft parent, such a possibility existing only if access rights cannot be exercised due to the constant opposition of a child who manifests hostile feelings towards its parent. In addition, the law does not explicitly provide the possibility for bereft parents to obtain provisional access rights pending the outcome of return proceedings based on the Hague Convention.

However, the Romanian authorities consider that these issues are regulated either indirectly in the new law or in other legal acts:

- *Psychological care:* A measure of psychological care of the child during the procedure to examine the request for return may be taken by a judicial authority under Law No. 369/2004. As the Law provides, in Article 9, the obligatory presence of a psychologist during the hearing of the child, the legal authority may decide that the same psychologist, or a psychologist of the Directorate General of Social Assistance, assists the child.

- *Access right:* In response to the requests of the Superior Council of Magistracy, Romanian magistrates expressed a majority opinion in favour of granting an access right to a parent requesting the return of a child abducted on Romanian territory both during the examination of the request and in the event of a refusal to return the child. This right will be granted on request under the terms of the Romanian Family Code, which provides a right of access for the parent who does not usually live with the child. This provision is also interpreted in favour of a parent who asks the Romanian authorities to establish the illicit character of the presence of his child in Romania. Moreover, under Law No. 272/2004 on the protection and promotion of the rights of the child, the child has a right to maintain personal relations and direct contacts with his parents, the exercise of these rights being established by a judicial authority. This right is also acknowledged for a child whose parents usually live different countries (Articles 16 and 17 of Law No. 272/2004).

• *Information is awaited on how the new law is applied by the national authorities.*

2) Publication and dissemination: The European Court's judgment has been published in the *Official Journal*. In addition, the Romanian authorities indicated that the judgment (accompanied by a circular letter underlining the provisions of the Hague Convention) was sent out to civil courts, the appropriate ministries and the social services.

The Deputies decided to resume consideration of this item at the latest at their 1028th meeting (3-5 June 2008) (DH), in the light of further information to be provided on general measures.

1007 (October 2007) section 4.2

33343/96 Pantea, judgment of 03/06/03, final on 03/09/03

The case concerns the ill-treatment inflicted on the applicant by his fellow-prisoners in January 1995 during his detention on remand, in circumstances which engaged the state's responsibility, and the shortcomings of the investigation carried out by the Romanian authorities into the facts of the case (violations of Article 3).

The case also concerns the illegality (acknowledged by the national courts) of the applicant's detention on remand in July 1994, and the fact of his being kept in detention until April 1995 after the expiry of the warrant committing him to prison in August 1994 (violations of Article 5§1).

The case furthermore concerns the fact that the applicant, whose detention was ordered by a prosecutor, was not brought rapidly before a judge (violation of Article 5§3).

In addition, the competent court took more than three months (December 1994 - April 1995) to rule on the applicant's request to be freed from detention on remand (violation of Article 5§4). The case also concerns the fact that Romanian law did not provide the possibility to obtain compensation for illegal detention in the applicant's situation (violation of Article 5§5).

Finally, the criminal proceedings instituted against the applicant on 07/06/1994, which were still pending before the court of first instance when the European Court rendered its judgment, lasted too long (violation of Article 6§1).

Individual measures:

1) Violation of Article 6§1:

• *Information provided by the Romanian authorities:* The Romanian authorities have tried to accelerate the proceedings by contacting the competent court and the case has been transferred to another court, at the applicant's request.

In a letter of 31/08/2007 they informed the Secretariat that by a decision of 30/05/2007 the Regional Court of Dolj decided to close the criminal proceedings due to special criminal statute of limitation. The applicant appealed against this decision.

▪ *Information is expected on the outcome of this appeal.*

2) Possibility of launching a new investigation or remedying the shortcomings of the initial investigation:

• *Information provided by the Romanian authorities:* The Romanian authorities indicated, during a meeting with representatives of the Secretariat held in June 2004 that the applicant's fellow-prisoners, as well as the prison warders, could no longer be prosecuted due to the expiry of the statutory limitation period for the relevant criminal offences (5 years, counting from the date of the events). By letter of 4/02/2005, the Romanian authorities indicated that a report had been drawn up on 13/06/2003 following an internal investigation. This revealed shortcomings in the conduct of the warders and of the deputy commander of the prison, who failed to prevent the incident, to intervene adequately to protect the applicant and to conduct a prompt internal investigation. Nevertheless, in view of the expiry of the statutory limitation period for disciplinary action against the warders, they were not punished. In any event, the Romanian authorities indicated that none of the prison officials involved in the events is still serving today in the National Penitentiary Administration.

General measures:

1) Violation of Article 3 caused by the ill-treatment inflicted on the applicant: Information has been requested on the measures envisaged, beyond the publication of the judgment of the European Court, to prevent vulnerable detainees being placed with dangerous inmates and on measures to ensure that prison authorities can intervene effectively in cases of violent conflict between detainees. The Romanian authorities have pointed out that the findings of the European Court have been disseminated among the staff of the National Penitentiary Administration. To avoid any repetition of this kind of incidents, the Penitentiary Administration has instructed its staff to inform the competent authorities immediately of any physical aggression against prisoners and stressed the obligation of medical staff to note any finding concerning ill-treatment inflicted on prisoners, as well as their statements, in their medical records. The strict prohibition of the excessive use of force has been reiterated, as well as the need to give particular protection to more vulnerable prisoners.

2) Violations of Article 5: The constitutional and legislative changes (concerning the Code of Criminal Procedure) adopted in 2003 provide that detention during the pre-trial phase must be ordered by a judge, for a maximum of 30 days, with the possibility of prolonging it several times for the same period. After the case has been sent before a court, the lawfulness of the detention (still ordered by a judge), as well as the continuing existence of the reasons justifying it, must be reviewed every 60 days by the court. A decision to place a person in detention taken during the judgment phase may be challenged before the higher court, which must rule on this complaint within 3 days after receiving the file. The new law also provides the possibility of compensation for illegal detention in situations similar to that of the applicant.

3) Violation of Article 6§1: The question concerning the length of criminal proceedings is being examined in the context of the Stoianova and Nedelcu group of cases (Section 4.2).

4) Publication and dissemination: The Romanian authorities confirmed the publication of the judgment of the European Court in the *Official Journal*, as well as its broad dissemination amongst courts and public prosecutors' offices.

The Deputies decided to resume consideration of this item at the latest at their 1st meeting DH in 2008, in the light of further information to be provided concerning general measures, as well as individual measures if necessary.

1013 (December 2007) section 4.2

- Cases concerning failure by domestic authorities to assist in enforcing final judicial decisions placing obligations on private third parties

34647/97 Ruianu, judgment of 17/06/03, final on 17/09/03
22626/02 Schrepler, judgment of 15/03/2007, final on 15/06/2007

CM/Inf/DH(2007)33

These cases concern the failure of domestic authorities to assist the applicants in enforcement of final judicial decisions related to the obligation of private third parties (violation of Article 6§1).

The Ruianu case concerns the non-enforcement of two final court decisions (issued in 1993 and 1995) enjoining the defendants to demolish a building illegally constructed on the applicant's property. The European Court concluded that, in spite of the applicant's repeated requests, only one adequate attempt had been made to enforce the judgments, and this not until 2000. Following this attempt, the subsequent requests made by the applicant for the enforcement of the judgments remained unsuccessful.

The Schrepler case concerns the non-enforcement of a domestic court decision of 1998 ordering payment of a certain sum to the applicant.

Individual measures:

1) Ruianu: Following the friendly settlement reached with their neighbours, the applicant's heirs (she died on 10/03/2005) sold to them the plot of land on which the building at issue stands.

2) Schrepler: The decision of 1998 had still not been executed when the European Court rendered its judgment.

• *Information is expected on the current situation of the applicant.*

General measures:

• *Information provided by the Romanian authorities in the context of Ruianu case (letter of 31/05/2004):* The Romanian authorities provided information concerning the means available in Romanian law to force debtors to execute obligations established by court decisions, such as periodic monetary penalties, fines for non-compliance, or other criminal sanctions.

Although this information is relevant, the Secretariat notes that the legal means invoked by the government could not avoid the violation in the present case. Therefore, given the domestic authorities' responsibility for the enforcement stage (see in particular paragraphs 59, 72 and 73 of the judgment), additional information was requested concerning the means available in domestic law to ensure the execution of domestic courts' decisions in similar situations.

By letter of 27/03/2006, the Romanian authorities indicated that a draft Law concerning the enforcement of civil court decisions, modifying the Code of Civil Procedure had been approved by the government and was currently before Parliament.

On 21 and 22 June 2007 a high level Round Table (organised by the Department for the Execution of Judgments of the European Court of Human Rights) between representatives of the Council of Europe and the authorities of different states was held to discuss solutions to the structural problems of non-enforcement of domestic court decisions. In this context the representatives of the Romanian authorities exchanged their experiences on the measures taken or under way to prevent similar violations and examined possible further reforms to be adopted.

• *Information is awaited on the authorities' assessment whether the violations found by the European Court in these cases have a structural character and on specific measures taken or envisaged to ensure the proper execution of judicial decisions in similar situations (in this context see the conclusions of the Round Table mentioned above CM/Inf/DH(2007)33). Information is also expected on the relevant provisions of ~~this~~ the draft mentioned above and progress in its adoption.*

The judgment of the European Court in the Ruianu case was published in the *Official Journal* on 2/12/2004 and has been included in a collection of judgments delivered against Romania between

1998 and 2004, 2000 copies of which have been distributed free of charge to courts and others. It was also transmitted to the Magistrates' Superior Council.

The Deputies,

1. noted with interest the information submitted by the Romanian authorities concerning the amendments introduced in the Code of Civil Procedure by Law No. 459 (entered into force on 01/01/2007) concerning the obligations and means at the disposal of bailiffs with respect to the execution of final domestic decisions;
2. invited the authorities to submit additional information in this respect, in particular the text of the relevant provisions;
3. also recalled in this context the conclusions of the Round Table on the non-enforcement of final domestic decisions held in June 2007 in Strasbourg, in which the Romanian authorities took part;
4. decided to resume consideration of these items at their 1020th meeting (4-6 March 2008) (DH), in the light of further information to be provided concerning payment of the just satisfaction, if necessary;
5. decided to resume consideration of these items at the latest at their 1028th meeting (3-5 June 2008) (DH), in the light of further information to be provided on the situation of the applicant in the Schrepler case and on general measures.

1013 (December 2007) section 4.2

41138/98+ Moldovan and others, judgment No. 2, judgment of 12/07/2005, final on 30/11/2005
 41138/98+ Moldovan and others, judgment No.1 of 05/07/2005 - Friendly settlement
 57884/00 Kalanyos and others, judgment of 26/04/2007, final on 26/07/2007 - Striking-out
 57885/00 Gergely, judgment of 26/04/2007, final on 26/07/2007 - Striking-out

These cases concern complaints raised by the applicants, all of Roma origin, concerning the consequences of certain events which took place between 1990 and 1993.

In the Moldovan and others, judgments No 1 and No. 2, violent clashes occurred in September 1993 between the Roma community and the other villagers in the Hădăreni village, leading to the death of three Roma and to the destruction of the applicants' houses and of much of their personal belongings. By a court verdict delivered in 2004 (final in February 2005), several non-Roma villagers were found guilty and were ordered to pay civil compensation to the applicants.

In the judgment on the merits (Moldovan and others, judgment No. 2) the European Court found that, in view of the direct repercussions of the acts of state agents on the applicants' rights (in particular due to the involvement of police officers in the burning of the Roma houses), the government's responsibility was engaged with regard to the applicants' living conditions, even after 20/06/1994, when Romania ratified the Convention. Thus, it concluded that the general attitude of the national authorities had perpetuated the applicants' feelings of insecurity and affected their right to respect for their private and family life and their homes. In this respect, the European Court noted, *inter alia*, that the Public Prosecutors' Office had failed to institute criminal proceedings against the state agents involved in the burning of the applicants' houses, that the domestic courts had refused for many years to award the applicants pecuniary damages for the destruction of their belongings and furniture, that some of the houses had not been rebuilt by the authorities and those which supposedly had been rebuilt remained uninhabitable, etc. (violations of Article 8).

Further, the European Court found that the applicants' living conditions over the last ten years (in overcrowded and unsuitable dwellings), together with the racial discrimination to which they had been publicly subjected by the way in which their grievances had been dealt with by the various (judicial and administrative) authorities, had constituted an interference with their human dignity which, in the special circumstances of the case, had amounted to "degrading treatment" within the meaning of Article 3 (violations of Article 3).

The European Court also found that the proceedings brought by the applicants for compensation against the civilians accused of violent acts had lasted too long. These proceedings began in September 1993, when the applicants became civil parties to criminal proceedings against the presumed perpetrators. They ended on 25/02/2005 with the confirmation by the Court of Cassation of a lower court's verdict ordering those who had already been convicted in 1999 for taking part in the violent incidents, to pay compensation to the applicants who had sustained both pecuniary and non-pecuniary damage (violation of Article 6§1).

Finally, the European Court noted that the applicants' Roma origin seems to have had a decisive influence on both the duration and the outcome of the domestic proceedings. Particular note was taken of the authorities' discriminatory remarks throughout the proceedings and the fact that a court decision to reduce the amount of compensation awarded to the applicants for non-pecuniary damage

had been motivated by observations directly linked to their ethnic origin (violation of Article 14 taken together with Articles 6 and 8).

In the *Moldovan and others*, judgment No.1, the European Court took note of the friendly settlements concluded between the respondent state and some of the applicants.

The *Kalanyos and others* and *Gergely* cases concern the failure of criminal investigations to clarify fully the circumstances which led to the destruction of houses belonging to Roma villagers in Plăieșii de Sus and Cașinul Nou (district of Plăieșii de Jos, Harghita County) by local population in August 1990 and June 1991. The government recognised that these events left the applicants living in precarious conditions, depriving them of their right to bring a civil action to establish liability and recover damages and making it difficult to exercise their right to respect for home, private and family life. The government has also expressed its regret concerning remarks made by certain authorities concerning the applicants' Roma origin and accordingly admitted that the circumstances constituted violations of Articles 3, 6, 8, 13 and 14. The European Court took note of the government's regret and acknowledgment of the violations and of its proposals concerning individual and general measures for settlement of these cases.

Individual measures:

1) *Moldovan and others no. 2 (judgment on merits)*: The European Court, under Article 41, awarded the applicants just satisfaction in respect of pecuniary and non-pecuniary damages.

According to the last information submitted (06/02/2006), the procedure of forced execution of the sums granted to the applicants by the internal decision (final on 25/02/2005, see above) was pending before the Ludus Court. Moreover, the government is currently assessing the possibility of opening an investigation against the government agents involved in the events of September 1993.

• *Information is expected in this respect.*

2) *Moldovan and others no. 1 (friendly settlement)*: The Romanian government offered to pay the applicants various sums of money covering pecuniary and non-pecuniary damage, as well as costs and expenses. Both the government and the applicants indicated that this payment constitutes a final settlement of the case, including the applicants' domestic civil claims.

3) *Kalanyos and others, Gergely*: The authorities undertook to compensate the damage sustained by the applicants as well as their costs and expenses.

General measures:

1) *Undertakings of the government*: Under the terms of the friendly settlement (*Moldovan and others*, judgment no. 1 case) and in both the *Kalanyos and others* and the *Gergely* cases, the Romanian government undertook to adopt several measures to fight against the discrimination against Roma, such as:

- enhancing the educational programmes for preventing discrimination against Roma in the school curricula in the Hădăreni community (Mureș County) and in both Plăieșii de Sus and Cașinul Nou communities (Harghita County);
- drawing up public information programmes to dispel stereotypes, prejudices and practices towards the Roma community in the Mureș public institutions competent for the Hădăreni community and in the Harghita public institutions competent for the Plăieșii de Sus and Cașinul Nou communities;
- initiating legal education programmes together with the members of the Roma communities and ensuring the eradication of racial discrimination within the Romanian judicial system;
- supporting positive changes in public opinion of the Hădăreni, Plăieșii de Sus and Cașinul Nou communities concerning Roma on the basis of tolerance and the principle of social solidarity;
- stimulating Roma participation in the economic, social, educational, cultural and political life of the local community in Mureș County and Harghita County by promoting mutual assistance and community development projects;
- implementing programmes to rehabilitate housing and the environment in the communities and
- identifying, preventing and actively solving conflicts likely to generate family, community or inter-ethnic violence.

Furthermore, in the context of the friendly settlement, the government undertook to prevent similar problems in the future by carrying out adequate and effective investigations and by adopting social, economic, educational and political policies to improve the conditions of the Roma community in accordance with the government's present strategy in this respect. In particular, it declared that it will undertake general measures as required by the specific needs of the Hădăreni community in order to facilitate the general settlement of the case, taking also into account the steps which have already been taken with this aim, such as rebuilding some of the houses destroyed.

It seems that these undertakings could serve as a basis for the assessment of general measures taken or envisaged for the execution of the judgment on merits (*Moldovan No. 2*).

• *Information on the measures adopted:*

(a) The Romanian authorities have informed the Secretariat that the National Agency for the Roma (<http://www.anr.gov.ro/>), an organ subordinated to the Romanian government, has drawn up a “General Plan of Action” on the implementation of the Romanian authorities’ undertakings in order to fulfil the commitments foreseen in the friendly settlement. According to this plan of action, a team made up of governmental experts and experts belonging to civil society visited Hădăreni on several occasions to present the project to its inhabitants, to identify problems and general attitudes in the local community and to choose the people who could help implement the project locally. The conclusions of these visits have been used to draft a “Community Development Programme”, which addresses issues such as education (including health education and legal education), the fight against discrimination, the prevention of family or community conflicts, professional training, employment and the development of infrastructure, culture, etc. A governmental decision approving the Hadareni Community Development Plan 2006-2008 was adopted and published in the *Official Gazette* on 4/05/2006.

(b) By Law No. 103/2006, Romania has ratified Protocol No. 12 to the Convention (published in the *Official Gazette* on 2/05/2006). The Romanian authorities have also indicated that they envisage amending the legislation concerning the fight against discrimination, in order to create a direct and effective possibility to obtain redress for discriminatory acts.

Moreover, the National Agency for the Roma signed an agreement with UNDP (United Nations Development Programme). The parties committed themselves to establish six assistance social centres for Roma to facilitate their socio-economic integration. One of the centres will have its seat at Targu Mures. Further, according to the Memorandum of Understanding signed by the Romanian government and UNDP in September 2005, 11 projects will be financed within the “Partnership for supporting the Roma 2005” Program.

• *Information awaited: on the progress achieved in the realisation of the plan of action on the implementation of undertakings foreseen in the friendly settlement and other possible measures.*

2) Violation of Article 6§1: The problem of the excessive length of the proceedings is being examined in the context of the Stoianova and Nedelcu group of cases (1007th meeting, October 2007, Section 4.2).

3) Publication and dissemination: Judgements of 12/07/2005 have been translated into Romanian and published in the *Official Journal*. In addition, the judgment has been already included in the training programme for judges and prosecutors of the National Institute of Magistrate.

The Deputies,

1. recalled the General Action Plan and the Community Development Programme adopted by the Romanian authorities to fulfil their undertakings in Moldovan and others case, judgment No.1 (friendly settlement) and noted the information provided during the meeting;
2. observed that those undertakings may also serve as a basis for the supervision of the execution of the Moldovan and others, judgment No. 2 (judgment on merits);
3. invited the authorities to provide further information on the progress of implementation of their undertakings and on the measures taken or envisaged to fulfil the additional obligations resulting from the Kalanyos and Gergely judgments;
4. decided to resume consideration of these items at their 1020th meeting (4-6 March 2008) (DH), in the light of the information to be provided concerning the payment of just satisfaction, if necessary;
5. decided to resume consideration of these cases at the latest at their 1028th meeting (3-5 June 2008) (DH), in the light of the assessment of the information submitted and further information to be provided on individual and general measures.

1013 (December 2007) section 4.2

42860/98 Notar, judgment of 20/04/04 - Friendly settlement

The case relates to allegations that the applicant (who, at the material time, was a minor), suffered mistreatment when he was arrested and during his detention in the Tg. Mures Youth Shelter in July 1996, and that there had been no effective investigation of these matters (complaints under Article 3). The applicant also complained that his detention was unlawful (complaint under Article 5§1), that he was not given an explanation of the charges against him (complaint under Article 5§2), that he had no opportunity to obtain prompt judicial review of the legality of his detention (complaint under Article 5§3 and 4) and that he could not obtain compensation for his unlawful detention (complaint under Article 5§5). The applicant further complained of an infringement of his right of access to a court to obtain compensation for the unlawfulness of his detention or for the alleged mistreatment (complaint under Article 6§1) as well as a breach of the presumption of his innocence, in view of the fact that his

identity was disclosed during a television programme which depicted him as the perpetrator of a criminal offence (complaint under Article 6§2). Finally, the applicant complained of hindrance to the exercise of his right of individual application (complaint under Article 34).

- *Undertakings by the government.* According to the friendly settlement reached, the Romanian government undertook to pay a sum of money covering pecuniary and non-pecuniary damage, as well as costs and also:

(1) to reform the existing legislation with a view to exempting from stamp duty civil court actions claiming damages for ill-treatment contrary to Article 3,

(2) to inform the police of the appropriate conduct to be observed to ensure respect for the presumption of innocence, and

(3) to pursue its efforts in the area of protecting children in difficulty.

Individual measures: The amount agreed in the friendly settlement has been paid to the applicant. No further individual measure is required.

General measures:

• *Information provided by the Romanian authorities:*

1) Stamp duty: Following the amendment of the Law on judicial stamp duties of 1997, requests for the determination and award of civil damage for alleged treatment in breach of Articles 2 and 3 of the Convention are exempted from stamp duty. These amendments have been adopted by a government ordinance published in the Official Gazette on 28/01/2005 and were approved by Parliament in March 2005.

2) Presumption of innocence: A draft order was prepared in 2004 by the Ministry of Public Administration and Internal Affairs, setting out in particular the rules to be followed concerning the disclosure to the media of data and information obtained by the personnel of the Ministry in the exercise of their professional duties. The draft provides in particular that the identity of persons who are being investigated, prosecuted or placed in detention on remand may not be made public.

• *Further information is expected on action taken with regard to the draft order mentioned and on the timetable envisaged for its adoption. Information is also expected on measures aimed at the appropriate training of the police.*

3) Protection of children in difficulty: The legislation in force at the material time regulating the placement of minors in youth shelters has been repealed.

• *The following legislative acts related to child protection have been adopted:*

a) *Law No. 272/2004 of 23/06/2004* on the protection and promotion of the rights of the child; Chapter V of the Law (Articles 80-84) relates to the protection of the child who has committed a criminal act but is not criminally liable. Thus, Article 83 prohibits the publication of any information concerning a criminal act committed by such children, including their personal data. According to Article 56 e) of the Law, those children are beneficiaries of “special child protection measures”, including placement, emergency placement and specialised supervision.

b) *Governmental decree No. 1432/2004 of 23/09/2004* on the national authority for the protection of children in difficulty;

c) *Governmental decree No. 1434/2004 of 23/09/2004* on the general department of social assistance and protection of children;

d) *Governmental decree No. 1439/2004 of 24/09/2004* on special services for children who have committed a criminal offence but are not liable under criminal law;

e) *Decision of the National Audiovisual Council No. 187 of 03/04/2006* concerning the regulation of the content of audiovisual programme services. The decision *inter alia* prohibits the broadcasting of any information on children under 14 which could lead to their identification when they are accused of committing offences (Article 4). Information on children over 14 is permissible under the conditions listed in Article 6. In addition, Article 7 contains the obligation to give information about the person's rights before filming or recording.

• *Clarification is expected concerning the provisions of Law No. 272/2004 and the three decrees mentioned above.*

• *Further information is also expected on the legislation governing the placement of minors in youth shelters as well as summary of the relevant legislative provisions currently in force and the necessity of any improvements in this respect.*

The Deputies decided to resume consideration of this item at their 1020th meeting (4-6 March 2008) (DH), in the light of further information to be provided concerning measures to comply with the government's undertakings.

1007 (October 2007) section 4.2

46430/99 Anghelescu Barbu No.1, judgment of 05/10/2004, final on 05/01/2005

42066/98 Bursuc, judgment of 12/10/2004, final on 12/01/2005

43247/02 Melinte, judgment of 9/11/2006, final on 9/02/2007

The Anghelescu Barbu No.1 and Bursuc cases concern the ill-treatment inflicted on the applicant by police officers (violations of Article 3). In the Bursuc case, the applicant was subjected, while in police custody in January 1997, to particularly serious violence, which was capable of causing severe pain and suffering, regarded by the European Court as “torture”. In the Barbu Anghelescu case, in April 1996 at a roadside checkpoint, the applicant was subjected to injuries qualified by the European Court as degrading treatment.

All these cases deal with the lack of effectiveness of the investigations conducted by the domestic authorities into the accusations against the police officers (in the Melinte case concerning an alleged ill-treatment in June 1999), investigations which had led to decisions not to prosecute any officers (violations of Article 3). First of all, the European Court noted that the investigations had been conducted by military prosecutors, whose independence was open to doubt in view of their status of active officers within the military. At the time of the events, the policemen had the same status of active officers.

Moreover, in the Bursuc case, the European Court also criticised the fact that, within the framework of the domestic investigation, evidence and statements were obtained by the local criminal investigation department, even though the police officers under investigation were serving in the police station of the same town. That state of affairs was incompatible with the rule that there should be no hierarchical or institutional link between the persons called upon to conduct the investigation and those implicated in the offence under investigation. What is more, the European Court criticised the military prosecutor's office failure to make any reference, in his order discontinuing the proceedings, to the findings of the forensic experts' reports drawn up in the Bursuc case, as well as the fact that the prosecutor's office failed to carry out supplementary investigations, as instructed by the court before which the applicant lodged a complaint against the decision not to prosecute, in the Barbu Anghelescu case.

Finally, the Bursuc case also deals with the excessive length of the criminal proceedings brought against the applicant for allegedly insulting police officers, proceedings which began on 27/01/1997 and ended on 24/01/2001, when the applicant died (violation of Article 6§1).

Individual measures: In July 2005, the Minister of Justice asked the General Prosecutor to conduct an investigation on the persons responsible for the violations found by the European Court in the Barbu Anghelescu and Bursuc cases.

1) Barbu Anghelescu No.1: The General Prosecutor's Office at the High Court for Appeal and Justice, after the re-examination of the case, had decided to discontinue it on 29/09/2005 due to the prescription of the criminal responsibility. This decision became final due to lack of appeal by the applicant.

• *Assessment: It appears that no other measure is necessary.*

2) Bursuc: By a decision of 12/06/2006, the General Prosecutor's Office at the High Court for Appeal of Bacau decided to discontinue the case after a new analysis of the criminal issue in the light of the statements of the European Court, after hearing of eight police officers involved in the incident at issue, the widow of the applicant, the witnesses proposed by the parties and after having examined all appropriate proofs. This decision became final due to lack of appeal by the interested party.

• *Assessment: It appears that no other measure is necessary.*

3) Melinte:

• *Information is expected on the possibility of reopening of the investigation into the alleged ill-treatment of the applicant.*

General measures:

1) Violation of Article 3:

• *Measures adopted:* Ministry of Administration and Home Affairs has disseminated the text of the judgment to the police units. Moreover, sessions of in-service training in the field of human rights have been initiated at the level of territorial police units, aimed at preventing abuses. Police officers are also kept informed in connection with the cases highlighted by public or private bodies dealing with the protection of human rights. Moreover, work sessions take place regularly at the level of territorial police units, involving in particular social workers and experts in psychology and human rights, in view of creating a multidisciplinary network able to react to human rights violations.

• *Assessment of these measures is under way.*

2) Effectiveness of the investigations into alleged police abuses: Following the reform of the status of police officers undertaken in 2002, they now have the status of civil servants, so that the competence to investigate and prosecute acts committed by them now belongs to ordinary prosecutors and courts. Nevertheless, in the light of the findings of the European Court in the Bursuc case (§104), information was requested on the measures envisaged by the domestic authorities to ensure that enquiries concerning police officers are no longer conducted by members of criminal investigation departments serving in the same police units as the persons under investigation.

- *Measures adopted:* The law on the organisation of the police and the Code of Criminal Procedure has been modified in respect to the investigations concerning offences allegedly perpetrated by police officers. The authorities have also provided statistical data on prosecution of police officers for alleged ill-treatment.

- *Bilateral contacts are under way to assess the statistical data and determine whether further measures are needed.*

3) Violation of Article 6§1: The Bursuc case presents similarities to the Stoianova and Nedelcu group of cases (Section 4.2).

4) Publication and dissemination: The judgments of the European Court in the Anghelescu Barbu No.1 and Bursuc cases were translated and published in the *Official Gazette* in May 2005. They have also been sent to the Superior Judicial Council, to the Prosecutor General, to the Ministry of Justice and to the Ministry of Administration and Home Affairs, which have ensured their dissemination to courts of appeal, prosecutors and police units.

The Deputies decided to resume consideration of these items at the latest at their 1st DH meeting in 2008 in the light of further information to be provided concerning general measures as well as individual measures, if necessary.

1013 (December 2007) section 4.2

Failure to enforce final judicial decisions ordering the restitution of property nationalised or lost during the communist period

48102/99	Popescu Sabin, judgment of 02/03/04, final on 02/06/04, rectified on 05/07/2004
77195/01	Abăluță, judgment of 15/06/2006, final on 15/09/2006
7114/02	Acatrinei, judgment of 26/10/2006, final on 26/03/2007
57810/00	Costin, judgment of 26/05/2005, final on 26/08/2005
54400/00	Croitoriu, judgment of 09/11/2004, final on 30/03/2005
2239/02	Dobre, judgment of 15/03/2007, final on 15/06/2007
78047/01	Dragne and others, judgment of 07/04/2005, final on 07/07/2005 and of 16/11/2006, final on 16/02/2007
18037/02	Gavrileanu, judgment of 22/02/2007, final on 09/07/2007
58318/00	Georgi, judgment of 24/05/2006, final on 13/09/2006
18013/03	Ioachimescu and Ion, judgment of 12/10/2006, final on 12/01/2007
38113/02	Matache and others, judgment of 19/10/2006, final on 19/01/2007
2726/02	Nerumberg, judgment of 01/02/2007, final on 09/07/2007
8402/03	Pietro and Others, judgment of 20/07/2006, final on 20/10/2006
7234/03	Pop, judgment of 21/12/2006, final on 21/03/2007
2911/02	Popescu Mihai-Iulian, judgment of 29/09/2005, final on 29/12/2005
67289/01	Sandor, judgment of 24/03/2005, final on 24/06/2005
746/02	Tacea, judgment of 29/09/2005, final on 29/12/2005

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All these cases concern delays in enforcing or failure to enforce by the administrative authorities of judicial decisions, delivered between 1992 and 1999, ordering the restitution of property lost during the communist period (Popescu Sabin, Costin, Croitoriu, Dobre, Dragne, Gavrileanu, Nerumberg, Popescu Mihai-Iulian, Tacea, Abăluță, Georgi, Acatrinei, Ioachimescu and Ion, Pop) and/or the payment of compensation in the absence of such restitution (Dragne, Sandor, Pietro and Others, Matache and others).

The European Court found violations of Article 6§1 in all the cases, except that of Pop, and violations of Article 1 of Protocol No. 1 in all the cases, except that of Costin.

Individual measures: The European Court awarded the applicants just satisfaction in respect of pecuniary damage (Popescu Sabin, Dragne), non-pecuniary damage (Costin, Abăluță, Georgi, Pietro, Acatrinei, Ioachimescu and Ion, Pop) or both pecuniary and non-pecuniary damage (Croitoriu,

Popescu Mihai-Iulian, Sandor, Tacea).

In some cases (Abăluță, Dobre, Ioachimescu and Ion, Nerumberg, Pop) the European Court ordered the enforcement of the domestic decision concerning the restitution of property or payment of just satisfaction for pecuniary damage.

The domestic decisions have been enforced in the cases of Popescu Sabin, Costin, Dragne, Sandor, Tacea, Georgi, Pietro and others, Acatrinei. In the Abăluță case the authorities decided to pay the amount in question.

In the Matache case the European Court considered that the question of just satisfaction was not ready for decision and reserved it accordingly. In the Gavrileanu case the European Court ordered the enforcement of the domestic decision at issue and decided to reserve the question of just satisfaction with regard to compensation for the loss of earnings arising from the failure to execute this judgment and in respect of non-pecuniary damage.

• *Information is awaited on the current situation of the applicants in the Croitoriu, Dobre, Gavrileanu, Nerumberg, Mihai-Iulian Popescu, Ioachimescu and Ion, Pop cases.*

General measures:

1) Legislative reform: On 19/07/2005 Parliament adopted Law No. 247 on the reform of property and justice. This law modified Law No. 18/1991 and the subsequent Acts concerning the restitution of land. According to the government, it contributes to improving and accelerating proceedings. Moreover, it imposes sanctions on local authority representatives who do not respect its provisions.

According to additional information submitted by the Romanian authorities by letter of 9/09/2006, the statistical reports of March and August 2006 and a preliminary analysis concerning the application of Law No. 247/2005 show a significant increase in cases resolved by local commissions, either by admitting or dismissing requests.

Moreover, departmental commissions accepted an increasing number of proposals made by the local commissions. It should also be underlined that there is a preference for the restoration of plots of land (increase of area approved by departmental commissions). Finally, the reform also provides the verification of the validity of property titles.

In addition, in order to ensure the respect of legal provisions by the administration, a "Control Body" was created within the "Department for co-ordination and control of the application of the legislation in the field of the restitution of the land property"; in first eight months of 2006, this body carried out more than 300 controls and sanctioned approximately 6% of all acting mayors in Romania. The value of the imposed fines amounted to 1 330 000 RON (380 000 euros).

On 21 and 22 June 2007 a high level Round Table (organised by the Department for the Execution of Judgments of the European Court of Human Rights) between representatives of the Council of Europe and the authorities of different states was held to discuss solutions to the structural problems of non-enforcement of domestic court decisions. In this context the representatives of the Romanian authorities exchanged their experiences on the measures taken or under way to prevent similar violations and examined possible further reforms to be adopted.

• *Additional clarifications are expected in the context of the application of the laws mentioned above to the cases in which the local public authorities refuse the execution of the final judicial decisions ordering the restitution of property (see the conclusions of the above mentioned Round table CM/Inf/DH(2007)33). Copies of the relevant provisions would be useful.*

2) Publication and dissemination of the judgments of the European Court: The judgment in the case of Popescu Sabin was translated and published in the *Official Journal* in August 2005. In addition, a summary was published in the first issue of *Themis*, a journal of the National Institute of Magistrate, and later distributed free to all courts. Finally, the administrative authorities have received a copy of the judgment.

The Costin judgment was translated and is to be published in the *Official Journal* (letter from the Romanian authorities of 27/03/2006).

In addition, the Ministry of Public Finance addressed a circular letter to all Local Finance Administrations presenting the Sandor case to them in order to avoid similar situations. The text of the judgment was translated and is to be published in the *Official Journal*.

Finally, by a circular letter of 18/11/2005 addressed to the prefects of all departments, the Romanian authorities explained the principles of the European Court's case-law regarding the execution of judicial decision concerning land. They also underlined the need to execute judicial decisions ordering the setting of the ownership and/or the issue of the title deed and the importance of a transparent dialogue with the beneficiaries of the judicial decisions concerning land. Prefects were invited, in their capacity as presidents of the departmental commissions for the application of land law, to transmit this circular letter to local commissions.

The Deputies,

1. noted with interest the information submitted by the Romanian authorities concerning the 2005 reform related to the restitution of properties and the control of the local authorities set up for this matter;
2. considered that clarification was necessary on how this reform would remedy the problem of non-execution of decisions ordering restitution of property raised in these cases;
3. considered, in addition, that an analysis by the Romanian authorities of the causes of the refusal to execute is needed so as to determine whether complementary measures are necessary;
4. also recalled in this context the conclusions of the Round Table on the non-enforcement of final domestic decisions held in June 2007 in Strasbourg, in which the Romanian authorities took part;
5. decided to resume consideration of these items at their 1020th meeting (4-6 March 2008) (DH), in the light of further information to be provided on payment of the just satisfaction, if necessary;
6. decided to resume consideration of this group of cases at the latest at their 1028th meeting (3-5 June 2008) (DH), in the light of further information to be provided on the current situation of some of the applicants and the outstanding issues concerning general measures.

1007 (October 2007) section 4.2

54062/00 *Androne*, judgment of 22/12/2004, final on 06/06/2005

The case concerns the infringement of the principle of legal certainty and consequently of the applicants' right to a fair trial on account of the delayed reopening of certain civil proceedings which had resulted in 1997 in a final court decision ordering the restitution to the applicant of a building which had been confiscated by the state. The revision proceedings, which were initiated in March 2000 by the General Prosecutor on the grounds that the state had not been represented at the earlier proceedings resulted, in 2002, in the annulment of the 1997 decision (violation of Article 6§1).

The case also concerns a violation of the applicants' right to enjoyment of their possessions due to the late reopening of these proceedings (violation of Article 1 of Protocol 1).

Individual Measures: Under Article 41 of the Convention, the European Court indicated that the return of the property at issue, as ordered by the court decision of 1997, would put the applicants as far as possible in the situation equivalent to that in which they would have been if there had been no breach of Article 1 of Protocol No. 1. Failing such restitution, the defendant state was to pay the applicants a sum of money corresponding to the value of the building, within three months from the date at which the judgment became final.

• *Information provided by the Romanian authorities:* The Romanian authorities have indicated that the Mayor of Bucharest ordered the restitution of the building to the applicants on 02/09/2005.

Nevertheless, the applicants challenged the terms of this restitution, complaining that the Mayor's decision, delivered on the basis of Law 10/2001, required them to conclude a five-year lease with the sitting tenants in the building. They have therefore refused to accept the material restitution of the building.

In reply, the Romanian authorities have stressed that prior to the violation of the Convention, the applicants were in a similar situation. In fact, the domestic law in force at the relevant time (Law 17/1994) had extended until 1999 the period during which the sitting tenants of nationalised properties could continue to live in their apartments by virtue of leases which they had concluded with the state, even if the buildings had meanwhile been returned to their former owners. Subsequently, this period has been extended on several occasions. Government Order 40/1999 provided a procedure through which persons to whom buildings had been returned might conclude new leases with tenants.

According to the latest information provided by the Romanian authorities, on 25/04/2006, the applicants obtained the possession of the property whereas a restoration report was drafted.

In addition, on 7/06/2006 the Bucharest Court of Appeal ordered the eviction of the tenants from the applicants' flat.

General Measures: In the context of the adoption of general measures, the Romanian authorities have indicated that they consider that the violation found by the European Court in this case was caused by the way in which the code of civil proceedings regulates the legal regime of the one-month time limit during which revision proceedings may be lodged.

Although the Secretariat notes that the measures to ensure that revision proceedings are not lodged after the expiry of the one-month time-limit are relevant to the execution of this judgment, it considers that the violation found by the European Court in this case might also require additional measures to prevent new, similar violations.

In this respect, in its letter sent to the Romanian authorities on 19/10/2005, the Secretariat recalled the Committee' position according to which it should no longer be possible for public prosecutors to question the final character of court judgments in civil cases (see Interim Resolution ResDH(2004)14

of 11/02/2004, concerning the execution of the judgment delivered by the European Court on 25/07/2002 in the case of Sovtransavto Holding against Ukraine). Moreover, as regards the possibility provided by the Romanian Code of Civil Procedure to request the revision of final court decisions if the interests of the state or of other public-law bodies were not represented or were represented in bad faith, the Secretariat raised doubts as to its compatibility with the case-law of the European Court, according to which final judgments delivered by courts should not be reviewed unless this is made necessary by “circumstances of a substantial and compelling character” (see case of Ryabykh against Russia, judgment of 24/07/2003, §52).

• *Additional information is awaited in this respect.*

The Romanian authorities expressed their intention to take into account the modification resulting from this case, in particular with respect to the possibility to challenge the final courts' decisions by public prosecutor, in a working group for the amendment of the Romanian Code of Civil Procedure established by the Ministry of Justice.

• *Information is awaited on the progress of this working group, in particular, on the project of the amendment of the Code of Civil Procedure mentioned by the Government.*

The judgment of the European Court was published in the *Official Journal* in September 2005 and has been sent out by the Superior Council of Magistracy to courts and prosecutors' offices, together with the recommendation that all the court decisions involving the state or bodies established under public law are communicated to the prosecutor's offices.

The Deputies decided to resume consideration of this item:

1. at their 1013th meeting (3-5 December 2007) (DH), in the light of information to be provided concerning payment of the just satisfaction, if necessary;
2. at the latest at their 1st meeting in 2008 (DH), in the light of further information to be provided concerning general measures.

1007 (October 2007) section 4.2

- Cases concerning the length of civil proceedings

Application	Case	Duration of proceedings within the Court's jurisdiction <i>ratione temporis</i>	State of proceedings at the time of the European Court's judgment
1295/02	Nicolau, judgment of 12/01/2006, final on 12/04/2006	Begun in January 1995 (10 years, 11 months)	pending
56326/00	Cârstea and Grecu, judgment of 15/06/2006, final on 23/10/2006	November 1991 - August 1999 (7 years, 8 months)	closed
35229/02	Guță, judgment of 16/11/2006, final on 26/03/2007	February 1994 - March 2004 (9 years, 9 months)	closed
19567/02	Matica, judgment of 02/11/2007, final on 02/02/2007	June 1992 - December 2001 (7 years, 5 months)	closed

These cases concern the excessive length of civil proceedings (violations of Article 6§1).

Individual measures:

• *Information is expected on the state of pending proceedings and, if appropriate, on measures taken to accelerate them.*

General measures:

• *Measures expected:* the publication and dissemination of the European Court's judgment in the **Nicolau case** among the relevant authorities and domestic courts.

• *Other information expected:* The authorities are invited to provide information on the domestic situation concerning the length of civil proceedings and on measures taken or envisaged to prevent new, similar violations. It is also recalled that in the context of several criminal cases (Stoianova et Nedelcu group of cases, Section 4.2) the Secretariat has asked the Romanian authorities whether they were envisaging measures to provide an effective national remedy against excessively long judicial proceedings.

The Deputies decided to resume consideration of these items:

1. at their 1013th meeting (3-5 December 2007) (DH), in the light of information to be provided concerning payment of the just satisfaction, if necessary;
2. at the latest at their 1st DH meeting in 2008, in the light of further information to be provided concerning general measures as well as individual measures, if necessary.

997 (June 2007) section 4.2

- Cases concerning the failure to restore or compensate for nationalised property sold by the state to third parties

57001/00	Străin and others, judgment of 21/07/2005, final on 30/11/2005
70639/01	Barbu, judgment of 12/10/2006, final on 12/01/2007
75261/01	Barcanescu, judgment of 12/10/2006, final on 12/01/2007
70890/01	Danulescu, judgment of 12/10/2006, final on 12/01/2007
2608/02	Ionescu Ruxanda, judgment of 12/10/2006, final on 12/01/2007
12728/03	Jujescu, judgment of 29/06/2006, final on 29/09/2006
63252/00	Păduraru, judgment of 01/12/2005, final on 01/03/2006 and of 15/03/2006, possibly final on 15/06/2007
1597/02	Patrichi, judgment of 12/10/2006, final on 12/01/2007
13075/03	Penescu, judgment of 05/10/2006, final on 05/01/2007
4596/03	Porteanu, judgment of 16/02/2006, final on 16/05/2006
38467/03	Rabinovici, judgment of 27/07/2006, final on 27/10/2006
13309/03	Radu, judgment of 20/07/2006, final on 20/10/2006
58612/00	Sebastian Taub, judgment of 12/10/2006, final on 12/01/2007
25603/02	Suciu Arama, judgment of 09/11/2006, final on 09/02/2007
5691/03	Toganel and Gradinaru, judgment of 29/06/2006, final on 29/09/2006
77048/01	Tovaru, judgment of 12/10/2006, final on 12/01/2007
23354/02	Ungureanu, judgment of 09/11/2006, final on 09/02/2007

All these cases concern the sale by the state of property nationalised under the communist regime to third parties (tenants) without compensation to the legitimate owners, although the domestic courts declared, between 1993 and 2000, that the acts of nationalisation had been illegal (violation of Article 1 of Protocol No. 1).

The Strain case also concerns the excessive length of the proceedings for recovery of the property at issue. Proceedings began in September 1993 and lasted until 30/06/1999, when the Timișoara Court of Appeal delivered its final judgment (violation of Article 6§1).

Individual measures: The European Court ordered the return of the properties in question or payment of just satisfaction for pecuniary damage corresponding to their market value within three months of the date on which its judgments became final in all the cases except those of Păduraru and Suciu Arama. In the Păduraru case the European Court considered that the question of the application of Article 41 (just satisfaction) was not ready for decision and should accordingly be reserved. In Suciu Arama case the applicant recovered her property before the European Court gave its judgment.

The European Court also awarded just satisfaction for non-pecuniary damage in all the cases except those of Păduraru and Porteanu.

The property in question has been returned in the Strain case (a final court decision of 23/02/2006). Just satisfaction for pecuniary damage has been paid in the Porteanu and Radu cases.

• *Information is awaited on the current situation of the applicants, in particular, whether their properties have been returned or if they have received just satisfaction for pecuniary damage.*

General measures:

1) Violation of Article 1 of Protocol No. 1: In the Strain case, the European Court noted that, even if Law No. 10/2001 provided that a future law would regulate the procedure for granting compensation in similar situations, as well as its forms and its amount, no such law had been voted at the time the judgment was delivered.

Subsequently, in other cases, the European Court noted with interest that Law No. 247/2005, amending Law No. 10/2001, applies the principles expressed in international case-law related to illegal or *de facto* expropriation. The new law qualifies as illegal the nationalisations carried out by the communist regime and provides an obligation of restitution in kind or, if that is impossible, compensation equivalent to the market value of the property. Those so entitled might be compensated in the form of participation, as shareholders, in a mutual investment fund organised as a Romanian limited company (S.A.), registered at the Bucharest Companies Registry on 29/12/2005 (*Proprietatea*, see <http://www.fondulproprietatea.ro/en/>).

However, the European Court has observed on several occasions that the company *Proprietatea* was not yet operational to the extent of being effectively able to provide the applicants with compensation. Moreover, neither Law No. 10/2001 nor Law No. 247/2005 takes into consideration prejudice resulting

from the prolonged absence of compensation of persons who, like the applicants, were deprived of their property despite final judgments ordering its return (see, among others, Porteanu case, § 34).
• *Information is expected as to whether the Proprietatea is now operational and on measures taken or envisaged to address the issue of lack of compensation for the period between the final judgments providing the restitution of properties to their owners and their actual enforcement (see, among others, the judgment in the Porteanu case, §34).*

2) Violation of Article 6§1: The problem of the excessive length of the civil proceedings is being examined in the context of the Nicolau group of cases (992nd meeting, April 2007, Section 4.2).

3) Publication and dissemination: The judgments of the European Court in the Străin, Păduraru and Porteanu cases were published in the *Official Journal* and disseminated.

The Deputies decided to resume consideration of these items:

1. at their 1007th meeting (15-17 October 2007) (DH), in the light of information to be provided on the payment of the just satisfaction, if necessary;
2. at the latest at their 1013th meeting (3-5 December 2007) (DH), in the light of further information to be provided concerning both individual and general measures.

1007 (October 2007) section 4.2

59892/00 Maszni, judgment of 21/09/2006, final on 21/12/2006

The case concerns the lack of independence and impartiality of the military court which convicted the applicant, a civilian, in 1998, of driving with a forged licence and suborning a policeman to forgery (violation of Article 6§1). The policeman accused of forging the driving licence being under military jurisdiction, the applicant was tried by a military court as well, under Article 35 of the Code of Criminal procedure, because of the related nature of the charges.

The European Court considered that certain aspects of the status of military judges might cast doubt on their independence and impartiality: for example, under Articles 29 and 30 of Law No. 54/193, they are regular officers in the armed forces, paid by the Ministry of Defence and subject to military discipline, and their promotion is governed by internal army regulations.

On the question of the jurisdiction of military tribunals over civilians, the Court also indicated that it could not share the reasoning according to which a global analysis of the facts was needed in order to avoid inconsistent outcomes where, as in the present case, it was possible to separate the issues.

Individual measures: The European Court awarded the applicant just satisfaction in respect of non-pecuniary damage.

• *The authorities are invited to provide information on the current situation of the applicant, in particular whether he may request reopening of the proceedings and the erasure of his conviction from his criminal record.*

General measures: Policemen are no longer defined as military personnel: under Law No. 281/2003 on the status of policemen they have become civil servants. Consequently, policemen accused of offences are now tried by ordinary courts.

• *The authorities are invited to provide information about measures taken or envisaged to comply with the requirements of the European Convention with respect to the competence of the military courts (having in mind the European Court's criticism concerning their current jurisdiction in abstracto over civilians) and granting the independence and impartiality of the military judges. Such measures may require changes in the legal framework related to the status and competences of military justice.*

• *Publication and dissemination of the European Court's judgment among relevant courts and authorities is expected.*

The Secretariat has written a letter to the Romanian authorities inviting them to present an action plan for the execution of this judgment.

The Deputies decided to resume consideration of this item:

1. at their 1013th meeting (3-5 December 2007) (DH), in the light of further information to be provided concerning payment of the just satisfaction awarded, if necessary;
2. at the latest at their 1st DH meeting in 2008, in the light of further information to be provided concerning general measures and individual measures, if necessary.

1013 (December 2007) section 4.2

60868/00 Vasilescu Grigore, case of 08/06/2006, final on 08/09/2006

The case concerns the unfairness of certain proceedings brought by the applicant to obtain the restitution of his property, resulting from the domestic courts' failure to take account of certain key arguments he submitted (violation of Art. 6§1). By decision of 26/06/1998, the Buftea Court of First Instance acknowledged the applicant's claims for restitution of property seized after 1945. This decision was subsequently quashed by the Bucharest Departmental Court (08/02/1999) and finally by the Bucharest Court of Appeal (13/12/1999). Neither of these courts took account of the applicant's argument that the decrees Nos 218/1960 and 712/1966, which were the basis of the seizure of the applicant's property, had been found unconstitutional by the Supreme Court of Justice in 1993.

Individual measures:

- *Developments:* In other proceedings, initiated under Law No. 10/2001, the applicant recovered part of his property (a plot of land of 5,425 m² out of 15,000 m² and the buildings on it). Administrative proceedings concerning the restitution of the remaining land were pending when the European Court rendered its judgment.

- *Information is expected on the present situation of the applicant.*

General measures: As it does not appear that the violation in this case has a structural character, publication and dissemination of the European Court's judgment to the relevant courts and authorities would seem to be sufficient general measures to prevent new, similar violations.

- *Information is expected in this respect.*

The Deputies decided to resume consideration of this item at the latest at their 1028th meeting (3-5 June 2008) (DH), in the light of further information to be provided concerning individual and general measures.

997 (June 2007) section 4.2

62276/00 Nichifor No. 1, judgment of 13/07/2006, final on 13/10/2006

The case concerns the excessive length of certain proceedings concerning civil rights and obligations before the administrative commission responsible for the application of Law No. 112/1995 and before civil courts (violation of Article 6§1). Proceedings began in July 1996 and ended in December 2000 (four years and five months, of which three years and eight months were before the administrative commission).

Individual measures: None: the proceedings are closed. The European Court awarded the applicant just satisfaction in respect of non-pecuniary damage.

General measures: The European Court noted that that national law requires the administrative commission at issue to take decisions within 30 days.

- *The authorities are invited to inform the Committee whether or not the delay encountered in this case was exceptional and, if appropriate, whether measures have been taken or are planned to ensure that the limits established by law are respected.*

- *The publication and dissemination of the European Court's judgment to relevant authorities, in particular the administrative commissions for the application of Law No. 112/1995, and domestic courts is awaited.*

The Deputies decided to resume consideration of this item:

1. at their 1007th meeting (15-17 October 2007) (DH), in the light of further information to be provided concerning payment of the just satisfaction, if necessary;
2. at the latest at their 1013th meeting (3-5 December 2007) (DH), in the light of further information to be provided concerning general measures.

1007 (October 2007) section 4.2

- Cases concerning a violation of the right of access to a court through application of the doctrine of *res judicata*

62710/00 Lungoci, judgment of 26/01/2006, final on 26/04/2006

78037/01 Caracas, judgment of 29/06/2006, final on 11/12/2006

These cases concern violation of the applicants' right of access to a court resulting from the dismissal of their claims on the ground that they were identical with claims already determined in previous proceedings (violations of Article 6§1). In both cases the Romanian courts wrongly applied Article 1201 of the Civil Code as they failed to take into account new facts which had occurred after the original decisions.

In the Lungoci case, in 1999 the court failed to consider a final judgment of 28/03/97 acknowledging the applicant's property title to some flats which had been nationalised in 1950.

In the Caracas case, in the 1998 decision, the court failed to take account of administrative proceedings brought by the applicants under Law No. 112/1995.

The European Court noted that the fact that the applicants had been given access to a court solely for the purposes of seeing their action declared inadmissible under the law in force meant that they had been deprived of a clear and effective right of access to a court.

Individual measures: The Romanian law provides in Article 322§2 of the code of civil procedure a possibility of reopening of civil proceedings in cases in which the European Court found a violation of the European Convention. In addition, both applicants were awarded just satisfaction for non-pecuniary damage.

General measures:

• *Publication and dissemination of the judgments of the European Court, together with a circular, are expected in order to raise domestic courts' awareness of the Convention's requirements as they result from these cases.*

On 12/07/2006, in the context of the Lungoci case, the Secretariat sent an initial phase letter to the authorities asking for clarifications in order to establish whether the violation has an occasional character or whether other measures should be envisaged with a view to preventing new, similar violations.

• *Information is awaited in this respect.*

The Deputies decided to resume consideration of these items:

1. at their 1013th meeting (3-5 December 2007) (DH), in the light of further information to be provided concerning payment of just satisfaction, if necessary;
2. at the latest at their 1st DH meeting in 2008, in the light of further information to be provided concerning general measures.

1007 (October 2007) section 4.2

63945/00 Weissman and others, judgment of 24/05/2006, final on 23/10/2006

This case concerns violation of the applicants' right of access to a court due to excessive court fees required at an initial stage of domestic proceedings (violation of Article 6§1).

By a final decision of 21/04/2000, the Supreme Court of Justice dismissed the applicants' action seeking reimbursement in respect of loss of earnings resulting from the state's illegal use of their building, on the ground that they had failed to pay certain sums due in stamp duty required for bringing the proceedings.

The European Court found that the amount in question, calculated on the basis of a set percentage laid down by law of the sum at stake in the proceedings, was not justified either by the particular circumstances of the case or by the applicants' financial situation. Since the amount claimed from the applicants in order to lodge their action was excessive, they were implicitly obliged to abandon the action, which deprived them of the right to have their case heard by a court.

The case also concerns a violation of the applicants' right to the peaceful enjoyment of their possessions:

the European Court found that the Romanian authorities provided no convincing explanation of why the applicants had not been compensated for the state's use of their building (violation of Article 1 of Protocol No. 1).

Individual measures: None: the European Court awarded the applicants jointly just satisfaction for pecuniary damage resulting from the lack of compensation.

General measures:

1) Violation of Article 6§1: The European Court noted that, according to Section 21 of the Stamp Duty Act (Law No. 146/1997) in force at the material time, possible application for exemption from stamp duty would have been decided by the Ministry of Finance, which was a party to the proceedings. Moreover, Law No. 146/1997 provided no possibility of an appeal against the decision of the Ministry of Finance.

Following the amendment of Section 21 of Law No. 146/1997 by Law No. 195 of 25/05/2004, it is henceforth a matter for the courts to grant of exemptions, reductions or repayment by instalments in respect of stamp duty.

• *The Romanian authorities are invited to provide information about the current methods of calculation of court fees and basis for granting of exemptions, reductions or repayment by instalments in respect*

of stamp duty (including relevant examples) and measures taken or envisaged to prevent new, similar violations.

2) Violation of Article 1 of Protocol 1: The European Court noted that the wording of Articles 485, 486 and 487 of the Civil Code clearly oblige the occupant of a building who is not the owner to return the property together with any profits arising to its owner. In addition, the case-law of the Supreme Court of Justice recognised a possibility for the former owners to obtain reimbursement of rent collected by the state once an action for restitution of possession had been brought.

• *The Romanian authorities are invited to provide information about other possible measures taken or envisaged to prevent new, similar violations.*

3) The publication and dissemination of the European Court's judgment: *Information is awaited in this respect.*

The Secretariat has written a letter to the Romanian authorities inviting them to present an action plan for the execution of this judgment.

The Deputies agreed to resume consideration of this item:

1. at their 1013th meeting (3-5 December 2007) (DH), in the light of further information to be provided concerning payment of the just satisfaction, if necessary;
2. at the latest at their 1st DH meeting in 2008, in the light of further information to be provided on general measures.

1013 (December 2007) section 2

67703/01 Hauler, judgment of 12/07/2007, final on 12/10/2007

The case concerns the violation of the applicant's right of access to a court due to the domestic courts' refusal in 1999 and 2000 to review the lawfulness of an administrative decision concerning the allocation of a plot of land (violation of Article 6§1).

Individual measures: Romanian law provides, in Article 322§9 of the Code of Civil Procedure, the possibility of reopening civil proceedings in cases in which the European Court found a violation. In addition, the European Court awarded the applicant just satisfaction in respect of non-pecuniary damage.

• *Assessment: No other measure appears to be necessary.*

General measures: The case presents similarities to the Glod case (Section 6.2) in which the Committee of Ministers noted that, following the legislative reforms adopted in 1997 and 2000, courts have full jurisdiction in respect of complaints against administrative decisions dealing with land restitution. Nevertheless, in the present case the European Court observed that the domestic case-law relating to the competence of the courts to decide on the legality of the allocation of land by administrative commissions does not authorise the conclusion that this issue has been solved definitively (§§20-21 of the judgment).

• *Publication and dissemination of the European Court's judgment among relevant courts and authorities are therefore expected in order to raise their awareness of the Convention's requirements as they result from this case.*

• *Information would be appreciated on other possible measures.*

The Deputies decided to resume consideration of this item

1. at their 1020th meeting (4-6 March 2008) (DH), in the light of information to be provided concerning the payment of just satisfaction, if necessary;
2. at their 1028th meeting (3-5 June 2008) (DH), in the light of information to be provided concerning general measures, in particular the publication and dissemination of the European Court's judgment.

1013 (December 2007) section 4.2

1 case against Romania and 1 case against Hungary and Romania

71099/01 Monory, judgment of 05/04/2005, final on 05/07/2005

7198/04 Iosub Caras, judgment of 27/07/2006, final on 11/12/2006

These cases concern questions related to the application by the Romanian authorities of the 1980 Hague Convention on the Civil Aspects of International Child Abduction (violations of Article 8).

In the **Monory case**, the European Court condemned the way in which the Romanian authorities dealt with the applicant's request for the return to Hungary of his daughter (nearly 4 years old), who had

been kept in Romania without the applicant's consent by his wife. The request for the return of the child lodged by the applicant in January 1999 under the 1980 Hague Convention was eventually rejected by the Oradea Court of Appeal in February 2000. The Romanian courts found in particular that the retention of the child by her mother was not unlawful since the applicant did not have exclusive custody rights. Furthermore, they noted that the child had already been integrated into her new environment. The European Court found that the Romanian authorities had failed to make adequate and effective efforts to assist the applicant in his attempt to secure the child's return in that

- they wrongly interpreted the Hague Convention as not being applicable to the present case, in spite of its obvious meaning which transpires from its very text, its Explanatory Report and from the recognised common practice of other European states;
- they failed to respond to the urgency of the situation, letting more than twelve months pass before adopting the final decision rejecting the applicant's request while indicating that the child had adapted to her new environment;
- they failed to take all provisional measures, including extra-judicial measures, which might have helped prevent further harm to the child or prejudice to the interested parties in accordance with Article 7 of the Hague Convention.

The **Monory** case also concerns the excessive length of the divorce and child custody proceedings before the Hungarian courts (violation of Article 6§1). The proceedings were brought by the applicant on 28/04/1999 and ended on 29/10/2003, when the Vác District Court declared the couple's divorce and granted the mother custody of the child.

In the **Iosub Caras** case, in November 2001 the Romanian Ministry of Justice received a request under the Hague Convention for the return of the applicant's child. The applicant claimed that his wife was wrongfully retaining their daughter in Romania, without his consent. In January 2002, the Ministry of Justice, acting as the Central Authority for the purpose of the Hague Convention, instituted proceedings on behalf of the applicant for the return of the child. The request was rejected in a final decision of the Bucharest Court of Appeal in June 2003 on the ground that, since the introduction of the proceedings under the Hague Convention, another Romanian court, in a final decision of 18/09/2002, had ruled the divorce of the parents and had granted sole custody of the child to the mother.

The European Court concluded that the Romanian authorities failed to fulfil their positive obligations under Article 8 on the following grounds:

- that, by failing to inform the divorce courts of the existence of the Hague proceedings, the authorities (in particular the Ministry of Justice) deprived the Hague Convention of its very purpose, i.e. to prevent a decision on the merits of the rights to custody being taken in the state of refuge;
- that the time taken by the courts to decide finally in this case (more than 18 months from the date of lodging the request for the return of the child to the date of final decision) failed to meet the urgency of the situation.

The European Court also expressed its concern that the domestic courts, when ruling on the Hague proceedings, based their judgment, among other arguments, on the fact that the custody rights had been decided on the merits, while the Hague proceedings were still pending.

Individual Measures:

1) Monory case: As the child is currently living in Romania, the Romanian authorities were asked whether the applicant currently enjoyed visitation rights. By letter of 30/11/2005, the Romanian authorities indicated that the applicant took no step under Romanian law to exercise his visiting rights.

2) Iosub Caras: None: the European Court noted that the national courts' refusal under the Hague Convention to order the return of the child, being also based on arguments which constitute an interpretation of the facts and evidence adduced in the case, did not appear to be arbitrary. The applicant was awarded just satisfaction in respect of non-pecuniary damage.

General Measures:

1) Violations of Article 8:

- Proper application of the 1980 Hague Convention

Various measures related to the proper application of the 1980 Hague Convention are being examined in the context of the Ignacolo-Zenide case (Section 4.2). In the context of the present cases it should be underlined that according to Law No. 369/2004 on the implementation of the 1980 Hague Convention a special court (the Bucharest Court for children and family issues) has been created, which is competent to deal with requests for the return of children under the 1980 Hague Convention. Further, study of the provisions and the application of Law No. 369/2004 is a part of the initial training of legal trainees in family law and "European Convention of Human Rights". The application of Law No. 396/2004 is also a priority in continuous training and is an element of the subjects of the seminars

organised by the Institute in the series of training on “Justice for minors” and “The European Convention - civil aspects”.

- *Information is awaited on other measures taken or envisaged in order to prevent new, similar violations resulting, in particular, from failure to inform relevant domestic courts of the existence of the Hague proceedings.*

- *Need to respond to the urgency of the situation*

- *Statistical information, including relevant examples, is awaited on the length of the proceedings related to the application of the 1980 Hague Convention.*

- *Need to take appropriate provisional measures*

Various information, in particular related to the provisional access right, has been provided in the context of the Ignacolo-Zenide case (Section 4.2).

2) Publication and dissemination: The judgment in the Monory case has been translated and published in the *Official Journal* of Romania and on the Internet site of Supreme Court of Cassation and Justice (<http://www.scj.ro/decizii_strasbourg.asp>). In addition, it was transmitted to the Bucharest court which is provisionally assuring the functions of the special court.

- *The publication and dissemination of the European Court's judgment in the Iosub Caras case to relevant domestic courts and institutions are also expected.*

3) Violation of Article 6§1 in the Monory case, this case presents similarities with the Tímár group (judgment of 25/02/03, Section 4.2).

- *The confirmation of the publication and dissemination of the judgment by Hungary is awaited particularly in view of the European Court's finding that special diligence is required in child custody disputes.*

The Deputies decided to resume consideration of these items:

1. at their 1020th meeting (4-6 March 2008) (DH), in the light of further information to be provided concerning payment of the just satisfaction awarded, if necessary;
2. at the latest at their 1028th meeting (3-5 June 2008) (DH), in the light of further information to be provided on general measures.

1007 (October 2007) section 2

71525/01 Dumitru Popescu No. 2, judgment of 26/04/2007, final on 26/07/2007

The case concerns the absence of judicial guarantees related to interception of the applicant's telephone conversations under Law No. 51/1991 on national security (violation of Article 8).

The European Court, noting that under Article 13 of this law telephone conversations unlimited as to time could be intercepted by simple authorisation of the prosecutor, considered that prosecutors could exercise considerable discretion with regard to serious interference with private life considering that they did not fulfil the requirement of independence from the executive. Furthermore, at the material time, permission to carry out telephone interception was not subject to review, either before or after the fact, by an independent, impartial judicial authority. The European Court also observed that Romanian law provided no safeguards concerning the need to keep recordings of telephone calls intact and in their entirety, or their destruction. Lastly, the European Court noted that the Romanian intelligence service was the only authority empowered to certify that the recordings were genuine and reliable but that doubts existed with regard to its independence and impartiality.

Individual measures: The European Court noted that the finding of a violation of Article 8 constituted sufficient just satisfaction in respect of the non-pecuniary damage sustained.

- *Information is expected as to whether the recordings in question have been destroyed.*

General measures: The European Court that the Code of Criminal Procedure now contains many safeguards concerning the interception and transcribing of telephone calls, the storage of relevant information and the destruction of information which is not relevant. Thus, Laws Nos. 281/2003 and 356/2006 modifying the Code of Criminal Procedure require a reasoned judicial authorisation for operations of interception and recording of telephone or other electronic communications. It also seems that responsibility for determining the reliability of recordings has now to the National Institute of Forensic Expertise, which acts under the authority of the Ministry of Justice and whose experts, as “public officials” are completely independent from the authorities responsible for intercepting or transcribing communications (§§82-83).

Nevertheless, the European Court noted that the public prosecutor apparently still had powers to order surveillance measures under Article 13 of Law No. 51/1991 in the event of a presumed threat to national security. This assumption was attested to by a recent decision of the Romanian Constitutional

Court (published in the *Official Journal* of 16/01/2007) according to which the application of Law 51/1991 was justified by its “special character”, even after the entry into force of the reforms of the Code of Criminal Procedure (§84).

- *Information is expected on the current legal framework regulating the issue of telephone interception and measures taken or envisaged to avoid any future violations.*
- *Publication of the European Court's judgment and its dissemination among relevant courts, public prosecutors' offices and the authorities responsible for interception of telephone conversations are also expected, to raise their awareness of the Convention's requirements as they result from this case.*

The Deputies decided to resume consideration of this item at the latest at their 1st meeting DH in 2008, in the light of information to be provided concerning general and individual measures.

992 (April 2007) section 4.2

- Cases of length of criminal proceedings

Application	Case	Duration within the European Court's jurisdiction	State of proceedings at the time of the Court's judgment
73502/01	Aliuta, judgment of 11/07/2006, final on 11/10/2006 ¹	Begun September 1997	pending
71649/01	Petre, judgment of 27/06/2006, final on 23/10/2006 ²	Begun December 1996 and 7 January 1997	pending
77517/01+	Stoianova and Nedelcu, judgment of 04/08/2005, final on 04/11/2005	April 1993 – November 1997; May 1999 – April 2005	closed
78048/01	Tudorache, judgment of 29/09/2005, final on 29/12/2005	April 1998 – March 2005	closed

The cases concern the excessive length of criminal proceedings brought against the applicants (violations of Article 6§1).

Individual measures:

- *The authorities are invited to provide information on the current state of the pending proceedings and, if appropriate, to take appropriate measures to accelerate them.*

General measures: On 03/04/2006, the Romanian authorities, in co-operation with the Commission for Democracy through Law (Venice Commission), organised a conference on possible remedies in respect of excessive length of proceedings. The discussions concerned the identification of the reasons for excessive length of proceedings and remedies. The results of the conference have been partially reflected in the conclusions of a study published by the Venice Commission at the end of 2006. The Romanian authorities intend to examine the adoption of possible practical solutions to the problem of the excessive length of proceedings, taking into account the conclusions of the Venice Commission.

- *Further information is awaited on measures envisaged to prevent new violations due to excessive length of proceedings and on possibilities of establishing effective domestic remedies, taking into account Committee of Ministers' Recommendation Rec(2004)6 to member states on the improvement of domestic remedies.*
- *The Romanian authorities are invited to ensure the publication and the wide dissemination of the European Court's judgments to all prosecutors' offices and courts, underlining the conclusion that, when reopening of criminal proceedings is ordered by a prosecutor following a decision to abandon them, the overall length of the proceedings within the meaning of Article 6§1 of the Convention must take into account the time elapsed before the decision to abandon. Therefore special diligence might be required in the handling of such cases.*

The Deputies decided to resume consideration of these items

1. at their 997th meeting (5-6 June 2007) (DH), in the light of information to be provided concerning payment of the just satisfaction, if necessary;
2. at the latest at their 1007th meeting (16-17 October 2007) (DH), in the light of further information to be provided concerning general measures, as well as individual measures if necessary.

¹ This case also appears in Section 3.a

² This case also appears in Section 3.a

1013 (December 2007) section 4.2

- Cases concerning late enforcement of final judicial decisions ordering payment of certain sums of money by a public institution

73970/01 Sacaleanu, judgment of 06/09/2005, final on 06/12/2005
 1486/02 Orha, judgment of 12/10/2006, final on 12/01/2007

CM/Inf/DH(2007)33

These cases concern late enforcement of final judicial decisions ordering payment of certain sums of money by public institutions (violations of Article 6§1).

In the Sacaleanu case the applicant's employer (the State Inspectorate for People with Disabilities) was ordered to pay her wages and penalties until her reinstatement in her former post (which eventually occurred in 2000), as well as costs and expenses. These sums were paid to the applicant with significant delays and in several instalments, almost twenty months having sometimes elapsed between them. The applicant only received the total sum on 22/02/2002. The European Court noted that the employer, as a state-funded public institution, could only pay its debts with specific sums assigned for the purpose by the Ministry of Finance. The European Court noted that delays in paying sums due to the applicant were sometimes caused by the fact that the Ministry had not made over the necessary sums in time. It therefore concluded that the state, through its own acts, had made it impossible for the applicant promptly to recover the sums which were due to her by virtue of final court decisions.

In the Orha case, the municipal authorities were ordered to pay to the applicants certain sums for expropriation of their property. The European Court noted that the decision given in October 1999 was neither executed nor annulled or modified following the application of recourses provided by law. Further, it also noted that the Law No. 33/1994 on expropriation did not provide any procedure to bring a judicial action in order to fix the modalities and time-limits for payments.

In the Orha case the European Court also considered that, by refusing to enforce the judgment the authorities had deprived the applicants of the peaceful enjoyment of their possessions (violation of Article 1 of Protocol No. 1).

Individual measures:

1) Sacaleanu: None: the sums at issue were paid to the applicant on 22/02/2002. The non-pecuniary damage suffered by the applicant has been compensated by the European Court under Article 41 of the Convention.

2) Orha: The European Court found that the question of just satisfaction was not ready for decision and therefore reserved it.

General measures:

On 21 and 22 June 2007 a high level Round Table (organised by the Department for the Execution of Judgments of the European Court of Human Rights) between representatives of the Council of Europe and the authorities of different states was held to discuss solutions to the structural problems of non-enforcement of domestic court decisions. In this context the representatives of the Romanian authorities exchanged their experiences on the measures taken or under way to prevent similar violations and examined possible further reforms to be adopted.

• *Information is awaited on the measures envisaged or already adopted by the Romanian authorities to establish a system allowing the prompt payment by the public institutions of the debts owed by them by virtue of final court decisions (see the conclusions of the above mentioned Round table*

CM/Inf/DH(2007)33).

In the context of the Orha case the European Court also raised the question of certain shortcomings of Law No. 33/1994 on expropriation (§25 of the judgment).

• *Information is expected on the authorities' assessment whether the violation found by the European Court in this case has a structural character and on measures taken or envisaged to prevent similar violations.*

• *Are also expected: publication and dissemination of the European Court's judgments to relevant domestic courts and institutions.*

The Deputies,

1. recalled the conclusions of the Round table on the non-enforcement of final domestic decisions, held in June 2007 in Strasbourg, in which the Romanian authorities took part;
2. invited the Romanian authorities to continue their reflection on measures to be taken to avoid new violations similar to those found in these cases and to submit an action plan in this respect;
3. decided to resume consideration of these items at their 1020th meeting (4-6 March 2008) (DH), in the light of further information to be provided on payment of the just satisfaction, if necessary;

4. decided to resume consideration of these items at the latest at their 1028th meeting (3-5 June 2008) (DH), in the light of further information to be provided concerning the Romanian authorities' assessment of the situation at the national level and on the measures taken or envisaged in order to ensure that the public institutions enforce without delay the final domestic decisions, in particular if those impose on them the obligation of payment of certain sums of money.

1007 (October 2007) section 2

77217/01 Cleja and Mihalcea, judgment of 08/02/2007, final on 08/05/2007

This case concerns a violation of the applicants' right to the peaceful enjoyment of their possessions in that, for a protracted period, they were prevented from using their property due to domestic courts' refusal to order the eviction of the tenants from their flat (violation of Article 1 of Protocol No. 1). In March 1994, the Romanian courts ordered the return to the applicants of the flat nationalised during the communist period. In 1999, the applicants brought an action for eviction of the former state tenants conditional on an exchange of flats on the basis of Articles 23-25 of the Emergency Government Order No. 40/1999 on the protection of tenants and the fixing of rents for residential accommodation ("E.G.O. No. 40/1999"), submitting a certified declaration of a third party that she would rent another flat to the tenants. In December 2002, the Supreme Court of Justice rejected the action for eviction finding that the applicants' request did not fulfil the conditions laid down in Article 23§3 of E.G.O. No. 40/1999 since it was not possible to oblige a third party to conclude a lease with the tenants, a simple declaration not being considered as a sufficient guarantee. Furthermore, the flat proposed by the applicants to the tenants was found not to respect the minimum requirements laid down in Annex No. 1 to Law No. 114/1996, to which Article 23§2 of the E.G.O. No. 40/1999 referred since its modification by Law No. 241/2001 (§18).

The European Court, noting the lack of a formal procedure under Article 23§3 of E.G.O. No. 40/1999 and the fact that the applicants submitted a certified declaration, found that the interpretation and the application of Article 23§3 by the courts could not be considered as being foreseeable and ensuring a fair balance between the interests at issue. It also noted that the modified Article 23§2 led to a disproportionate protection of the interests of the tenants to the detriment of the owners,

Individual measures: The applicants recovered their flat in 2004. In addition, the European Court awarded them jointly just satisfaction in respect of both pecuniary and non-pecuniary damage.

• *Assessment: it seems that no further measure is necessary.*

General measures:

• *Information is expected on current legislation and practice regulating the issue of the eviction of former state tenants conditional on an exchange of flats and measures taken or envisaged in order to avoid any future violations.*

• *Publication of the European Court's judgment and its dissemination among relevant courts are also expected, to raise their awareness of the Convention's requirements as they result from this case.*

The Deputies decided to resume consideration of this item:

1. at their 1013th meeting (3-5 December 2007) (DH), in the light of information to be provided concerning the payment of just satisfaction, if necessary;
2. at their 1st DH meeting in 2008, in the light of information to be provided concerning general measures.

1013 (December 2007) section 4.2

1434/02+ Lupaş and others, judgment of 14/12/2006, final on 14/03/2007

The case concerns the violation of the applicants' right of access to a court due to the application of a rule requiring unanimity amongst joint owners in order to bring an action for recovery of a property held in common which had been nationalised under the former regime (violation of Article 6§1).

The 19 applicants are the descendants of certain joint owners of a 50-hectare plot on the Black Sea coast, which was expropriated in 1950 for the construction of a military base. In 1998 and 1999 three actions for recovery of the property were brought by some of the applicants, without the agreement of the heirs of two of the former co-owners. Between 2001 and 2002 all three actions were dismissed at final instance by the Supreme Court of Cassation pursuant to the unanimity rule, on account of the refusal of one of the heirs and the difficulty of identifying all the heirs of one of the former owners.

The European Court noted that the unanimity rule had satisfied the criteria of accessibility and predictability and it had pursued the legitimate aim of protecting the rights of all the heirs of the former joint owners of the property. On the other hand, given the circumstances of the case, the strict

application of the rule erects an insurmountable obstacle to any future attempt to establish the applicants' title, and imposes a disproportionate burden on them by denying them any clear and concrete possibility of having their request determined by a court.

Individual measures: Romanian law provides, in Article 322§9 of the Code of Civil Procedure, the possibility of reopening of civil proceedings in cases in which the European Court found a violation of the European Convention. As the Convention and the case-law of the Court have direct effect under Romanian Law, courts will without doubt adapt the jurisprudence criticised in this case.

In addition, all applicants were awarded just satisfaction for non-pecuniary damage.

• *Assessment:* Consequently, it seems that no other individual measure is necessary.

General measures: Although the unanimity rule applied in the present case had no base in domestic legislation, it was adhered to by most of the domestic courts. In its judgment, the European Court noted with interest a draft law amending the civil code, which eliminates the unanimity rule.

• *Information is expected on measures taken or envisaged to avoid future violations, in particular, the draft law setting aside the unanimity rule in this context and the possible time frame for its adoption.*

• *Publication and dissemination of the European Court's judgment among relevant courts and authorities are expected, to raise domestic courts' awareness of the Convention's requirements as they result from this case.*

The Deputies decided to resume consideration of this item:

1. at their 1020th meeting (4-6 March 2008) (DH), in the light of further information to be provided concerning payment of the just satisfaction awarded, if necessary;
2. at the latest at their 1028th meeting (3-5 June 2008) (DH), in the light of further information to be provided concerning general measures.

1013 (December 2007) section 4.2

- Case concerning the failure to enforce final judicial decisions ordering the registration of the applicants' ownership in the land registry

5050/02 Pântea Elisabeta, judgment of 15/06/2006, final on 15/09/2006

CM/Inf/DH(2007)33

The case concerns a violation of the applicant's right to a court, due to the failure to enforce a final court decision of 02/04/2001 ordering the municipality of Grivita to record her ownership of a certain property on the agricultural land register and to remove the title of a third person to the same property. The municipal authorities refused to enforce the second limb of this decision (violation of Article 6§1).

Individual measures: The European Court ordered the full execution of the domestic court's decision of 02/04/2001 and awarded the just satisfaction for non-pecuniary damage.

• *Information is awaited on measures taken with the view to executing the judgment in question, in particular with respect to the removal of the title of a third party to the same property.*

General measures: The problem of the administration's failure or substantial delay in abiding by final domestic judgments has already been dealt with in the context of the restitution of property by domestic administration (Popescu Sabin, Section 4.2). This case concerns another aspect of the activities of the administration.

On 21 and 22 June a high level Round Table (organised by the Department for the Execution of Judgments of the European Court of Human Rights) between representatives of the Council of Europe and the authorities of different states was held to discuss solutions to the structural problems of non-enforcement of domestic court decisions. In this context the representatives of the Romanian authorities exchanged their experiences on the measures taken or under way to prevent similar violations and examined possible further reforms to be adopted.

• *Information is awaited on the authorities' assessment whether the violation found by the European Court in this case has a structural character and on specific measures taken or envisaged to ensure the proper execution of judicial decisions in similar situations, bearing in mind that any practice consisting in refusing or delaying the execution of decisions should be accordingly sanctioned. In the execution of this judgment, the Romanian authorities may consider the experiences of other countries confronted with similar problem of failure or late execution of judgments (see the conclusions of the above mentioned Round table CM/Inf/DH(2007)33).*

The judgment of the European Court was translated and published in the *Official Journal* and on the Internet site of the Supreme Court of Justice and Cassation (http://www.scj.ro/decizii_strasbourg.asp).

• *Confirmation of its dissemination to the relevant authorities and courts is expected.*

The Deputies,

1. noted with concern that more than a year after the judgment of the European Court became final, no information has been submitted by the Romanian authorities concerning the state of execution of the final domestic decision at issue in this case, namely the removal of a third party's name from the land registry;
2. also noted that additional information was expected so as to assess the need for additional general measures beyond the publication of the judgment of the European Court;
3. decided to resume consideration of this item at their 1020th meeting (4-6 March 2008) (DH), in the light of further information to be provided concerning payment of the just satisfaction, if necessary;
4. decided to resume consideration of this item at the latest at their 1028th meeting (3-5 June 2008) (DH), in the light of further information to be provided concerning the execution of the final domestic decision as well as the analysis of the Romanian authorities of the reasons of the violation and further general measures taken or envisaged, if appropriate.

1013 (December 2007) section 4.2

- Cases concerning late enforcement of final judicial decisions ordering the applicants' reinstatement in their posts within public bodies and payment of salary arrears for the period they were unemployed

23878/02 Strungariu, judgment of 29/09/2005, final on 29/12/2005
 5060/02 Mihaescu, judgment of 02/11/2006, final on 26/03/2007

CM/Inf/DH(2007)33

These cases concern the late enforcement of court decisions ordering the applicants' reinstatement in their posts in state agencies and the payment of salary arrears for the period during which they were unemployed (violations of article 6§1).

In the Strungariu case the decision (October 2001) ordering the applicant's reinstatement in his post in the Agency for Privatisations and Administration of State Shareholdings and the payment of the salary arrears was executed in January 2003

In the Mihaescu case, the decisions for his reinstatement in his post in Iași University of Medicine and Pharmacology (March 2000) and the payment of the salary arrears (June 2003) were executed in 2006.

Individual measures: None. The European Court found that the applicants had been reinstated in their posts according to the requirements of the court decisions at issue and noted that the salary arrears had been paid to them.

In addition, the European Court also awarded them just satisfaction in respect of non-pecuniary damage.

General measures: In the Strungariu case the judgment of the European Court was to be translated and published in the *Official Journal*. The government also expressed the intention to address the National Agency for Public Servants in order to identify other relevant institutions and to inform them on the context and the implications of this judgment.

On 21 and 22 June 2007 a high level Round Table (organised by the Department for the Execution of Judgments of the European Court of Human Rights) between representatives of the Council of Europe and the authorities of different states was held to discuss solutions to the structural problems of non-enforcement of domestic court decisions. In this context, the representatives of the Romanian authorities exchanged their experiences on the measures taken or under way to prevent similar violations and examined possible further reforms to be adopted.

• *Information is awaited on the authorities' assessment whether the violations found by the European Court in these cases have a structural character and on specific measures taken or envisaged to ensure the proper execution of judicial decisions in similar situations, bearing in mind that any practice consisting in refusing or delaying the execution of decisions should be accordingly sanctioned. In the execution of this judgment, the Romanian authorities may consider the experiences of other countries confronted with similar problem of failure or late execution of judgments (see the conclusions of the above mentioned Round table CM/Inf/DH(2007)33).*

Moreover, the dissemination measures could usefully be accompanied by a reminder of the relevant principles established in the case-law of the European Court.

The Deputies,

1. noted the information submitted by the Romanian authorities indicating that the National Agency for Public Servants had been informed of the obligations incumbent upon public authorities with respect to the enforcement of domestic judicial decisions;
2. decided to resume consideration of these items at their 1020th meeting (4-6 March 2008) (DH), in the light of further information to be provided concerning payment of the just satisfaction, if necessary;

3. decided to resume consideration of these items at the latest at their 1028th meeting (3-5 June 2008) (DH), in the light of further information to be provided concerning the authorities' assessment of the situation at national level as well as on complementary general measures possibly taken or envisaged to prevent new, similar violations.

1007 (October 2007) section 4.2

19997/02 Boldea, judgment of 15/02/2007, final on 15/05/2007

The case concerns the unfairness of criminal proceedings for defamation against the applicant, a university teacher, in that the domestic courts failed to give adequate reasons for their decisions imposing an administrative fine. The accusation leading to the proceedings was made by colleagues of the applicant whom he had accused of plagiarism at a faculty meeting.

The European Court considered that the court of first instance had neither set out to interpret all the elements constituting the offence nor examined the evidence adduced by the applicant, contenting itself instead with a statement to the effect that the relevant formal elements, i.e. the intent to harm and the public character of the utterance at issue, had been formally established. The Court also found that the appellate court had not addressed any of his grounds of appeal, concerning in particular the lack of reasons in the judgment at first instance, simply referring back to the recitals of that judgment (violation of Article 6§1).

The case also concerns a breach of the applicant's right of freedom of expression due to his conviction. The European Court took the view that the applicant's allegations were uttered as his professional opinion were not without foundation. It further noted that the applicant had participated actively in the proceedings and had adduced evidence in support of his allegations but that the domestic courts had robbed the proceedings of any fairness by not providing reasoned decisions. It concluded that sentencing the applicant to a fine did not respond to a pressing social need (violation of Article 10).

Individual measures: The applicant made no claim with regard to just satisfaction.

• *The authorities are invited to provide information on measures taken or envisaged to put an end to any negative consequences of the applicant's conviction.*

General measures: It seems that this violation was an isolated occurrence. Publication and dissemination of the European Court's judgment among relevant courts and authorities is expected, to raise awareness of the Convention's requirements as they result from this case.

The Deputies decided to resume consideration of this item at their 1st DH meeting in 2008 in the light of information to be provided concerning individual measures as well as general measures, namely publication and dissemination of the European Court's judgment.

1007 (October 2007) section 2

21740/02 Bock and Palade, judgment of 15/02/2007, final on 15/05/2007

The case concerns a violation of the applicants' right to the peaceful enjoyment of their property due to a final decision of the Supreme Court in 2001 conferring part of a building and the use of the adjoining land, both belonging to the applicants, upon the local authority. This decision was taken pursuant to the jurisprudential principle of a "right acquired *in rem*" which, in certain circumstances, makes it possible to assume ownership of buildings constructed on someone else's land (violation of Article 1 of Protocol No. 1).

In fact, the building, which had belonged to the applicants' parents and which was composed of 18 flats and the adjoining land were nationalised in 1950. Partially destroyed during the second world war, it was rebuilt by a state agency and transferred to the town council which, however, did not have its title recorded in the Land Register. In 1994 the applicants, as joint heirs, had their title to the property entered in the Land Register and began to pay property tax on it.

The European Court considered that the applicants had a possession, inherited from their parents, and that the interference in their right to it was without legal basis in domestic law: the Supreme Court's judgment had found that the town council had acquired a right *in rem* to the buildings on the applicant's land on account of a "factual situation neither desired by nor known to them" which had given rise to an "apparently legal state of affairs". However, according to Romanian case-law, the simple fact of putting a building on someone else's land is not enough to constitute an acquisition *in rem* in favour of the builder (§63).

Individual measures: The European Court reserved the question of just satisfaction in respect of pecuniary and non-pecuniary damage.

General measures: *Information is awaited on current practice of the Supreme Court in such cases and measures taken or envisaged in order to avoid similar violations.* Publication and dissemination of the European Court's judgment among relevant courts and authorities is expected, to raise awareness of the Convention's requirements as they result from this case.

The Deputies decided to resume consideration of this item:

1. at their 1013th meeting (3-5 December 2007) (DH), in the light of information to be provided concerning the payment of just satisfaction, if necessary;
2. at the latest at their first meeting in 2008 (DH), in the light of information to be provided concerning general measures.

1007 (October 2007) section 2

23468/02 Sissanis, judgment of 25/01/07, final on 25/04/2007

The case concerns the violation of the freedom of movement of the applicant, a Greek national, due to a stamp placed in his passport in the course of criminal proceedings against him which forbade him to leave Romania between 1998 and 2004 (violation of Article 2 of Protocol No 4).

The European Court found that this restriction was not provided by law, in that Article 27 of Law 25/1969, upon which it was based, was vague in that it neither identified the authority empowered to impose such a measure nor defined with sufficient precision the conditions for imposing measures prohibiting someone from leaving the country. The European Court also considered that the procedure for applying bans on leaving the country did not provide sufficient safeguards against abuse on the part of the authorities, since Law No. 25/1969 provided no review procedure, either at the time of imposition or afterwards (§71).

Finally, Article 27 of Law No. 25/1969 had been declared unconstitutional on 11/04/2001, thus the order forbidding the applicant to leave the country had been in breach of Romanian law at least from that date onwards.

Individual measures: On 10/06/2004 the stamp in question was removed from the applicant's passport. In addition, the European Court awarded him just satisfaction in respect of non-pecuniary damage.

• *Evaluation: It seems that no other measures are necessary.*

General measures: According to the European Court, Law No. 25/1969 was abrogated by Law No. 123 of 2/04/2001. Subsequently, Emergency Ordinance No. 194 on the status of foreigners of 12/12/2002 (published in *Official Journal* of 27/12/2002 and approved by Law No. 357/2003 of 11/07/2003) was adopted. It seems that specific provisions related to the imposition of preventive measures forbidding an individual to leave the country are also contained in the Code of Criminal Procedure, as modified by Law No. 281 of 24/06/2003.

• *The authorities are invited to clarify the state of the present law on preventive measures forbidding an individual to leave the country. In particular, information is expected on which authorities are empowered to impose such measures, the conditions in which they may be imposed and the safeguards against possible abuses.*

The Deputies agreed to resume consideration of this item:

1. at their 1013th meeting (3-5 December 2007) (DH), in the light of further information to be provided concerning payment of the just satisfaction, if necessary;
2. at the latest at their 1st DH meeting in 2008, in the light of information to be provided concerning general

1013 (December 2007) section 4.2

37284/02 Lafargue, judgment of 13/07/2006, final on 13/10/2006

The case concerns a violation of the applicant's right to respect for his family life due to the failure by the Romanian authorities in their obligation to take adequate and sufficient efforts to ensure respect for the applicant's right of access to and residence with his son, born in 1995, over a period of approximately six years (violation of Article 8).

After the applicant's divorce in 1997, the custody of the child was awarded to his ex-wife. On 16/12/1999 an access and residence order was made (final on 3/05/2000) authorising the applicant to spend one week with his son during the winter holidays and two weeks during his annual holidays.

The applicant applied to the court bailiff service of the Bucharest Court of First Instance to obtain enforcement of this decision. However, his attempts remained ineffectual mainly due to the conduct of the mother, who failed to appear or came alone when summoned to attend with the child, or refused her former husband, accompanied by a court bailiff, entry to her flat.

Following a request by the French authorities under the 1980 Hague Convention on the Civil Aspects of International Child Abduction, the Romanian Ministry of Justice brought an action demanding that a detailed access programme be drawn up for the applicant. In 2005, the Bucharest Court of First Instance drew up a provisional access programme granting the applicant access on alternate weekends, from 4 p.m. on Friday to 5 p.m. on Sunday. Even so, the applicant was only able to meet his child for five months at the beginning of 2005 and after notice of the application had been given to the government. Moreover, the Romanian authorities only imposed a small fine on the ex-wife.

Individual measures: According to the European Court's judgment the authorities did not pursue the programme of meetings between the applicant and with his child after first five months of 2005, even though psychologists' reports attested to the effectiveness of such meetings.

- *Information provided by the Romanian authorities:* The applicant spent one week with his son during the winter holidays in 2006.

On 27/03/2007 the Court of First Instance of Bucharest decided that the applicant's son should undergo two months of psychological treatment.

By a judgment of 22/06/2006 (final in May 2007) the Bucharest Court established a visiting schedule for the applicant. According to this schedule, the applicant may visit his son from Friday (6 p.m.) until Sunday (6 p.m.) during the first and the third week of each month. The stays were also foreseen for the first week of the Easter school holidays, in the period from 15/07 (6 p.m.) to 30/08 (6 p.m.) and during the first week of the Christmas holidays. This decision provides a possibility to send the applicant's son during those periods to the applicant's residence in France. By a letter of 4/06/2007 the Ministry of Justice requested a bailiff's office to undertake all necessary measures to ensure the implementation of this decision.

- *Additional information is expected on the effective implementation of those decisions.*

General measures:

1) General legislative provisions regulating the exercise of the right of access

- *Information is awaited on any appropriate general legislative provisions capable of ensuring the respect of the state's positive obligations under Article 8 with respect to access rights. Information would in particular be useful as regards the adequacy and effectiveness of the available means in this respect (e.g. enforcement measures, including sanctions, psychological and social assistance, etc.) and their capacity to ensure implementation of the legitimate rights of interested persons and respect for judicial decisions. Furthermore, information would be useful on any measures envisaged by the Romanian authorities in this respect.*

2) Specific legislative provisions concerning the implementation of the 1980 Hague Convention with respect of the right of access

a) On 15/09/2004 Romania adopted Law No. 369/2004 on the implementation of the 1980 Convention on the Civil Aspects of International Child Abduction (entered into force on 29/12/2004). Specific provisions of this Law relate to the right of access:

- *Enforcement measures*

Law 369/2004 provides that the Romanian Central Authority (Ministry of Justice) shall attempt to bring about a friendly resolution concerning the exercise of the right of access. If this attempt fails, and at the explicit request of the person endowed with such right, the Central Authority shall take the necessary measures to ensure the compulsory enforcement of this right. The Law provides an initial, civil fine (approximately 125 to 625 euros) and, if the perpetrator does still not comply, the general rules governing the enforcement of court decisions are applicable. In addition, the court may order a defendant to pay a civil fine of approximately 12 to 25 euros for each day of delay.

- *Preparation of the child for the contact with its parent*

Law 369/2004 explicitly provides the possibility of psychological therapy for the child for a maximum of three months where access rights cannot be exercised due to the constant opposition of a child who manifests hostile feelings towards its parent (Article 18).

b) On 5/04/2005 the Ministry of Justice, on the basis of Article 24 of Law 369/2004, adopted Order No. 509/C to approve the Regulation on the modalities of exercising the duties of the Ministry of Justice as a Central Authority designated through Law No. 100/1992 on Romania's accession to the 1980 Hague Convention.

- *The Romanian authorities are invited to provide relevant examples of the application of Law 369/2004 and Order No. 509/C showing the positive changes in practice of domestic authorities since the relevant facts in this case.*

3) Publication and dissemination of the European Court's judgment to relevant authorities:
• *Information is awaited in this respect.*

The Deputies decided to resume consideration of this item:

1. at their 1020th meeting (4-6 March 2008) (DH), in the light of further information to be provided on payment of the just satisfaction awarded, if necessary;
2. at the latest at their 1028th meeting (3-5 June 2008) (DH), in the light of further information to be provided on general measures and individual measures, if necessary.

1013 (December 2007) section 4.2

41124/02 Filip, judgment of 14/12/2006, final on 14/03/2007

This case concerns the compulsory psychiatric hospitalisation of the applicant between November 2002 and January 2003, at the behest of a public prosecutor, with a view to determining his capacity of judgment. The European Court considered that it had not been adequately established that the applicant was deranged, no prior medical opinion having been sought nor any precise indications given as to the elements which led the prosecutor to apply for the applicant's detention. It also noted that the applicant's committal had not been carried out according to law, in that the competent medical commission ought to have been implicated at the moment the committal was enforced. In point of fact, the commission which was seised a month later did not concur with the need for committal (violation of Article 5§1).

The case also concerns the failure to ensure a prompt determination of the lawfulness of the applicant's psychiatric detention (violation of Article 5§4): the relevant domestic court instead of determining the applicant's complaint, submitted in December 2002 under Article 434 of the Code of Criminal Procedure, it referred it to the prosecutor. The prosecutor ordered the withdrawal of the detention order, without examining the complaint on the merits, in January 2003. Thus the authorities took 8 weeks to withdraw the detention order.

Finally the case concerns the inadequacy of investigations carried out into the applicant's allegations of ill-treatment (violation of Article 3). The court noted that the prosecution failed to pronounce upon these complaints and the Romanian authorities provided no information indicating that a criminal investigation had been opened in this respect.

Individual measures: After the lifting of the hospitalisation order and release of the applicant the Romanian courts ordered psychiatric treatment recommended by the medical commission. The applicant did not appeal against this order.

• *Information is expected as to whether it is possible to open an investigation concerning the applicant's allegations of ill-treatment during his detention in the psychiatric hospital.*

General measures:

• *Information is expected on measures taken or envisaged to avoid similar violations. In particular, to assess the necessity and scope of specific measures, the authorities are invited to clarify:*

- *the legal basis for opening criminal investigations and the reasons for disregarding the applicant's complaints about his alleged ill-treatment in present case;*

- *the current law governing detention in psychiatric hospitals.*

• *Information is also expected on the publication and dissemination of the European Court's judgment among relevant courts and authorities, to raise domestic courts' awareness of the Convention's requirements as they result from this case.*

The Secretariat will invite the Romanian authorities to present an action plan for the examination of this judgment.

The Deputies decided to resume consideration of this item:

1. at their 1020th meeting (4-6 March 2008) (DH), in the light of further information to be provided concerning payment of just satisfaction, if necessary;
2. at the latest at their 1028th meeting (3-5 June 2008) (DH), in the light of further information to be provided concerning individual and general measures.

1013 (December 2007) section 4.2

10337/04 Lupsa, judgment of 08/06/2006, final on 08/09/2006

33970/05 Kaya, judgment of 12/10/2006, final on 12/01/2007

These cases concern a violation of the applicants' right to respect for their private and family life on account of their expulsion for security reasons in August 2003 and April 2005 (violations of Article 8). The European Court found that these measures were not provided by a law responding to the requirements of the Convention. In this respect it noted that the applicants, Serbian and Turkish nationals respectively, were declared to be undesirable aliens, expelled and denied access to Romanian territory. These measures were ordered by the public prosecutor's office on the ground that the Romanian Intelligence Service had received sufficient and serious intelligence that they were engaged in activities capable of endangering national security. No proceedings were brought against the applicants for participating in the commission of any offence in Romania or any other country and they were not provided with any details as to the allegations against them. Furthermore, in the Lupsa case, in breach of domestic law, the applicant was not served with the order declaring his presence to be undesirable until after he had been expelled. Finally, the Bucharest Court of Appeal confined itself to a purely formal examination of the public prosecutor's orders.

These cases also concern the failure to respect procedural guarantees in the procedure whereby the applicants were expelled (violations of Article 1 of Protocol 7). The European Court recalled that Emergency Ordinance no. 194/2002, the legal basis for the expulsion, did not afford them the minimum guarantees against the arbitrary action by the authorities. Thus, although the applicants' expulsions were carried out pursuant to a lawfully taken decision, the relevant law did not comply with the requirements of the Convention. In addition, the authorities had failed to comply with the requirements of Article 1 a) and b) of Protocol 7.

Individual measures: The Romanian authorities have indicated that the applicants may request the re-examination of the decisions in question under Article 322 (9) of the Code of Civil Procedure. The European Court awarded them just satisfaction in respect of non-pecuniary damage.

• *Assessment:* no further individual measure seems necessary.

General measures:

• *Information provided by the Romanian authorities (letter of 08/05/2007):* Emergency Ordinance No. 194/2002 was amended on 26/03/2007. According to the new wording of Article 83, declarations of undesirability of aliens shall henceforth be made by the Bucharest Court of Appeal, seised by a public prosecutor at the request of the authorities having jurisdiction in the field of public order and national security. The data and information at the basis of such declarations shall be placed at the disposal of the judicial authority in accordance with the conditions provided by the law regulating national security activities and the protection of classified information. The public prosecutor's submission is examined by a court chamber sitting in private, the parties being notified. The judicial authority shall inform the alien of the facts at the basis of the submission. A reasoned judgment should be given within 10 days of the prosecutor's submission. It is final and shall be communicated to the alien concerned and, if the alien is declared undesirable, to the Aliens Authority for enforcement.

• *While the Secretariat is currently examining this information, clarification is expected as to whether the amendments also guarantee adversarial proceedings in which the alien concerned may present his or her point of view and refute the arguments of the authorities (§38 of the Lupsa judgment). In this context the Romanian authorities should note that, according to the European Court's case-law, persons subject to measures based on considerations of national security must not be deprived of all guarantees against arbitrariness.*

Both judgments, after being translated, have been published in the *Official Journal* and on the internet site of the Supreme Court of Cassation and Justice.

The Deputies decided to resume consideration of these items:

1. at their 1020th meeting (4-6 March 2008) (DH), in the light of further information to be provided concerning payment of the just satisfaction, if necessary;
2. at the latest at their 1028th meeting (3-5 June 2008) (DH), in the light of further information to be provided concerning general measures.

1007 (October 2007) section 2

19215/04 Gheorghe, judgment of 15/03/2007, final on 15/06/2007

This case concerns a violation of the applicants right to a fair hearing on the account of absence of a specific and explicit response from the Supreme Court of Justice in a decision of 4/11/2003, to the applicant's ground of appeal in a case concerning his disability allowance (violation of Article 6§1). The European Court found that in the absence of such a response it was impossible to ascertain whether the domestic courts had simply neglected to examine the content of the applicant's claim or

whether its dismissal had been the result of a manifest error of judgment as to the subject-matter of the action.

This case also concerns the excessive length of civil proceedings (more than 2 years and 11 months for two levels of jurisdiction) (violation of Article 6§1). The European Court found that since the applicant's state of health had declined considerably during the proceedings considerable diligence was required on the part of the authorities.

Individual measures: The proceedings were ended on 4/11/2003. Romanian law provides, in Article 322§9 of the Code of Civil Procedure, the possibility of reopening civil proceedings in cases in which the European Court has found a violation. In addition, the European Court awarded the applicant just satisfaction in respect of non-pecuniary damage.

• *Assessment: no further measure appears necessary.*

General measures:

1) Failure to give specific response to applicant's claims: It seems that this violation was an isolated case.

• *Publication of the European Court's judgment and its dissemination among relevant courts and authorities are expected in order to raise their awareness of the Convention's requirements as they result from this case.*

2) Excessive length of proceedings: The issue of excessive length of proceedings is being examined in the context of the Nicolau case (Section 4.2).

The Deputies decided to resume consideration of this item:

1. at their 1013th meeting (3-5 December 2007) (DH), in the light of information to be provided concerning the payment of just satisfaction, if necessary;
2. at the latest at their 1st meeting in 2008 (DH), in the light of information to be provided concerning general measures.

1007 (October 2007) section 5.1

28114/95 Dalban, judgment of 28/09/99 - Grand Chamber, Interim Resolution ResDH(2005)2
The case concerns the applicant's conviction for defamation in 1994, under Article 206 of the Criminal Code, for having published articles in which he exposed a series of frauds allegedly committed by a senior official and a member of parliament.

The European Court found a disproportionate interference with the applicant's freedom of expression since, whilst Article 207 of the Romanian Criminal Code admits the adduction of evidence as to the truthfulness of an utterance at issue if it has been made in order to protect a legitimate interest, the Romanian courts had not allowed the applicant to prove the truth of his allegations. On the contrary, they found it established, *inter alia*, that the allegations were untrue on the basis of decision by the public prosecutor's office not to indict the public official in question in respect of the same allegations (violation of Article 10).

Individual measures: The applicant died before the European Court delivered its judgment. Under Article 41, the European Court awarded to his widow just satisfaction in respect of the non-pecuniary damage sustained.

General measures (see also Interim Resolution ResDH(2005)2):

• *Measures taken*

a) *awareness-raising measures and direct effect of the Convention:* The Dalban judgment was published in Romanian in the *Official Journal* in June 2000. Conferences, training courses and seminars for judges and public prosecutors have been organised since 2001, specifically dealing with issues related to the freedom of expression, as guaranteed by Article 10, with a view to ensuring the direct effect of the Convention in domestic law and thus its interpretation in accordance with the case-law of the European Court.

As from 2004, the Romanian authorities have provided examples of such direct effect by submitting court decisions concerning charges of criminal libel in which courts (often making reference to the Strasbourg case-law) acquitted defendants not least in view of their intention to make public information and ideas on issues of public interest.

b) *legislative measures:* Law No. 160/2005, which entered into force on 05/06/2005, abolished imprisonment for defamation. Subsequently, on 11/08/2006, Law No. 278/2006 entered into force.

This in particular abrogated Articles 205-207 of the Criminal Code; as a result, both insult and defamation were decriminalised. Furthermore, a new Criminal Code, adopted on 28/06/2004, is due to enter into force in September 2008 (for further details see Interim Resolution ResDH(2005)2).

• *Clarifications are expected as regards Law 278/2006, particularly as to how the amendments to the criminal code introduced by this law will combine with those scheduled to enter into force in 2008. Confirmation is also expected that Law 278/2006 has abrogated the automatic character of ancillary penalties (see case Sabou and Pircalab below).*

The Deputies decided to resume consideration of this item at the latest at their 1st DH meeting in 2008, in the light of information to be provided concerning general, namely legislative, measures.

1007 (October 2007) section 5.1

33348/96 Cumpănă and Mazăre, judgment of 17/12/2004 - Grand Chamber

The case concerns the disproportionate character of the criminal sanctions imposed in 1995 on the applicants (a journalist and the editor of a local newspaper), convicted of insult and defamation under Articles 205 and 206 of the Criminal Code following the publication of a critical article, accompanied by a cartoon, concerning some illegalities allegedly committed by local public authorities.

The European Court found that the applicants' conviction was in conformity with the Convention, particularly in view of the fact that the applicants had failed to provide a sufficient factual basis for the serious accusations expressed. Nevertheless, the European Court stressed that the sentence of seven months' imprisonment imposed on the applicants, accompanied by a secondary penalty of disqualification from exercising certain civil rights (automatically applicable in Romanian law to anyone serving a prison sentence) and by an order prohibiting the applicants from working as journalists for one year, were manifestly disproportionate, in their nature and severity, to the legitimate aim pursued (violation of Article 10).

In this respect, the European Court pointed out that "although sentencing is in principle a matter for the national courts, the Court considers that the imposition of a prison sentence for a press offence will be compatible with journalists' freedom of expression as guaranteed by Article 10 of the Convention only in exceptional circumstances, notably where other fundamental rights have been seriously impaired, as, for example, in the case of hate speech or incitement to violence" (§ 115).

Individual measures: The applicants were granted a presidential pardon dispensing them from serving their prison sentence and putting an end to the secondary sentences. Moreover, it appears from the facts of the case that they continued to work as journalists. The Romanian authorities have indicated that the applicants had been rehabilitated: their criminal records no longer contain any mention of their criminal convictions.

Also, under Article 41, the European Court rejected the applicants' application for reimbursement of the sum which they had paid the injured party for non-pecuniary damage, in view of its conclusion that the applicants' conviction could have been regarded as "necessary in a democratic society" if the criminal sanctions had not been so harsh.

General measures: the case presents similarities *mutatis mutandis* to that of Dalban, judgment of 28/09/1999 (see above).

The Deputies decided to resume consideration of this item at the latest at their 1st DH meeting in 2008, in the light of information to be provided concerning general, namely legislative, measures.

1007 (October 2007) section 5.1

46572/99 Sabou and Pîrcălab, judgment of 28/09/2004, final on 28/12/2004

The case concerns the conviction of the applicants (journalists at a local newspaper) for defamation in December 1997 (final in April 1998), under Article 206 of the Criminal Code, for having published a series of articles containing accusations concerning the president of the local court (accusations referring in particular to her using her influence and forged documents to obtain unlawful advantages for her family).

The European Court concluded that there had been a disproportionate infringement of the applicants' right to freedom of expression in that first, there had been no proof that the allegations were totally false and secondly there was no reason to suppose that the applicants had acted in bad faith.

Secondly, the appellate court did not examine the evidence produced by the applicants but relied only on the conclusions of decision by the prosecutor's office not to indict the injured party. Furthermore, the applicants were punished severely (ten months' imprisonment for the first applicant, a suspended

criminal fine for the second, accompanied by the obligation to pay the injured party compensation for non-pecuniary damage) (violation of Article 10).

The European Court also found a violation of the first applicant's right to respect for family life in view of the automatic prohibition of the exercise of his parental rights during his imprisonment under Articles 64 and 71 of the Criminal Code, as an ancillary penalty accompanying the prison sentence. The Court noted in particular that there had been no suggestion of lack of care on his part or ill-treatment of his children, and that this kind of additional sanction was imposed without judicial supervision and without any assessment of the children's interest (violation of Article 8). Moreover, the European Court concluded that the first applicant had had no effective remedy in domestic law against the interference with his right to respect for family life (violation of Article 13).

Individual measures: The Romanian authorities have indicated that the applicants have been rehabilitated and are no longer suffering any consequence of their criminal convictions. Furthermore, the European Court granted just satisfaction in respect of both pecuniary and non-pecuniary damage sustained, including the sum the applicants were ordered to pay in civil compensation to the injured party.

General measures:

1) Violation of Article 10: The case presents similarities to the case of Dalban against Romania (judgment of 28/09/1999) - see above).

2) Violation of Articles 8 and 13:

• *Confirmation is expected that, following the entry into force on 11/08/2006 of Law 278/2006 amending the Criminal Code (see details under the Dalban case above), decisions prohibiting the exercise of parental rights by persons sentenced to imprisonment will take into account the nature and the gravity of the offence committed, the circumstances of the case, the personality of the convicted person and the interest of the child.*

The Romanian authorities have indicated that domestic courts, in the light of the judgment of the European Court in this case, did not wait for the entry into force of these reforms to abandon the practice of automatically prohibiting those serving prison sentences from exercising their parental rights. Examples of the case-law of Bucharest courts, as well as from the High Courts of Cassation and of Justice in this respect have been provided.

The judgment of the European Court was furthermore published in the *Official Gazette* on 08/06/2005 and transmitted to the High Judicial Council to be sent out to all jurisdictions. A summary of the judgment was furthermore published in the legal journal *Themis* of January 2005, No. 1, published by the National Judicial Institute and freely distributed to all courts.

The Deputies decided to resume consideration of this item at the latest at their 1st meeting in 2008 (DH), in the light of information to be provided concerning general, namely legislative, measures.

Interim Resolutions

Interim Resolution ResDH(2005)57 concerning the judgment of the European Court of Human Rights of 4 May 2000 in the case of Rotaru against Romania

*(Adopted by the Committee of Ministers on 5 July 2005
at the 933rd meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 46, paragraph 2, of the Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocol No. 11 (hereinafter referred to as “the Convention”),

Having regard to the final judgment of the European Court of Human Rights in the Rotaru case delivered on 4 May 2000 and transmitted the same day to the Committee of Ministers under Article 46 of the Convention;

Recalling that the case originated in an application (No. 28341/95) against Romania, lodged with the European Commission of Human Rights on 22 February 1995 under former Article 25 of the Convention by Mr Aurel Rotaru, a Romanian national, and that the Commission declared admissible the complaint concerning the breach of the applicant's right to respect for his private life on account of the holding and use by the Romanian Intelligence Service (“RIS”) of a file containing personal information concerning, in particular, his alleged belonging in 1937 to the Romanian “legionary” movement, as well as the complaint concerning the breach of the right of access to a court and of the right to an effective remedy before a national authority that could rule on an application to have the file amended or destroyed;

Recalling that the case was brought before the Court by the Commission on 3 June 1999 and by the applicant on 29 June 1999;

Whereas in its judgment of 4 May 2000 the Court held *inter alia*:

- by sixteen votes to one, that there had been a violation of Article 8 of the Convention;
- unanimously, that there had been a violation of Article 13 of the Convention;
- unanimously, that there had been a violation of Article 6, paragraph 1, of the Convention;
- unanimously, that the government of the respondent state was to pay the applicant, within three months, 50,000 French francs in respect of non-pecuniary damage and 3,690.28 French francs in respect of costs and expenses, to be converted into Romanian lei at the rate applicable on the date of settlement, and that simple interest at an annual rate of 2.74% would be payable on those sums from the expiry of the above-mentioned three months until settlement;
- dismissed, unanimously, the remainder of the claim for just satisfaction;

Having regard to the Rules adopted by the Committee of Ministers concerning the application of Article 46, paragraph 2, of the Convention;

Having invited the government of the respondent state to inform it of the measures which had been taken in consequence of the judgment of 4 May 2000, having regard to Romania's obligation under Article 46, paragraph 1, of the Convention to abide by it;

Recalling that High Contracting Parties are required rapidly to take the necessary measures to this end herewith, in particular by preventing new violations of the Convention similar to those found in the Court's judgments ;

Recalling the Declaration of the Committee of Minister of 12 May 2004 on ensuring the effectiveness of the implementation of the European Convention on Human Rights at national and European levels, as well as the recommendations mentioned therein aiming at reinforcing the implementation of the European Convention on Human Rights at domestic level;

Having satisfied itself that on 2 August 2000, within the time-limit set, the government of the respondent state paid the applicant the sums provided in the judgment of 4 May 2000;

Noting the information provided by the Romanian authorities concerning the individual measures, as well as the measures taken so far to prevent new, similar violations (this information is summarised in the appendix to this resolution);

Recalling that the Court noted, under Article 8 of the Convention, that the domestic law did not lay down with sufficient precision the limits to be respected in the exercise of the power to gather, record and archive information concerning national security (paragraph 57 of the judgment), as well as the absence of a procedure to supervise the activity of the secret services to ensure respect of the values of a democratic society; supervision which should be carried out, at least in the last resort, by the judiciary (paragraph 59 of the judgment);

Also recalling that the Court concluded, under Article 13 of the Convention, that no provision of Romanian law allowed the applicant to challenge the holding by the intelligence services of information on his private life or to refute the truth of such information (paragraph 72 of the judgment);

Recalling that the case also concerned a violation of Article 6, paragraph 1, of the Convention on account of the failure of the Bucharest court of appeal, in November 1997, to rule on the applicant's request for compensation for the non-pecuniary damage caused by the use of erroneous information, as well as on his request for reimbursement of the costs incurred in order to obtain the rectification of the information concerning him (paragraph 77 of the judgment);

Noting with interest the new Law No. 535/2004 on the prevention and repression of terrorism which now provides for a procedure of judicial supervision of all secret surveillance measures, also in the cases involving threats to the national security;

Noting also with interest the information submitted by the Romanian authorities concerning the legislative procedure currently under way with a view to reforming Law No. 51/1991 on national security;

Noting in addition the procedure provided by Law No. 187/1999 which, in spite of the shortcomings identified by the European Court (see paragraph 71 of the judgment), nevertheless allows interested persons to inspect the files created in their respect (between 1945 and 1989) by the organs of the former *Securitate*, to obtain certificates concerning their possible collaboration with the former *Securitate* and to contest before a court the content of such certificates;

Noting nevertheless with regret that, more than five years after the date of the judgment, several shortcomings identified by the European Court still do not seem to have been remedied, in particular concerning the procedure to be followed in order to have access to the archives taken over by the RIS from former secret services (others than the *Securitate*), the absence of specific regulation concerning the age of the information which could be stored by the authorities, or the lack of a possibility to contest the holding of this information and, save for the cases provided for by Law No. 187/1999, their truthfulness,

CALLS UPON the Romanian authorities rapidly to adopt the legislative reforms necessary to respond to the criticism made by the Court in its judgment concerning the Romanian system of gathering and storing of information by the secret services,

DECLARES, after having examined the information supplied by the Government of Romania, that it has provisionally exercised its functions under Article 46, paragraph 2, of the Convention in this case,

DECIDES to resume consideration of this case, as far as general measures are concerned, when the legislative reforms have been accomplished or, at the latest, at one of its first meetings in 2006.

Appendix to Interim Resolution ResDH(2005)57

Information provided by the Government of Romania during the examination of the Rotaru case by the Committee of Ministers

Individual Measures

The Romanian authorities recall that the case dealt with the use made by the Romanian Intelligence Service, within the context of court proceedings, of information concerning the applicant, information obtained by consulting the archives taken over from the former secret services. Because of a similarity of names, some of this information, dealing with the applicant's political activity in the 1930s, was erroneous.

To avoid any future confusion of this kind which could be harmful to the applicant, the judgment of the European Court has been appended by the Romanian Intelligence Service to the file from which the information at issue was obtained, an annotation having been made in this respect.

General Measures

The Romanian authorities underline that the secret services' activities concerning the gathering of information on national security are regulated by the framework law on national

security (Law No. 51/1991). This law defines (Article 3) the cases which may be considered as threats to national security and which justify the adoption of specific measures of secret surveillance of the persons suspected of having committed such acts. The law also regulates (Article 13) the procedure to be followed when having recourse to surveillance measures which interfere with the individual's right to respect for private life, such as telephone tapping, and provides the possibility for all persons claiming that their rights and freedoms have been infringed to seise the parliamentary commissions dealing with defence and public order (Article 16).

Since the delivery of the European Court's judgment in the Rotaru case, several bills concerning the reform of Law No. 51/1991 have been submitted to the Parliament. They aim at the modernisation of the law, with a view to adapting it to the new forms of threats to national security (in particular within the context of the fight against international terrorism), as well with a view to reinforcing the guarantees given to individuals' fundamental rights. In this respect, the Romanian authorities are taking into account the Guidelines on human rights and the fight against terrorism adopted by the Committee of Ministers on 11 July 2002.

This legislative process has nevertheless not yet led to the reform of Law No. 51/1991, particularly in view of the complexity and of the sensitive nature of the subject matter. The procedure concerning the authorisation of surveillance measures provided for by Law No. 51/1991 has nevertheless been modified by Law No. 281/2003 on the amendment of the Code of Criminal Procedure, which instituted a judicial control of secret surveillance measures. Subsequently, Law No. 535/2004 on the prevention and repression of terrorism has brought further changes, so that the authorisation of secret surveillance measures, in all the cases of presumed threats to national security provided for by Law no. 51/1991, comes today within the competence of judges of the High Court of Justice and Cassation.

Concerning the other aspects criticised by the European Court in the Rotaru judgment, they will be taken into account in the context of the legislative reform which is currently under way. New provisions will be enacted regulating issues such as the control of the activity of secret services, the age of information which may be held, as well as establishing a procedure allowing interested persons to challenge the information which might be held by the secret services. In this respect, the publication of the Rotaru judgment in the Official Journal in January 2001 has already allowed the Romanian courts to take account of the European Court's findings, in particular of those concerning the right, guaranteed by Article 13 of the Convention, to have the possibility to challenge the holding by the intelligence services of personal data, to refute their truthfulness and to request that the inexact data be modified.

Moreover, it is envisaged to regulate in a detailed way the procedure to be followed to have access to information contained in the archives taken over by the RIS from the former secret services, as well as to indicate the use that may be made of the information thus obtained. In this respect, the competent authorities envisage the possibility to amend Law No. 14/1992, which regulates the activity of the RIS, after the amendment of the framework law on the protection of national security.

In addition, the Romanian authorities recall the provisions of Law No. 187/1999 on citizens' access to the personal files held on them by the *Securitate* and aimed at unmasking that organisation's nature as a political police force. Even if this law is not applicable to the situation of the applicant in the Rotaru case, it nevertheless allows interested persons to inspect the files created in respect of them by the organs of the former *Securitate* (between

1945 and 1989), to obtain certificates indicating whether they had collaborated or not with the former *Securitate* and to contest before a court the content of such certificates.

Finally, the Romanian authorities believe that the domestic courts will afford direct effect to the Rotaru judgment so as to avoid new violations of Article 6, paragraph 1, of the Convention similar to that found by the European Court in the present case, where the Bucharest Court of Appeal failed to consider the applicant's claim for compensation and for the reimbursement of the costs incurred in order to obtain the rectification of the data at issue.

Interim Resolution ResDH(2005)2
concerning the judgment of the European Court of Human Rights
of 28 September 1999 in the case of Dalban against Romania

*(Adopted by the Committee of Ministers on 8 February 2005
at the 914th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 46, paragraph 2, of the Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocol No. 11 (hereinafter referred to as “the Convention”),

Having regard to the final judgment of the European Court of Human Rights in the Dalban case delivered on 28 September 1999 and transmitted the same day to the Committee of Ministers under Article 46 of the Convention;

Recalling that the case originated in an application (No. 28114/95) against Romania, lodged with the European Commission of Human Rights on 20 April 1995 under former Article 25 of the Convention by Mr Ionel Dalban, a Romanian national, and that the Commission declared admissible the complaints relating to the unfairness of criminal proceedings conducted against the applicant, the trial court not having examined documents submitted in his defence and to the unjustified interference with his freedom of expression due to the applicant's conviction for libel;

Recalling that the case was brought before the Court by the Commission on 27 April 1998 and by the applicant's widow on 5 May 1998;

Whereas in its judgment of 28 September 1999 the Court unanimously:

- held that there had been a violation of Article 10 of the Convention;
- held that it was not necessary to examine the case under Article 6, paragraph 1;
- held that the government of the respondent state was to pay the applicant's widow, within threemonths, 20 000 French francs in respect of non-pecuniary damage and that simple interest at an annual rate of 3.47% would be payable on this sum from the expiry of the above-mentioned three months until settlement;
- dismissed the remainder of the claim for just satisfaction;

Having regard to the Rules adopted by the Committee of Ministers concerning the application of Article 46, paragraph 2, of the Convention;

Having invited the government of the respondent state to inform it of the measures which had been taken in consequence of the judgment of 28 September 1999, having regard to Romania's obligation under Article 46, paragraph 1, of the Convention to abide by it;

Considering that High Contracting Parties are required rapidly to take the necessary measures to this end, *inter alia* by preventing new violations of the Convention similar to those found in the Court's judgments ;

Having satisfied itself that on 15 December 1999, within the time-limit set, the government of the respondent state paid the applicant's widow the sum provided for in the judgment of 28 September 1999;

Noting the information provided by the Romanian authorities concerning individual measures as well as the measures which have been taken so far to prevent new, similar violations (this information appears in the Appendix to this resolution);

Noting the explanations given by the Romanian authorities for the time taken to reform the law, the efforts they have undertaken to enhance the direct effect of Strasbourg judgments and the ongoing reflection on ways to improve legislative procedures in the light of Committee of Ministers' Recommendation Rec(2004)5 on the verification of the compatibility of draft laws, existing laws and administrative practice with the standards laid down in the European Convention on Human Rights;

Noting in this context that the European Court's judgment was promptly published in the Official Journal, to ensure that Romanian courts and authorities give it direct effect in applying existing law so as to avoid, as far as possible, new, similar violations;

Noting also that the Romanian authorities have provided examples of domestic court decisions on criminal libel charges in which the courts, often referring to the European Court's case-law, subsequently acquitted the defendants not least in view of their intention to transmit information and ideas on issues of public interest;

Noting that this development has been strengthened by the adoption, in June 2004, of the new Criminal Code, the relevant provisions of which allow those accused of criminal libel to invoke good-faith as a defence, to make more extensive use of the defence of truth and remove imprisonment as a punishment for this offence; these reforms being due to enter into force on 29 June 2005;

Recalling the Declaration on ensuring the effectiveness of the implementation of the European Convention on Human Rights at national and European levels, adopted by the Committee of Ministers on 12 May 2004, at its 114th Session, and the recommendations to the member states referred to therein,

INVITES the Romanian authorities to pursue their efforts further to develop the direct effect of the European Court's case-law in domestic law, *inter alia* in the area of freedom of expression, and to improve legislative procedures and to keep the Committee of Ministers informed of the progress;

DECLARES, after having examined the information supplied by the government of Romania, that it has provisionally exercised its functions under Article 46, paragraph 2, of the Convention in this case;

DECIDES to resume consideration of this case at the end of 2005.

Appendix to Interim Resolution ResDH(2005)2

*Information provided by the government of Romania
during the examination of the Dalban case
by the Committee of Ministers*

The Romanian government recalls that the violation found by the European Court in the present case concerned the applicant's criminal conviction for libel for articles which he had published in the press, without being given by the competent court a proper opportunity to adduce evidence in support of his statements.

As regards *individual measures*, the government recalls that the applicant died on 13 March 1998. It also points out that Romanian law offers the possibility to request reopening of criminal proceedings on the basis of judgments of the European Court of Human Rights, to obtain the annulment of a conviction contrary to Article 10 as in the present case. In any event, as regards some of the statements published by the applicant and resulted in his conviction, he was acquitted by the Supreme Court of Justice in March 1999, in extraordinary proceedings instituted by the Prosecutor-General.

In response to the Dalban judgment, the Romanian authorities initiated a reflection process concerning the necessary *general measures* and concluded that criminal law needed to be amended to stress the possibility for those accused of criminal libel to invoke good faith in their defence.

However, recognising that the legislative element in the changes to Romanian law required by the Court's judgment would take more time, the amendments to the Criminal Code being incorporated in the overall criminal law reform conducted in the last years, the government in the meantime issued Order No. 58/2002 reducing the penalties for criminal libel.

The government stresses that efforts have been made throughout the legislative process to ensure that judges interpret the relevant legal provisions in line with the Strasbourg standards. In this respect, the government recalls that criminal libel is an offence requiring the defamed party to lodge a criminal complaint directly with the court, thus excluding the public prosecutors' competence in this field.

Following the publication of the European Court's judgment in the Official Journal in June 2000, several conferences, training courses and seminars for judges and public prosecutors have been organised, specifically dealing with issues related to the freedom of expression as guaranteed by Article 10 of the Convention.

Moreover, a course on the "Court's case-law" was introduced as early as 2000 into the initial training of new judges and prosecutors conducted by the National Institute of Magistrates. Possible further development of these courses is being considered in the light of the Committee of Ministers' Recommendation Rec(2004)4 on the European Convention on Human Rights in university education and professional training.

As a result of these efforts, Romanian courts are increasingly taking into account the Strasbourg case-law concerning the freedom of expression when applying domestic law, as reflected in several recent judgments which have been provided to the Committee of Ministers.

In addition, the new Criminal Code was adopted on 28 June 2004, and included provisions stressing that journalists may publish statements of public interest in accordance with the principles enshrined in the European Court's case-law. According to the new Code, insult is no longer a criminal offence. As for defamation, imprisonment has been removed as a punishment and the possible use of the defence of truth has been widened, particularly by introducing the defence of good faith.

The new relevant provisions are:

Article 225 - Libel

The statement or allegation made in public, by any means, of facts concerning a particular person which, if true, would render that person liable to a criminal, administrative or disciplinary penalty or expose that person to public opprobrium (contempt), shall be punished by 10 to 120 days/fine.

The criminal proceedings can be set in motion at the request of the injured person. The conciliation of the parties excludes the criminal liability.

Article 226 – The proof of truth or of good faith

The statement or allegation of facts in relation to which the proof of truth was made or in relation to which the defendant had reasonable grounds to believe they were true, do not constitute libel.

In case of statements or allegations of facts referring to the private life of a person, the proof of truth or the proof that the defendant had reasonable grounds to believe that they were true are admissible for the defense of a legitimate interest.

In case of statements or allegations of facts referring to the private life of a person that affect that person's ability to exercise a public office, the proof of truth or the proof that the defendant had reasonable grounds to believe that the facts are true are admissible without being necessary to prove the existence of a legitimate interest.

In the Romanian government's view, the new provisions of the Criminal Code confirm the developing practice of the domestic courts to refrain from applying criminal sanctions to journalists who exercise their freedom of expression in good faith in order to transmit information and ideas of public interest, in accordance with the principles enshrined in Article 10 of the Convention. Therefore, new similar violations of Article 10 of the Convention will be prevented in the future.

Moreover, further measures are being considered, in the light of the Committee of Ministers' Recommendation Rec(2004)5 on the verification of the compatibility of draft laws, existing laws and administrative practice with the standards laid down in the European Convention on Human Rights, in order to improve legislative procedures so that laws necessary to ensure Romania's compliance with the European Convention on Human Rights are rapidly adopted, particularly if this is necessary to prevent new violations similar to those already found.