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## **Impact of the European Convention on Human Rights in States Parties: selected examples\***

Overview prepared by the Legal Affairs and Human Rights Department upon the request of Mr Pierre-Yves Le Borgn' (France, SOC), Rapporteur on the implementation of judgments of the European Court of Human Rights

Upon his appointment as Rapporteur on 'The implementation of judgments of the European Court of Human Rights' on 2 November 2015, Mr Le Borgn' requested the Secretariat of the Assembly's Legal Affairs and Human Rights Department to prepare an information document compiling selected examples of the positive impact that the European Convention on Human Rights has had within States Parties to the Convention. The present text is the result product of this work undertaken by the Department in collaboration with the Human Rights Centre of the University of Essex, United Kingdom.

### **Introduction**

Article 1 of the European Convention on Human Rights ([ETS No. 5](#), 'the Convention', 'ECHR') Convention places primary responsibility on States Parties to ensure that the rights and freedoms enshrined in the Convention are fully guaranteed to everyone within their jurisdiction, and that their national law and practice conform with the Convention, as authoritatively interpreted by the European Court of Human Rights ('the Court', 'the Strasbourg Court'). As a corollary of States' principal responsibility in securing the effective protection of Convention rights and the Strasbourg Court's role as the final arbiter as to the scope and meaning of these rights, States Parties are obliged to fully and rapidly implement the Court's final judgments (Article 46 (1) of the Convention).

This paper contains selected examples from all 47 States Parties to the Convention that illustrate how the protection of human rights and fundamental freedoms has been strengthened at the domestic level thanks to the Convention and the Strasbourg Court's case law. The list is by no means exhaustive, and does not claim to be representative of the fields in which the Convention has had the most far-reaching impact.

In most instances, a respondent State enjoys a certain discretion as to how to give effect to the Court's judgments, subject to the Committee of Ministers' supervision. Corrective measures that States have undertaken to implement Court judgments include constitutional and legislative amendments, organisational and administrative reforms, as well as adjustments reflected in the case law of the highest judicial organs. Of relevance, in this connection, is the status of the Convention and its protocols in the domestic law of States Parties (see **Appendix - Select bibliography**).

A number of States made changes to their legal systems prior to or shortly after their accession to the Council of Europe, in order to bring them into conformity with Convention requirements. Mention can be made of Switzerland, which granted women the right to vote at federal level before ratifying the Convention. In the course of the political changes in the late 1980s/early 1990s, several post-Soviet States abolished the death penalty; and a number of countries joining from Central and Eastern Europe undertook an analysis of whether their legal system complied with Convention standards, and adapted their respective legal systems and practices accordingly.

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\* At present available only in English. Actuellement disponible en anglais uniquement.

As illustrated by the examples discussed below, a violation need not necessarily be found by the Court in Strasbourg for the Convention to have an impact; in fact, a number of reforms have been implemented without the Court first finding a violation. On some occasions, a violation has been remedied prior to a judgment of the Court, leading to the case being removed from the Court's docket. In others, friendly settlements (in accordance with Article 38 of the Convention) have been reached on the basis of the respondent State's accepting to alter its law or practice, or the case has been struck out following a unilateral declaration (in accordance with Rule 62A of the [Rules of Court](#)) by the State acknowledging a violation and undertaking to remedy the situation. Similarly, States have been prepared to meet their Convention obligations by scrutinising the Court's case law and, if necessary, adjusting their legal systems following the finding of a violation in a case against another State, thus amplifying the effect of the Court's case law across Europe by taking into account the interpretative authority (*res interpretata*) of the Strasbourg Court's judgments.

The examples, in this information document, show that the effects of the Convention extend to all areas of human life, benefiting individuals, associations, political parties, companies, and persons belonging to particularly vulnerable groups such as minors, victims of violence, elderly persons, refugees and asylum seekers, defendants in judicial proceedings, persons with (mental) health problems, and those belonging to national, ethnic, religious, sexual or other minorities.

The areas where the Convention and its case law have brought about change include, but are not limited to, individuals' access to justice, the prohibition of discrimination, property rights, family law issues such as custody rights, the prevention and punishment of acts of torture, the protection of the victims of domestic violence, the privacy of individuals in their correspondence and sexual relations, and the protection of religious freedoms and freedoms of expression and association.

Finally, it is important to bear in mind that although Convention standards, enriched by the Court's case law – especially that of the Grand Chamber's judgments of principle – create a body of law which reflects 'common European standards' by which all States Parties are bound, this European supervision functions without prejudice to the basic premise that States ensure higher standards of human rights protection (Article 53 of the Convention).

## Impact of the Convention in State Parties – selected examples

### Albania

- More effective prevention of child abduction. The applicant in [Bajrami v. Albania](#) (Application 35853/04, judgement of 12 December 2006) had been unable to have a custody award in his favour enforced, since his ex-wife had taken their daughter to Greece. The Court found a violation of Article 8 of the Convention (right to respect for family life), interpreted in light of the Hague Convention on the Civil Aspects of International Child Abduction ('[Hague Convention](#)'), due to the lack of a specific remedy for preventing and punishing child abduction. This judgment prompted the Albanian authorities to complete the ratification procedure of the Hague Convention, to which it became a party on 1 August 2007.
- Proceedings cannot be reopened by prosecutor. In [Xheraj v. Albania](#) (Application No. 37959/02, judgment of 29 July 2008), the Strasbourg Court *inter alia* found that, by granting the prosecutor's appeal against the applicant's acquittal out of time, the Supreme Court had infringed the principle of legal certainty, thus violating the right to a fair trial (Article 6 (1) of the Convention). In response, the Albanian authorities organised training seminars and round-tables for judges and legal professionals to ensure appropriate implementation. The Supreme Court agreed to reopen the proceedings in relation to a number of applicants who had won their case in Strasbourg, including Mr Xheraj. (See [Resolution CM/ResDH\(2014\)96](#) and Supreme Court of Albania, case no. 76 of March 2012)
- Improvement of detention conditions. In [Dybeku v. Albania](#) (Application No. 41153/06, judgment of 08/12/2007), the Court ruled that the inadequacy of the applicant's detention conditions and inappropriate medical treatment qualified as inhuman and degrading treatment contrary to Article 3 of the Convention. In April 2014, a Law on the Rights and Treatment of Prisoners and Detainees was adopted, and the General Prison Directorate announced a review of the General Prison Rules as well as continuous training to medical staff in penitentiary hospitals. The positive impact of the individual measures taken in response to the Court's judgment, namely the applicant's transfer to

a specialised establishment for prisoners suffering from certain mental illnesses where he received daily medical treatment and psychiatric counselling, were acknowledged by the Court in [Dybeku v. Albania](#) (Application No. 557/12, decision (inadmissible) of 11 March 2014, paragraphs 25-26). (See information on the [status of execution](#), available from the website of the Council of Europe's Department for the Execution of the Judgments of European Court of Human Rights ('Execution Department'))

## Andorra

- Access to Constitutional Tribunal no longer subject to State Counsel's approval. A noteworthy legislative change was effected following the Court's admissibility decision in the case of [Millan i Tornes v. Andorra](#) (Application No. 35052/97, decision (admissible) of 17 November 1998, available in French only), in which the applicant had complained under Article 6 (1) of the Convention (access to a court) that the Andorran General Prosecutor's refusal to grant permission to lodge an *empara* appeal had denied him access to the Andorran Constitutional Court. The entry into force of the Constitutional Court (Amendment) Act on 20 May 1999 ultimately allowed the applicant to lodge an appeal with the Constitutional Court without the Principal State Counsel's agreement being required. In light of this, a friendly settlement was reached and the application was struck out of the list by judgment of 6 July 1999. (See paragraphs 19-23 of [the Court's judgment](#) (friendly settlement) of 6 July 1999, and [Resolution DH \(99\) 721](#))
- Domestic proceedings reopened subsequent to finding of a violation by Strasbourg Court. The Court's finding of a violation of Article 6 (1) of the Convention (right to a fair trial) in the case of [UTE Saur Vallnet v. Andorra](#) (Application No. 16047/10, judgment of 29 May 2012, available in French only) stemmed from a lack of impartiality of the administrative chamber of the High Court of Justice, due to the fact that the reporting judge in the appeals procedures in this case was partner in a law firm providing legal services to the government. The Court dismissed the Government's preliminary objections and held that, owing to the unduly strict interpretation of a procedural rule by the said chamber and by the Constitutional Court, the applicant company had been deprived of the possibility to obtain a hearing to have its appeal on grounds of nullity examined. Parliament subsequently refined its Judicial Proceedings Act to permit the review of such cases before its High Court of Justice (Law of 24 July 2014).

## Armenia

- Conscientious objectors need not serve in the military. In the case of [Bayatyan v. Armenia](#) (Application No. 23459/03, Grand Chamber judgment of 7 July 2011) before the Grand Chamber, the Court held that the prosecution and conviction of the applicant for refusing to perform military service had been in violation of his right to manifest his religion or belief under Article 9 of the Convention (freedom of conscience and religion). In 2013, Armenia therefore amended its Law on Alternative Service. Applications for alternative service from conscientious objectors have since been routinely granted; imprisoned contentious objectors have been released and their criminal records deleted. (See [Resolution DH\(2014\)225](#))
- Protection from unlawful deprivation of property. The case of [Minasyan and Semerjyan v. Armenia](#) (Application No. 27651/05, judgment of 23 June 2009) concerned an expropriation process in the centre of Yerevan, by which the applicants (and hundreds of other families) were deprived of their property. These expropriations were based on a number of Government decrees, in disregard of a decision by the Constitutional Court of 27 February 1998 which required that expropriations be based on statutory provisions. The Court found a violation of Article 1 of Protocol No. 1 to the Convention (protection of property). Whilst the adoption of a Law on Expropriation for the Needs of Society and the State pre-dates the Court's judgment, the latter's importance principally stems from the fact that it put emphasis on the need to observe the state's obligations under its own Constitution, as interpreted by the Constitutional Court. (See information on the [status of execution](#), available from the website of the Execution Department)
- No arrest or detention for administrative offences. As a result of implementation of the Court's judgment in [Galstyan v. Armenia](#) (Application No. 26986/03, judgment of 15 November 2007), in which the Court *inter alia* found a violation of the applicants' right to freedom of assembly (Article 11 of the Convention) due to their arrest and sentencing to several days' of detention for their (alleged) participation in demonstrations, 'administrative arrest and detention' practices of the law

enforcement agencies were eliminated in law. (See information on the [status of execution](#), available from the website of the Execution Department)

- Reform of the Criminal Procedure Code. In a number of cases including [Poghosyan v. Armenia](#) (Application No. 44068/07, judgment of 20 December 2011) and [Sefilyan v. Armenia](#) (Application No. 22491/08, judgment of 2 October 2012), the Court had to decide on the lawfulness of the applicants' detention. These judgments led to a change in the case law of the Court of Cassation, which now interprets national law in the light of breaches found by the Strasbourg Court with respect to, in particular, Articles 5 (1) (lawfulness of detention), 5 (3) (right to be brought promptly before a judge) and 5 (4) (right to have lawfulness of detention speedily examined by a court). The Court of Cassation has ruled that there should always be an opportunity to apply for pre-trial release on bail, regardless of the gravity of the charges; and that an accused must be brought before a competent court within three days of his or her arrest to have the lawfulness of the detention examined. (See information on the [status of execution](#), available from the website of the Execution Department)

## Austria

- Putting an end to the State monopoly on TV and radio broadcasting. In [Informationsverein Lentia and Others v. Austria](#) (Application Nos. 13914/88 et al., judgment of 24 November 1993) the Court found that the impossibility for the applicants to set up and operate private radio or television stations due to the monopoly of the Austrian Broadcasting Corporation breached Article 10 of the Convention (freedom to impart information). This judgment resulted in a liberalisation of regional and local radio broadcasting and of cable and satellite broadcasting, including a decision in 1995 by the Constitutional Court that removed the prohibition on the transmission of original programmes via cable. (See [Resolution DH \(98\) 142](#))
- Adoption rules must equally apply to unmarried different- and same-sex couples. The judgment in [X. and Others v. Austria](#) (Application No. 19010/07, Grand Chamber judgment of 19 February 2013) concluded that there had been a violation of Article 14 of the Convention (prohibition of discrimination) taken in conjunction with Article 8 (right to respect for family life) on account of the difference in treatment of the applicants, two women living in a stable relationship, in comparison with unmarried different-sex couples in which one partner sought to adopt the other partner's child. The women had complained about the Austrian courts' refusal to meaningfully examine one of the partners' request to adopt her partner's son, because Austrian law did not allow for such a possibility without severing the biological mother's legal ties with the child. Within less than six months of the judgment, the Law amending the Civil Code and the Registered Partnership Act entered into force, legalising second parent adoption in same-sex couples (registered or not) without terminating the child's legal bond with his or her biological parent. (See [Resolution CM/ResDH\(2014\)159](#))
- Disenfranchisement of prisoners must be proportionate. The Court's judgment in [Frodl v. Austria](#) (Application No. 20201/04, judgment of 8 April 2010), finding the blanket ban on prisoners' voting rights incompatible with the right to vote enshrined in Article 1 of Protocol No. 3 to the Convention, prompted the Austrian Parliament to pass the Electoral Law Amendment Act in 2011. According to the amended electoral code, no prisoner can be automatically deprived of the right to vote; a decision on disenfranchisement has to be taken by a judge based on rules set out in law, while taking into account the particular circumstances of the case and having regard to the Convention and the Court's case law. (See [Resolution CM/ResDH\(2011\)91](#))
- Equality for fathers not married to the mother of their children. In [Sporer v. Austria](#) (Application No. 35637/03, judgment of 3 February 2011) the Court found that the applicant, the father of a child 'born out of wedlock', had been treated differently, without justification, in comparison both with the child's mother and with married or divorced fathers in custody proceedings, resulting in a violation of Article 14 of the Convention (prohibition of discrimination) taken together with Article 8 (right to respect for family life). The relevant provisions of the Austrian Civil Code, pursuant to which the mother of a child 'born out of wedlock' had sole custody unless the child's best interest was at risk, were changed by virtue of the *Law amending Child Custody Law* and the *Law on Names*, which entered into force in February 2013. Austrian law now allows for judicial review into whether the interests of the child are better served by awarding sole custody to the father or joint custody. (See [Resolution CM/ResDH\(2015\)19](#))



## Azerbaijan

- Release of journalist from prison. In the case of [Fatullayev v. Azerbaijan](#) (Application No. 40984/07, judgment of 22 April 2010) the Court found that the conviction and prison sentence of a newspaper editor had violated his right to freedom of expression under Article 10 of the Convention, as well as his right to an independent tribunal (Article 6 (1)) and the presumption of innocence (Article 6 (2)). Mr Fatullayev was pardoned and released from prison on 26 May 2011. (See [Interim Resolution CM/ResDH\(2013\)199](#) and [Interim Resolution CM/ResDH\(2014\)183](#))
- Restoration of possession of unlawfully occupied flat. The judgment in [Akimova v. Azerbaijan](#) (Application No. 19853/03, judgment of 27 September 2007) concluded that there had been a violation of Article 1 of Protocol No. 1 to the Convention (right to peaceful enjoyment of possessions) on account of the formal postponement, for an indefinite period of time, of the enforcement of a domestic judgment ordering the eviction of internally displaced persons who were unlawfully occupying the applicant's apartment. The case was struck out after a [friendly settlement](#) was reached, in accordance with which the applicant was afforded compensation. Her possession of her apartment was restored on 14 March 2008. (See status information in the [status of execution](#), available from the website of the Execution Department)

## Belgium

- Children 'born out of wedlock' have equal inheritance rights. Legislative changes were made in response to [Marckx v. Belgium](#) (Application No. 6833/74, judgment (Plenary) of 13 June 1979) which found violations of Articles 8 (right to respect for private and family life) and 14 (prohibition of discrimination) of the Convention. These amendments secured equal inheritance rights for children of parents not legally married to each other. Moreover, the Civil Code was amended in 1987, *inter alia* to recognise a legal bond between an unmarried mother and her child resulting from the mere fact of birth, without the need for the mother to recognise maternity in specific proceedings or to adopt her child. (See [Resolution DH \(88\) 3, as well as the follow-up case of Vermeire v. Belgium](#) (Application No. 12849/87, judgment of 29 November 1991), and [Resolution DH \(94\) 3](#)).
- Accused must be able to understand verdict. In [Taxquet v. Belgium](#) (Application No. 926/05, Grand Chamber judgment of 16 November 2010) the Court held that the criminal proceedings against the applicant before the Assize Court had been unfair, in violation of Article 6 (1) of the Convention. In particular, there had been no safeguards in place to enable the applicant to ascertain which items of evidence and factual circumstances had caused the lay jury to reach a guilty verdict against him. In implementation of the [Chamber's judgment](#) of 13 January 2009, and without awaiting the judgment of the Grand Chamber, Belgium adopted a new law on 21 December 2009 which stipulates that the jury's verdict must contain the principal reasons for the jury's decision, to be formulated by the members of the jury assisted by the professional judges. (See [Resolution CM/ResDH\(2012\)112](#))
- Right to a public hearing in disciplinary proceedings. An adjustment of the national courts' jurisprudence on the right to a fair and public hearing by an independent and impartial tribunal established by law was prompted by the Court's judgments in [Le Compte, Van Leuven and De Meyere v. Belgium](#) (Application Nos. 6878/75 and 7238/75, judgment (Plenary) of 23 June 1981) and [Albert and Le Compte v. Belgium](#) (Application Nos. 7299/75 and 7496/76, judgment (Plenary) of 10 February 1983). The Belgian Supreme Court recognised that the right to exercise a profession which does not constitute a public function fell within the notion of a 'civil right' for the purpose of Article 6 (1) of the Convention (right to a fair trial) and, accordingly, that disciplinary hearings before professional councils had to satisfy Convention standards (at least at the stage of appeal) regarding their public conduct. (See [Resolution DH \(85\) 14](#) and [Resolution DH \(85\) 13](#))
- Parties must be able to reply to intervention of the representative of the prosecutor's office. The case of [Borgers v. Belgium](#) (Application No. 12005/86, judgment (Plenary) of 30 October 1991) concluded that the impossibility for an accused to reply to submissions made at a hearing of the Supreme Court by an official of the Procurator General's department at that court, who moreover participated in the deliberations, was contrary to the applicant's defence rights under Article 6 of the Convention (right to a fair trial). Shortly afterwards, it became customary to give the parties to the proceedings an opportunity to respond to the opinion of the Procurator General's representative. The latter has henceforth no longer participated in the deliberations. This practice

of allowing parties to respond to the opinion of the representative of the prosecutor's office, in particular in civil cases, was ultimately extended to all levels of jurisdiction and translated into an amendment to the Judicial Code (See [Resolution ResDH\(2001\)108](#))

- Right to assistance by a lawyer during police interrogation. In [Salduz v. Turkey](#) (Application No. 36391/02, Grand Chamber judgment of 27 November 2008), the Court held that Article 6 (1) and (3) (c) of the Convention implied that access to a lawyer should be provided, as a rule, from the first police interview of a suspect. In order to comply with these provisions of the Convention, as interpreted by the Court, the legislature adopted a law on 13 August 2011 (generally called the 'Salduz law'), providing for certain rights for everyone who is interrogated and who is deprived of his or her liberty, including in particular the right to consult a lawyer and to be assisted by a lawyer. The law was subsequently followed by various measures to make these rights effective, including through adaptation of the system of legal aid funded by the State.

## **Bosnia and Herzegovina**

- Judgments ordering the release of 'old' foreign-currency savings must be enforced. The applicant in [Jeličić v. Bosnia and Herzegovina](#) (Application No. 41183/02, judgment of 31 October 2006) was unable to withdraw her foreign-currency savings deposited prior to the dissolution of the SFRY. A judgment ordering the release of her savings was not enforced, and the Court held that this amounted to a violation of the applicant's right to access to court guaranteed in Article 6 (1) of the Convention as well as a violation of her right to peaceful enjoyment of property under Article 1 of Protocol No. 1. In implementation of this judgment, Bosnia and Herzegovina amended Article 27 of the Law on Settlement of Obligations arising from Old Foreign Currency Savings, to the effect that the courts are now obliged to submit final judgments to the ministries of finances for their settlement, creating a legal basis for the enforcement of final judgments. (See [Resolution CM/ResDH\(2012\)10](#))
- Psychiatric detention must be based on court decision. The Court's case law has led to legislative amendments regarding the rules on psychiatric detention. Following [Tokić and Others v. Bosnia and Herzegovina](#) (Application Nos. 12455/04 et al., judgment of 8 July 2008), where the applicant's psychiatric detention was found to be in violation of Article 5 (1) (right to liberty and security of the person) due to its failure to comply with essential procedural safeguards, the Code of Criminal Procedure was amended in 2003. Consequently, persons can no longer be held in psychiatric detention pursuant to an administrative decision taken by the Social Work Centre, but only based on a decision of the competent civil court. (See [Resolution CM/ResDH\(2014\)197](#), as well as [Halilović v. Bosnia and Herzegovina](#), Application No. 23968/05, judgment of 24 November 2009, paragraph 14)
- Requirement to reunite mother with son. In the case of [Šobota-Gajić v. Bosnia and Herzegovina](#) (Application No. 27966/06, judgment of 6 November 2007), the Court concluded that the failure of the authorities to take all reasonable measures to facilitate the applicant's reunion with her son, despite several domestic decisions in her favour, had violated her rights under Article 8 of the Convention (right to respect for family life). The Court's judgment triggered legislative reforms, with the 2002 Family Act of Republika Srpska prescribing that interim orders may be given during the course of custody and maintenance proceedings only by courts and not, as previously, by social care centres. (See [Resolution CM/ResDH\(2011\)45](#))

## **Bulgaria**

- Legal certainty of judgments in restitution cases. A legislative change came about in response to [Kehaya and Others v. Bulgaria](#) (Application Nos. 47797/99 and 68698/01, judgments of 12 January 2006 ([merits and just satisfaction](#)), and of 14 June 2007 ([just satisfaction](#))), which concerned violations of Article 6 (1) (principle of legal certainty) and Article 1 of Protocol No. 1 (peaceful enjoyment of property) on account of the case law of the Supreme Court allowing one government agency to challenge a final judgment which restored land collectivised in the 1950s to the applicants, delivered in proceedings against another government agency. In response, Bulgaria adopted a new Code of Civil Procedure, according to which a final judgment by an administrative court shall be binding upon the civil court regarding the lawfulness and the validity of an administrative act. (See [Resolution CM/ResDH\(2013\)238](#))

- State should not interfere in internal organisation of religious communities. The entry into force, in 2003, of a new Religious Denominations Act put an end to the situation whereby the executive, and not a judicial body, had been entrusted with registering religious communities wishing to obtain legal personality. Prior to that, a lack of clarity and predictability in the law as well as the executive's unfettered discretion had led to undue interferences in the internal organisation of a divided Muslim community, in violation of Article 9 of the Convention (right to freedom of religion), as the Court held in [Hasan and Chaush v. Bulgaria](#) (Application No. 30985/96, Grand Chamber judgment of 26 October 2000) and [Supreme Holy Council v. Bulgaria](#) (Application No. 39023/97, judgment of 16 December 2004). (See [Resolution CM/ResDH\(2011\)193](#))
- Restrictions on protest must be prescribed by law. In [Zeleni Balkani v. Bulgaria](#) (Application No. 63778/00, judgment of 12 April 2007) the Court observed that the decision to ban a rally for reasons not prescribed by law constituted an unjustified interference with the exercise of the right to peaceful assembly (Article 11 of the Convention). In 2010, amendments were made to the Meetings and Marches Act, according to which the mayor may ban a meeting only for the reasons set out in the law, and the decision to ban an event may be appealed before the competent administrative court. (See [Resolution CM/ResDH\(2011\)7](#))
- Appeal against sanction of detention for minor disturbance of public order. The violation of Article 2 of Protocol No. 7 to the Convention (right of appeal in criminal matters) in [Kamburov v. Bulgaria](#) (Application No. 31001/02, judgment of 23 April 2009, available in French only) and [Stanchev v. Bulgaria](#) (Application No. 8682/02, judgment of 01 October 2009) stemmed from the lack of second instance judicial control of judgments imposing a sanction of detention for a minor disturbance of the public order. In the light of the Court's ruling, the Bulgarian Constitutional Court declared Decree 904/1963 on Fight against Minor Disturbance, from which the Convention violation had originated, partially unconstitutional. The Decree was subsequently amended to the effect that individuals sentenced to administrative detention for a minor disturbance of the public order can now appeal to a higher court instance. (See [Resolution CM/ResDH\(2013\)99](#))
- Compensation for excessive length of proceedings. In the pilot judgments in [Dimitrov and Hamanov v. Bulgaria](#) (Application Nos. 48059/06 and 2708/09, judgment of 10 May 2011) and [Finger v. Bulgaria](#) (Application No. 37346/05, judgment of 10 May 2011), the Court required that Bulgaria introduce remedies to deal with unduly long criminal proceedings and set up a compensatory remedy in respect of unreasonably long criminal, civil and administrative proceedings. The Bulgarian authorities accordingly adopted amendments to the Judiciary Powers Act, which entered into force on 1 October 2012, introducing an administrative compensatory remedy for excessive length of proceedings. (See [Final Resolution CM/ResDH\(2015\)154](#))
- Detention on remand must be ordered by a court and judicially reviewable. In [Nikolova v. Bulgaria](#) (Application No. 31195/96, Grand Chamber judgment of 25 March 1999) the Court found that the lack of judicial review of the decision to detain the applicant on remand and the impossibility of challenging this detention at regular intervals had amounted to a violation of Article 5 (3) and (4) of the Convention (right to liberty and security). As a consequence, parliament adopted a reform on 6 August 1999, effective as of 1 January 2000, which amended, in particular, the Code of Criminal Procedure. Prosecutors or investigating judges can no longer detain persons for a prolonged period without any judicial review; instead, remand detention shall be ordered by a court, and persons in detention may apply to a court to have the lawfulness of their detention reviewed. (See [Resolution ResDH\(2000\)110](#))
- State must not impose blanket travel ban. At the origin of the violation of Article 2 of Protocol No. 4 to the Convention (freedom to leave any country) in [Stamose v. Bulgaria](#) (Application No. 29713/05, judgment of 27 November 2012) was the imposition of a two year travel ban on a Bulgarian national (a student who had breached the immigration rules of the United States by taking up paid work when living in the country on a student visa). The Court found that seizing the applicant's passport and prohibiting him from travelling to any foreign country had not been necessary in a democratic society. By means of two legislative amendments, the relevant section of the Bulgarian Personal Documents Act was repealed, and previously imposed travel bans ceased to have effect. (See [Resolution CM/ResDH\(2014\)249](#))
- Limits to the interception of prisoners' correspondence. The law regarding the control of prisoners' correspondence was amended following a series of cases in which the Court had found a violation

of Article 8 of the Convention (right to respect for private life and correspondence). In the case [Harachiev and Tolumov v. Bulgaria](#) (Application Nos. 15018/11 and 61199/12, judgment of 8 July 2014, paragraphs 273-277), the Court acknowledged these improvements.

## Croatia

- Access to the Constitutional Court. A change in the practice of the Constitutional Court was deemed capable, by the Committee of Ministers, to prevent future violation similar to that found in [Čamovski v. Croatia](#) (Application No. 38280/10, judgment of 23 October 2012). In this case, the Court had upheld the applicant's complaint under Article 6 (1) of the Convention against the inadmissibility of his constitutional complaint, which had resulted from an obvious error in calculating the prescribed time-limit. (See [Resolution CM/ResDH\(2015\)61](#))
- Better protection from eviction. A change in the case law of the Constitutional Court, by virtue of a binding decision (No. U-III-46/2007) of 22 December 2010, and the corresponding change in the practice of the domestic courts have strengthened individuals' procedural rights in eviction proceedings. In light of the Strasbourg Court's finding of a violation of the applicants' right to respect for their home (Article 8 of the Convention) in [Čosić v. Croatia](#) (Application No. 28261/06, judgment of 15 January 2009) and [Paulić v. Croatia](#) (Application No. 3572/06, judgment of 22 October 2009) on account of their evictions from their state-owned flats, courts have started to apply the proportionality test in eviction proceedings. (See [Resolution CM/ResDH\(2011\)48](#))
- Improving opportunities for Roma children in education. The measures taken to implement the Court's judgment in [Oršuš and Others v. Croatia](#) (Application No. 15766/03, Grand Chamber judgment of 16 March 2010) appear to form part of the authorities' wider efforts to address inequalities in the education of Roma children. The Grand Chamber ruled that the applicants had suffered discrimination in their right to education (violation of Article 14 of the Convention in conjunction with Article 2 of Protocol No. 1) on account of their placement in Roma-only classes with a reduced curriculum in primary school, ostensibly owing to insufficient command of the Croatian language. Following amendments to the Law on Primary and Secondary School Education in July 2010, schools are obliged to provide special assistance to children with poor command of Croatian. A number of measures, such as providing for separate language classes and lessons, have since been taken with a view to assisting Roma pupils in acquiring the necessary language skills to integrate into mixed classes. (See information on the [status of execution](#), available from the website of the Execution Department; and the [2012 report](#) of the European Commission against Racism and Intolerance (ECRI) on Croatia, paragraphs 59-81)
- State may prosecute soldiers for war crimes who had previously been granted amnesty. The Court held in [Marguš v. Croatia](#) (Application No. 4455/10, Grand Chamber judgment of 27 May 2014) that Article 4 of Protocol No. 7 to the Convention, which enshrines the principle of *ne bis in idem* (no one shall be tried twice for the same offence) was not applicable to conviction for war crimes committed by a soldier who had previously been granted an amnesty. Although the Court did not find a violation of the Convention in the instant case, the domestic authorities are now processing war crimes that had previously been covered by the General Amnesty Act.
- Requirement for measures to establish paternity. The Court's finding of a violation of Articles 6 (1) (right to a fair trial within a reasonable time), 8 (right to respect for private life) and 13 (right to an effective remedy) of the Convention in the case of [Mikulić v. Croatia](#) (Application No. 53176/99, judgment of 7 February 2002) prompted the enactment of a new Family Act, providing for specific measures to establish paternity rapidly where the putative father refuses to cooperate in the proceedings. Domestic courts have further established a practice of considering failure to attend a medical examination to establish paternity to be evidence in favour of the opposing side. (See [Resolution ResDH\(2006\)69](#))
- Right not to be tried twice for the same offence. In [Maresti v. Croatia](#) (Application No. 55759/07, judgment of 25 June 2009) the Court *inter alia* upheld the applicant's complaint under Article 4 of Protocol No. 7 to the Convention that his trial for misdemeanour and the criminal proceedings against him had breached his right not to be tried twice for the same offence. The State Attorney's Office subsequently issued specific instructions not to prosecute persons in two separate proceedings for the same event, which resulted in a change of domestic practice. The prohibition of instituting minor offences proceedings for offences already subject to criminal prosecution was



subsequently codified in the Minor Offences Code. (See information on the [status of execution](#), available from the website of the Execution Department)

- Equality of arms in criminal proceedings. The source of the violation of the applicant's right to a fair trial (Article 6 of the Convention) in [Zahirovic v. Croatia](#) (Application No. 58590/11, judgment of 25 April 2013) was a breach of the principle of equality of arms owing to the Supreme Court's failure to forward an opinion of the State Attorney's Office to the applicant, thus depriving him of the opportunity to comment on the observations made. It has been removed through the adoption, in December 2013, of the new Code of Criminal Procedure, pursuant to which public prosecutors are no longer entitled to submit written observations on the merits of a case to the competent appellate court which have not been communicated to the defendant. (See information on the [status of execution](#), available from the website of the Execution Department)
- Constitutional Court will examine complaints about lawfulness of detention even if the impugned decision has already been set aside. The Constitutional Court has aligned its judicial practice regarding review of the lawfulness of remand detention to the requirements of Article 5 (4) of the Convention (right to have lawfulness of detention speedily examined by a court) in its Decision No. U-III-5449/2013 of 13 January 2014 and subsequent case law, in order to give effect to the Court's judgments in [Krnjak v. Croatia](#) (Application No. 11228/10, judgment of 28 June 2011) and a number of similar cases. Given that the Convention violations in these cases had stemmed from the Constitutional Court's practice of declaring complaints contesting the lawfulness of detention inadmissible where the impugned decisions on detention were no longer in effect, the constitutional practice was changed accordingly; the Constitutional Court has henceforth examined such complaints on the merits. (See information on the [status of execution](#) of the [Krnjak](#) case, available from the website of the Execution Department, as well as [Jović v. Croatia](#) (Application No. 45593/13, judgment of 13 October 2015, paragraph 24))

## Cyprus

- Decriminalisation of homosexual relations between consenting adults. In the same line as its previous judgment in [Dudgeon v. the United Kingdom](#) (Application No. 7525/76, judgment (Plenary) of 22 October 1981), the Court held in [Modinos v. Cyprus](#) (Application No. 15070/89, judgment of 22 April 1993) that the statutory prohibition of homosexual relationships between consenting male adults was contrary to Article 8 of the Convention (right to respect for private life), notwithstanding the Attorney-General's policy of not bringing criminal proceedings. By means of two amendments to the impugned provision of the Cyprus Criminal Code, in 1998 and 2000 respectively, male homosexual conduct in private between consenting adults was decriminalised. (See [Resolution ResDH\(2001\)152](#))
- Protection from eviction for tenants of State-owned dwellings. Parliament adopted amendments to the Rent Control Law in 2002, stipulating, *inter alia*, that the provisions contained therein concerning the protection from eviction shall be equally applicable to both the tenants of State-owned dwellings and tenants renting from private landlords. The amendments were triggered by the Court's judgment in [Larkos v. Cyprus](#) (Application No. 29515/95, Grand Chamber judgment of 18 February 1999), where it found a violation of Article 14 of the Convention (prohibition of discrimination) in conjunction with Article 8 (right to respect for one's home) based on the fact that, unlike a private tenant living in a regulated area rented from a private landlord, the applicant, a retired civil servant who had rented a house from the Government, was not protected from eviction at the end of his lease. (See [Resolution CM/ResDH\(2007\)5](#))
- Right for members of the Turkish Cypriot community to vote in parliamentary elections. The case of [Aziz v. Cyprus](#) (Application No. 69949/01, judgment of 22 June 2004) originated in a complaint by a Turkish-Cypriot, who had resided all his life in the part of Cyprus controlled by the government, about his ineligibility to vote in the parliamentary elections. To comply with the Court's judgment finding a violation of Article 3 of Protocol No. 1 to the Convention (right to vote), taken alone and together with Article 14 (prohibition of discrimination), Parliament enacted Law 2(I) of 2006, extending the right to vote and to be elected in parliamentary, municipal and community elections to Turkish-Cypriots habitually residing in the Republic of Cyprus. (See [Resolution CM/ResDH\(2007\)77](#))
- Increase in courts' resources to avoid delays. The Court's case law has brought about improvements in the administration of justice. With the Court having concluded, in a number of

cases including [Papageorgiou v. Cyprus](#) (Application No. 39972/98, judgment of 21 March 2000), [Louka v. Cyprus](#) (Application No. 42946/98, judgment of 2 August 2000) and [Gregoriou v. Cyprus](#) (Application No. 62242/00, judgment of 25 March 2003), that the length of the domestic criminal, civil or administrative judicial proceedings in Cyprus was not in line with the ‘reasonable time’ requirement embodied in Article 6 (1) of the Convention (right to a fair trial within a reasonable time), additional judges were recruited and the IT equipment of the courts was modernised. (See ‘Report by Mr Alvaro Giles-Robles, the Commissioner for Human Rights, on his visit to Cyprus’ (25-29 June 2003), document [CommDH\(2004\)2](#), paragraph 6)

- Effective remedy for length-of-proceedings complaints. In response to an adverse judgment of the Strasbourg Court, Cyprus introduced an effective remedy for complaints relating to the excessive length of civil and administrative proceedings. Whereas the Court had found a violation of Article 13 of the Convention in [Clerides & Kynigos v. Cyprus](#) (Application No. 35128/02, judgment of 19 January 2006) on account of the absence of an effective preventative or compensatory remedy, it was ready to accept, in [Panayi v. Cyprus](#) (Application No. 46370/09, decision (inadmissible) of 23 September 2010) that the remedies provided by Law 2(I) of 2010, which had been adopted to give effect to the Court’s findings in [Clerides & Kynigos](#), were effective.

## Czech Republic

- Family must not be separated solely on grounds of material difficulties. The violation of Article 8 of the Convention (right to respect for family life) established in [Wallová and Walla v. the Czech Republic](#) (Application No. 23848/04, judgment of 26 October 2006, available in French only) and [Havelka and Others v. the Czech Republic](#) (Application No. 23499/06, judgment of 21 June 2007, available in French only) stemmed from the placing of the applicant families’ children into institutional care solely because their housing had been inadequate. The new Civil Code entered into force in January 2014, stipulating expressly that a family’s inadequate housing conditions and the material situation of a child’s parents cannot *per se* be a reason for the court’s decision on institutional care. Thus, it codified the previous findings of the Supreme Court from December 2010 and subsequent case law of the Constitutional Court. In addition, national action plans and strategies were adopted with a view to initiating activities to better support children at risk and improve the care for vulnerable children. (See [Resolution CM/ResDH\(2013\)218](#))
- Requirement of effective investigation into death in police custody. A violation of the right to life (Article 2 of the Convention) was found in the case of [Eremiášová and Pechová v. the Czech Republic](#) (Application No. 23944/04, judgment of 16 February 2012 and [revision](#) of 20 June 2013) on two accounts: first, for failure to safeguard the right to life of the applicants’ relative, who had died allegedly jumping out a window while in police custody; and secondly, on account of the authorities’ failure to effectively investigate the circumstances surrounding his death. Following the communication of the application to the Government, a legislative amendment (Act No. 341/2011) was adopted, establishing an independent General Inspectorate tasked with investigating offences allegedly committed by police officers. These legislative amendments were preceded by a binding instruction issued by the Chief of Police, setting out in more detail the obligations of police officers in ensuring safety and security at police stations. (See [Resolution CM/ResDH\(2014\)69](#))
- Compensation for unreasonable length of proceedings. The cases of [Bořánková v. the Czech Republic](#) (Application No. 41486/98, judgment of 7 January 2003, final on 21 May 2003, available in French only) and [Hartman v. the Czech Republic](#) (Application No. 53341/99, judgment of 10 July 2003) concerned the excessive length of proceedings before civil, administrative and criminal courts, as well as the lack of an effective remedy in this respect. The Court’s finding of violations of Articles 6 (1) (right to a fair hearing within a reasonable time) and 13 (right to an effective remedy) of the Convention led to the amendment, in April 2006, of the Act on Liability for Damage Incurred in the Course of Exercise of Public Powers through a Decision or Incorrect Administrative Procedure. The law introduced a compensatory remedy for unreasonable length of proceedings, and the Government took measures to expedite court proceedings. (See [Resolution CM/ResDH\(2013\)89](#) and Committee of Ministers’ [7<sup>th</sup> annual report 2013](#), page 112)
- Clearer rules for lodging appeals to the Constitutional Court. The case of [Adamíček v. the Czech Republic](#) (Application No. 35836/05, judgment of 12 October 2010, available in French only) – pertaining to the right to a fair trial as set out in Article 6 (1) of the Convention – dealt with the lack of clear rules as regards the formalities and time-limits to be observed in order to lodge a constitutional appeal. In February 2012, the Constitutional Court repealed as unconstitutional the

contested provisions of the Code of Civil Procedure. Parliament subsequently adopted an Act amending the Code as well as the Constitutional Court Act in October 2012, which clarified in detail the conditions under which a constitutional appeal should be deemed admissible. (See [Resolution CM/ResDH\(2013\)58](#) and Committee of Ministers' [7<sup>th</sup> annual report 2013](#), page 121)

## Denmark

- No compulsory membership in trade union. The case of [Sørensen and Rasmussen v. Denmark](#) (Application Nos. 52562/99 and 52620/99, Grand Chamber judgment of 11 January 2006) concerned the compulsory membership of a trade union as a precondition for recruitment. Less than a month after the Court had declared this to be in breach of Article 11 of the Convention (freedom of association), the Danish government tabled a bill amending the Act on Protection against Dismissal due to Association Membership, which entered into force on 29 April 2006. It prohibits closed-shop collective agreements, thereby securing an effective enjoyment of the negative right to freedom of association. (See [Resolution CM/ResDH\(2007\)6](#))
- Trial judge must not have made decision concerning pre-trial detention in the same case. In [Hauschildt v. Denmark](#) (Application No. 10486/83, judgment (Plenary) of 24 May 1989) the Court held that the applicant had not received a fair trial by an impartial tribunal under Article 6 (1) of the Convention, since some of the judges involved in his trial had also taken decisions ordering his pre-trial detention. In the wake of this judgment, Denmark amended its Administration of Justice Act, clarifying that a judge who has ordered the pre-trial detention of an accused during the initial hearing of a criminal case cannot subsequently examine the case on its merits. (See [Resolution DH \(91\)9](#))
- Better supervision of compensation proceedings for persons infected with HIV through blood transfusion. Following the Court's judgment in [A. and Others v. Denmark](#) (Application No. 20826/92, judgment of 8 February 1996), which concluded that the length of compensation proceedings with respect to persons who had contracted HIV through blood transfusions had been unreasonably long (violation of Article 6 (1) of the Convention in respect of several of the applicants), the Danish civil courts' practice was adapted in order to ensure better supervision of compliance with the reasonable time requirement. Aside from that, a special compensation fund was established. (See [Resolution DH \(96\) 606](#))
- Extension of freedom of expression. In the case of [Jersild v. Denmark](#) (Application No. 15890/89, Grand Chamber judgment of 23 September 1994) the Court held that the conviction of a journalist for aiding and abetting the dissemination of racist statements and imposition of a fine had not been necessary in a democratic society. The applicant had prepared a TV programme in which he interviewed youths who made racist remarks. In finding a violation of Article 10 of the Convention (right to freedom of expression), the Court had regard to the contents and context of the feature and the 'public watchdog' role of the media. The 1991 Media Liability Act was enacted, in effect, in anticipation of an adverse finding by the Court, pending the application before the European Commission on Human Rights. (See [Resolution DH \(95\) 212](#))

## Estonia

- Suspects must know evidence essential for specifying the content of the suspicion filed against them. The violation of Article 5 (4) of the Convention (right to have lawfulness of detention speedily reviewed) in [Ovsjannikov v. Estonia](#) (Application No. 1346/12, judgment of 20 February 2014) had stemmed from the applicant's lack of access to the criminal file or the material presented by the prosecutor to the court deciding on his remand in custody and the lawfulness of his continued detention. A modification of the Criminal Procedure Code in July 2014 ensured, *inter alia*, that suspects would henceforth have the right to request access to any evidence essential to discuss the lawfulness of an arrest warrant in court. (See [Resolution CM/ResDH\(2015\)136](#))
- Legal-aid lawyers must fulfil their tasks. The applicant in the case of [Andreyev v. Estonia](#) (Application No. 48132/07, judgment of 22 November 2011) was deprived of his right to appeal before the Supreme Court in the criminal proceedings against him, since his legal-aid lawyer had failed to lodge an appeal within the applicable time limit. Following the Court's finding of a violation of Article 6 (1) of the Convention (access to court), the applicant successfully applied to have his case re-opened. Having adjusted its practice, the Supreme Court now accepts that wrongful

failure by an advocate can be a reason to restore a term for appeal in cassation. In addition, new legislative provisions enshrined in the State Legal Aid Act and the Criminal Procedure Code (in force since 1 January 2010 and 1 September 2011, respectively) foresee the possibility to remove an incompetent or negligent advocate from the court room. (See [Resolution CM/ResDH\(2013\)8](#))

- Improvement of conditions of pre-trial detention. In the light of the Court's conclusion, in [Kochetkov v. Estonia](#) (Application No. 41653/05, judgment of 2 July 2009), that the conditions of the applicant's pre-trial detention had amounted to a violation of Article 3 of the Convention (prohibition of inhuman or degrading treatment), the State has taken measures to improve the physical conditions at both Narva Arrest House and other remand centres, including significantly reducing occupancy rates, undertaking maintenance work, and constructing new buildings. Moreover, it transpires from domestic case law that the Estonian courts no longer interpret the State Liability Act, under which they can award monetary compensation for non-pecuniary damage suffered as a result of inhuman or degrading detention conditions, as requiring that it be established that certain officials had been at fault for consciously placing a person in degrading conditions. (See [Resolution CM/ResDH\(2013\)9](#))

## Finland

- State must take measures to facilitate contact between children in foster care and their parents. The Court found in [K.A. v. Finland](#) (Application No. 27751/95, judgment of 14 January 2003) that the competent authorities had failed to take adequate measures to reunite parents with their children placed in foster care, in violation of Article 8 of the Convention (right to respect for private and family life), triggering a legislative reform. The Child Welfare Act was amended (and subsequently replaced by a new Act) to provide more precise regulations, in particular regarding contact between children in foster care and their parents. The Government also implemented a training programme for staff of social services on child welfare promotion. (See [Resolution CM/ResDH\(2007\)34](#))
- Trial records will be kept confidential for a longer period. The significance of the case of [Z v. Finland](#) (Application No. 22009/93, judgment of 25 February 1997) stems from the fact that it contributed to strengthening the respect for individuals' privacy by extending the time period during which confidential data concerning litigants are to be kept secret. In *Z.*, the Court ruled, *inter alia*, that court decisions to limit the confidentiality of the trial record, which contained information about the applicant's HIV infection, to a period of ten years (after which her medical records would become accessible to the public), and the disclosure of her identity and medical data in the Court of Appeal's judgment had breached her right to respect for her private life under Article 8 of the Convention. This judgment was duly taken into account by the Supreme Court in a decision of 19 March 1998, when extending to 40 years the period during which confidentiality of the applicant's medical is to be maintained. (See [Resolution DH \(99\) 24](#))
- Limits to searches of law firms. Amendments to the Finnish Coercive Measures Act were provoked by [Petri Sallinen and Others v. Finland](#) (Application No. 50882/99, judgment of 27 September 2005) and [Heino v. Finland](#) (Application No. 56720/09, judgment of 15 February 2011), where the Court ruled that the search of the applicants' law firms and seizure of 'privileged' material, i.e. material also affecting the rights of their clients, had been in breach of their right to respect for their privacy (Article 8 of the Convention). In its amended version, the Coercive Measures Act sets out clearly the circumstances in which privileged material may be subject to search and seizure, and contains additional safeguards for 'special searches' referring to premises (such as law firms) which may be assumed to contain information on which a person cannot testify at trial or which he or she may refuse to reveal. (See information on the [status of execution](#), available from the website of the Execution Department)
- Removal of strict time-limit for judicial recognition of paternity. In [Grönmark v. Finland](#) (Application No. 17038/04, judgment of 6 July 2010) and [Backlund v. Finland](#) (Application No. 36498/05, judgment of 6 July 2010) the Court held that there had been a violation of Article 8 of the Convention (right to respect for family life) on account of the dismissal of the applicant's paternity claims as time-barred. The Court considered that the time-limit for judicial recognition of paternity should not be imposed automatically and regardless of the circumstances of an individual case. National courts have since adopted a more lenient interpretation concerning access to courts in paternity cases. (See [Röman v. Finland](#) (Application No. 19072/05, judgment of 29 January 2013,



paragraph 59), as well as information on the [status of execution](#), available from the website of the Execution Department)

## France

- Legal recognition of the new identity of post-operative transsexuals. A change in national judicial practice concerning the possibility for the civil status of transgender persons to match their new gender identity was brought about by the Court's judgment in [B. v. France](#) (Application No. 13343/87, judgment (Plenary) of 25 March 1992), finding that the lack of legal recognition of the new identity of a post-operative transsexual constituted a violation of Article 8 of the Convention (right to respect for private life). In December 1992, the Court of Cassation established a precedent, ruling that transsexuals having undergone medical and surgical treatment to make their physical appearance match their social identity should have their civil status reflect their new gender. (See [Resolution DH \(93\) 52](#))
- Inheritance equality for children 'born out of wedlock'. In the same vein as [Marckx v. Belgium](#) (Application No. 6833/74, judgment (Plenary) of 13 June 1979, summarised above) the Court concluded in [Mazurek v. France](#) (Application No. 34406/97, judgment of 1 February 2000) that the statutory discrimination in terms of inheritance rights against children of parents who were not married to each other at the time of birth was in violation of Article 1 of Protocol No. 1 to the Convention (peaceful enjoyment of possessions) in conjunction with Article 14 (prohibition of discrimination). In addition to national courts setting aside the pertinent provision, the Civil Code was changed by Law No. 2001-1135 of 3 December 2001 to remove existing forms of discrimination between children born to unmarried as opposed to married parents regarding inheritance rights. (See [Resolution ResDH\(2005\)25](#))
- Limits to phone-tapping. In [Kruslin v. France](#) (Application No. 11801/85, judgment of 24 April 1990) and [Huvig v. France](#) (Application No. 11105/84, judgment of 24 April 1990) the Court found that French legislation in respect to phone-tapping was not compatible with Article 8 of the Convention (right to respect for private life). Within one year, Law No. 91.646 of 10 July 1991 changed practices to take the Court's findings into account. (See Keller/Stone Sweet 2008: 127)
- Insulting the Head of State is no longer a crime. Following [Eon v. France](#) (Application No. 26118/10, judgment of 14 March 2013, available in French only), which found a violation of a political activist's right to freedom of expression under Article 10 of the Convention on account of his prosecution for insulting the President by having held up a satirical placard, Parliament abolished the crime of insult to the Head of State. The President today enjoys the same protection against libel and defamation as ministers and MPs. However, proceedings for insult or defamation can only be brought by the person concerned, and not by the prosecutor. (See [Resolution CM/ResDH\(2014\)10](#), as well as [Law No. 2013-711 of 5 August 2013](#), available in French only)
- Effective legal protection from slavery and servitude. France undertook several revisions of its legal framework governing individuals' protection from domestic slavery in the wake of [Siliadin v. France](#) (Application No. 73316/01, judgment of 26 July 2005) and [C.N. and V. v. France](#) (Application No. 67724/09, judgment of 11 October 2012), which concluded that there had been violations of Article 4 of the Convention (prohibition of slavery and servitude) because French law had not provided tangible and effective protection to the applicants. The latter had been placed against their will into situations of dependence, which forced them to work long hours without pay, and without having been allowed to go to school. Further to an amendment to the Penal Code in March 2003, which established a presumption of vulnerability for minors in case of servitude and provided an aggravation of the penalty, a law of November 2007 created a criminal offence of trafficking human beings. The latter was further specified by Law No. 2013-711 of 5 August 2013, which completed the definition of trafficking in human beings, reintroduced slavery in the penal code and added the offenses of servitude and forced labour. (See [Resolution CM/ResDH\(2011\)210](#) and [Resolution CM/ResDH\(2014\)39](#))
- End to outright ban on military personnel joining any trade-union. In the case of [Matelly v. France](#) (Application No. 10609/10, judgment of 2 October 2014, available in French only) the prohibition on members of the armed forces in taking part in activities of professional associations was called into question and declared to be contrary to Article 11 of the Convention (right to freedom of association). In the aftermath of the Court's judgment, the President of the Republic appointed a senior official to prepare legislative amendments to the Defense Code. By virtue of [Law No. 2015-](#)

[917](#) of 28 July 2015, a right for military personnel to freely form and join national professional associations was introduced, adapted to the specific nature of military missions.

- Automatic suspensive effect of appeals against rejection of asylum application. [Gebremedhin \(Gaberamadhien\) v. France](#) (Application No. 25389/05, judgment of 26 April 2007) dealt with the rejection of an Eritrean national's request at Charles de Gaulle airport for leave to enter France with a view to applying for asylum. The Court considered that the lack of automatically suspensive effect of a decision refusing entry had exposed him to a risk of ill-treatment if returned to Eritrea, in violation of Article 13 of the Convention (right to an effective remedy) taken in conjunction with Article 3 (prohibition of torture, inhuman or degrading treatment or punishment). The applicant was allowed leave to enter France following the Court's order, under Rule 39 of the Rules of Court, not to remove him to Eritrea, and was ultimately granted refugee status. In terms of general measures taken to avoid future violations, a Law of 20 November 2007 amended the Code regulating the Admission and Residence of Aliens and the Right of Asylum by conferring an automatically suspensive effect on decisions to refuse admission to French territory with respect to asylum applications. (See [Resolution CM/ResDH\(2013\)56](#))
- Accused must be able to understand reasons for conviction. France has also amended its legislation in response to adverse judgments against other States Parties. Mention can be made of a reform following the Court's judgment in [Taxquet v. Belgium](#) (Application No. 926/05, Grand Chamber judgment of 16 November 2010, summarised above) whereby a provision was added to the Criminal Procedure Code which requires that a motivation sheet be appended to judgments by the Assize Court rendered by a lay jury, setting out on which evidentiary basis the accused was found guilty. In the light of these changes, the Court declared the applicant's complaint under Article 6 of the Convention (right to a fair trial) in [Matis v. France](#) (Application No. 43699/13, decision of 6 October 2015) inadmissible, accepting that there had been sufficient guarantees enabling him to understand the verdict.
- Access to court to challenge lawfulness of searches by tax authorities. The judgment in [Ravon and Others v. France](#) (Application No. 18497/03, judgment of 21 February 2008, available in French only) found a violation of the right to a fair trial as enshrined in Article 6 (1) of the Convention on account of lack of access to a court to review searches and seizures in professional and private premises by the tax authorities. In the light of this finding, the Code of Tax Procedure was amended by Law No. 2008-776 of 4 August 2008, which introduced a remedy to challenge the lawfulness and merits of court orders authorising such searches and seizures before the court of appeal's first president. The latter's decision can be appealed to the Court of Cassation. (See [Resolution CM/ResDH\(2012\)28](#) and [Société Provitel Saint-Georges et J. Emery v. France](#) (Application No. 29437/08, decision (inadmissible) of 9 November 2010, available in French only)
- Legal recognition of parentage of children born abroad as a result of lawful surrogacy. A revision of the Court of Cassation's jurisprudence came about as a result of two judgments issued on 26 June 2014 – [Mennesson v. France](#) (Application No. 65192/11) and [Labassée v. France](#) (Application No. 65941/11), in which the Strasbourg Court decided that the French authorities' refusal to grant legal recognition to parent-child relationships that had been legally established in the United States between children born as a result of surrogacy treatment and the intended parents who had the treatment had amounted to a violation of the children's right to respect for their private life (Article 8 of the Convention). By way of delivering two precedent cases on 3 July 2015, the Court of Cassation's Plenary Assembly established that a refusal to transcribe a foreign birth certificate of a child born abroad to a French national on the sole ground that this birth was the result of surrogacy can no longer be justified by the mere existence of a surrogacy agreement containing the names of the actual biological parents. (See [Cass., ass. plén., 3 juill. 2015, P+B+R+I, n° 14-21.323](#) and [Cass., ass. plén., 3 juill. 2015, P+B+R+I, n° 15-50.002](#))

## Georgia

- Compensation to victims of Soviet era repression. The case of [Klaus and Yuri Kiladze v. Georgia](#) (Application No. 7975/06, judgment of 2 February 2010, available in French only) related to a legislative gap preventing victims of political repression during the Soviet era from effectively asserting their right to compensation. In the wake of the Court's finding of a violation of Article 1 of Protocol No. 1 to the Convention (right to peaceful enjoyment of possessions), legislative reforms

were undertaken in April 2011 and October 2014; legislation now foresees that victims of Soviet era repression be granted compensation of 1000-2000 lari. (See [Resolution CM/ResDH\(2015\)41](#))

- DNA tests become foremost ground for establishing civil paternity. The applicants in the case of [Okroshidzebi v. Georgia](#) (Application No. 60596/09, decision (strike out) of 11 December 2012), a mother and her son, complained about the domestic courts' refusal to accept unambiguous DNA results as the ground for establishing civil paternity and thus to provide for child maintenance payments. Following the communication of the complaint, the Civil Code was amended by virtue of Law No. 5568 of 20 December 2011, according to which courts shall henceforth establish paternity on the basis of the results of a biological (genetic) or anthropological examination. The case was struck out of the list after a friendly settlement was reached between the applicants and the Government, in which the latter acknowledged a breach of Article 8 of the Convention (right to respect for private and family life) and entitled the applicants to apply for a reopening of the proceedings.
- Investigations into ill-treatment by state agents. The cases of [Bekauri and Others v. Georgia](#) (Application No. 312/10, decision (strike out) of 15 September 2015) and [Botchorishvili v. Georgia](#) (Application No. 652/10, decision (strike out) of 30 June 2015) illustrate the use of 'unilateral declarations' whereby cases concerning alleged ill-treatment at the hands of law enforcement officers and prison staff have been settled: the authorities acknowledge substantial and/or procedural violations of Article 3 of the Convention (prohibition of torture, inhuman or degrading treatment or punishment), agree to pay compensation, and undertake to conduct prompt and effective investigations into instances of ill-treatment. See, in this connection, the Committee of Ministers' decision to close the supervision of the execution of the Court's judgment in [Davtyan v. Georgia](#) (Application No. 73241/01, judgment of 27 July 2006, available in French only) and [Danelia v. Georgia](#) (Application No. 68622/01, judgment of 17 October 2006, available in French only) following the reopening of the investigations into the applicants' alleged ill-treatment in police custody. (See [Resolution CM/ResDH\(2014\)208](#))
- Freedom of expression covers criticism of politicians and public servants. Until 2004, there was no standard set in Georgian law with respect to criticism of politicians and public servants. The applicable Civil Code failed to differentiate between politicians and public servant on the one hand and ordinary people on the other. Drawing guidance from the Strasbourg Court's case law, national courts began to develop judicial standards envisaging different treatment, and on 24 June 2004, Parliament adopted a [Law on Freedom of Speech and Expression](#) which takes into account international standards, expressly noting, in Article 2, that the law should be interpreted in accordance with the Convention.
- Improving health care in prisons. A number of judgements, including those of [Makharadze and Sikharulidze v. Georgia](#) (Application Nos. 35254/07, judgment of 22 November 2011) and [Poghosyan v. Georgia](#) (Application No. 9870/07, judgment of 24 February 2009, available in French only) concerned lack of appropriate health care in prisons. In the latter case, the failure to provide adequate care to a prisoner with viral hepatitis C constituted a violation of the prohibition of inhuman or degrading treatment under Article 3 of the Convention. A major prison reform has yielded positive results, notably in terms of Hepatitis C and tuberculosis prevention, diagnostics and treatment. (See [Resolution CM/ResDH\(2014\)209](#), as well as [Goginashvili v. Georgia](#), Application No. 47729/08, judgment of 4 October 2011, paragraph 55)

## Germany

- Redress for excessively long domestic proceedings. The Court's pilot judgment in [Rumpf v. Germany](#) (Application No. 46344/06, pilot judgment of 2 September 2010) appears to have contributed to the finalisation of reforms, triggered by the previous judgments of [Sürmeli v. Germany](#) (Application No. 75529/01, Grand Chamber judgment of 8 June 2006) and others, all of which concerned violations of Article 6 (1) of the Convention. These reforms allowed Germany to overcome a long-standing structural problem concerning the excessive length of civil proceedings. Most notably, a new *Act on Legal Redress for Excessive Length of Court Proceedings and of Criminal Investigation Proceedings* established an acceleratory and a compensatory remedy, aimed at preventing future violations. (See [Resolution CM/ResDH\(2013\)244](#))
- Prohibition of retrospective order or extension of preventive detention. In a number of cases including [M. v. Germany](#) (Application No. 19359/04, judgment of 17 December 2009), the Court

held that the applicants' rights not to be unlawfully detained (Article 5 of the Convention) and not to be subject to a heavier penalty than the one initially imposed (Article 7) had been violated because of their continued placement in detention beyond the maximum period authorised at the time of their conviction. Following a decision of the Federal Constitutional Court (Case No. 2 B v R 2365/09) on the same matter and legislative changes introduced by, *inter alia*, the *Act to Reform the Law on Preventive Detention and on the Accompanying Provisions* of 22 December 2010, the Criminal Code no longer allows for retrospective extension of preventive detention. (See [Resolution CM/ResDH\(2014\)290](#))

- Strengthening the rights of fathers. The case of [Zaunegger v. Germany](#) (Application No. 22028/04, judgment of 3 December 2009) strengthened equality for fathers who are not married to the mother of their children, by leading to changes in legislation (2013 *Act to Reform Parental Custody of Parents Not Married to Each Other*) and practice to the effect that courts shall now grant joint custody, upon motion by a parent, as far as this is not contrary to the child's best interests (which will be presumed if the mother does not submit any reasons that could be contrary to such joint custody) (see [Resolution CM/ResDH\(2014\)163](#)). Of interest, in this context, is the case of [Görgülü v. Germany](#) (Application No. 74969/01, judgment of 26 February 2004): at stake was an appeal court decision suspending Mr Görgülü's visitation rights and denying him custody of his son (who had been born out of wedlock and given up for adoption without the applicant's consent) living in a foster family. Following the Court's judgment, the Constitutional Court granted temporary visiting rights to the applicant in December 2004. The authorities facilitated visits, the child started living with his father in February 2008 and, six months later, the latter was granted sole custody (see [Resolution CM/ResDH\(2009\)4](#)). Additional legislative amendments aimed to strengthen the rights of biological, non-legal fathers in terms of contact with and access to information about their children came into force in July 2013, having been adopted in the wake of [Anayo v. Germany](#) (Application No. 20578/07, judgment of 21 December 2010) and [Schneider v. Germany](#) (Application No. 17080/07, judgment of 15 September 2011).
- Police must not threaten suspect with physical harm during interrogation. The Court's judgment in [Gäfgen v. Germany](#) (Application No. 22978/05, Grand Chamber judgment of 1 June 2010) found that the applicant had been subjected to inhuman and degrading treatment in violation of Article 3 of the Convention during police interrogation, when officers threatened to use force against him if he refused to disclose the whereabouts of an abducted child. Although the authorities acknowledged the Convention violation in domestic proceedings, they had failed to afford the applicant sufficient redress, *inter alia* because of the disproportionately lenient punishment of the police officers involved. The judgment was disseminated widely, and now forms part of the human rights education and training of law enforcement officers. (See [Resolution CM/ResDH\(2014\)289](#))
- Protection of whistle-blowers. The case of [Heinisch v. Germany](#) (Application No. 28274/08, judgment of 21 July 2011) dealt with the dismissal – found by the Court to be disproportionate and therefore in breach of Article 10 of the Convention (right to freedom of expression) – of a nurse for having lodged a criminal complaint against the nursing home where she was working, alleging shortcomings in the care provided to patients there. Measures adopted in response to the Court's judgment included the re-opening of the domestic proceedings, which resulted in a settlement being reached between the applicant and her former employer, who agreed to pay her 90,000 euros in compensation. (See the Government's Final Action Report, document [DD\(2013\)813](#))
- Use of evidence obtained as a result of incitement by agent provocateurs. In [Furcht v. Germany](#) (Application No. 54648/09, judgment of 23 October 2014) the Court held that the criminal proceedings against the applicant had been unfair (in breach of Article 6 (1) of the Convention) because he had been incited by undercover police agents to commit the offence of which he was convicted. According to the Strasbourg Court, all evidence obtained in such a way had to be excluded, or a procedure with similar consequences had to be applied. The Federal Court of Justice and the Federal Constitutional Court used to be of the view that it was sufficient, in such cases, to mitigate the sentence. In a ruling of 10 June 2015 (2 StR 97/14), the Federal Court of Justice aligned its jurisprudence to the Strasbourg Court's case law, by acknowledging a procedural impediment to using evidence obtained as a result of entrapment. (See the Supreme Court's [press release](#) (in German))
- Ban of discriminatory payment of fire service levies. In [Karlheinz Schmidt v. Germany](#) (Application No. 13580/88, judgment of 18 July 1994), the situation whereby only men were obliged to serve as firemen or pay a financial contribution in lieu was held to constitute discrimination contrary to Article 14 of the Convention, taken in conjunction with Article 4 (3) (d) (prohibition of forced



labour). Following the judgment of the Court, the authorities of Baden-Württemberg and of the two other *Länder* which had similar regulations (Bavaria and Saxony) stopped requesting the payment of (outstanding) fire service levies. A subsequent judgment by the Federal Constitutional Court concluded that the impugned provisions were unconstitutional. (See [Resolution DH \(96\) 100](#))

- Abolition of the practice of administering emetics. Those *Länder* which used the practice of forcible administration of emetics (substances that induce vomiting) to secure evidence abandoned the said practice in the wake of the Grand Chamber's judgment in [Jalloh v. Germany](#) (Application No. 54810/00, Grand Chamber judgment of 11 July 2006). In this case the Court held that the forcible administration of emetics to a drug-trafficker in order to recover a plastic bag containing drugs that he had swallowed, and the decisive weight given to the evidence thus obtained in the criminal trial against the applicant had amounted to violations of the latter's right not to be subjected to inhuman or degrading treatment (Article 3 of the Convention) and to his right not to incriminate himself (which forms part of Article 6 (1) of the Convention). (See [Resolution CM/ResDH\(2010\)53](#))
- Protection of a princess' privacy from newspaper photographers. In [Von Hannover v. Germany](#) (Application No. 59320/00, judgment of 24 June 2004) the Court found that Germany had breached the right to respect for private life (Article 8 of the Convention) of the applicant, Princess Caroline of Monaco, owing to the domestic courts' refusal to uphold the injunction regarding certain photographs of her. A [second](#) (Grand Chamber) and [third](#) judgment delivered by the Court on 7 February 2012 and 19 September 2013, respectively, resulted in the finding of no violation, as the Court considered that national courts, including the Federal Court of Justice as well as the Federal Constitutional Court, had subsequently correctly applied the Convention principles and Strasbourg case law. (See [Resolution CM/ResDH\(2007\)124](#), as well as European Court of Human Rights 2014, [Seminar background paper](#), paragraph 29)

## Greece

- No need to disclose religious convictions when taking oath in criminal proceedings. In the case of [Dimitras and Others v. Greece \(No. 2\)](#) (Application Nos. 34207/08 and 6365/09, judgment of 3 November 2011, available in French only) the Court held that there had been an unjustified interference with the applicants' freedom of religion (violation of Article 9 of the Convention) due to the fact that they had been obliged, when taking an oath at criminal court hearings, to reveal their religious convictions in order to be allowed to make a solemn declaration instead of a religious oath. Legislative amendments were introduced in 2012, providing that individuals can choose at their discretion and without further formalities between taking a religious oath and making a solemn declaration in the context of criminal procedures. (See [Resolution CM/ResDH\(2012\)184](#))
- Legal recognition of same-sex couples. On 22 December, Parliament adopted a new Civil Partnership Bill which will allow same-sex couples to enter into a civil partnership, thereby providing for legal recognition and extending certain rights, such as inheritance rights, to same-sex couples. This Bill remedies a situation whereby same-sex couples were excluded from the scope of a Law introduced in 2008 which established a form of registered partnerships, but reserved it to opposite-sex couples. The Strasbourg Court had concluded that the reasons advanced for not opening civil unions to same-sex couples had been unconvincing, in breach of the prohibition of discrimination taken together with the right to respect to private and family life (violation of Article 14 in conjunction with Article 8 of the Convention) in its Grand Chamber judgment in [Vallianatos and Others v. Greece](#) (Application Nos. 29381/09 and 32684/09, Grand Chamber judgment of 7 November 2013).
- Better protection of conscientious objectors. In order to give effect to the Court's judgment in [Thlimmenos v. Greece](#) (Application No. 34369/97, Grand Chamber judgment of 6 April 2000), Parliament enacted a new Law (2915/2001) which entered into force on 29 May 2001. The judgment concluded that the exclusion of the applicant, a Jehovah's Witness, from the profession of chartered accountant because of his previous criminal conviction for insubordination (based on his refusal to wear the military uniform) had discriminated against him in the exercise of his freedom of religion (violation of Article 14 in conjunction with Article 9 of the Convention). The new law allows for the removal, in certain circumstances, from criminal records of sentences imposed on grounds of conscientious objection to military service, and exempts the beneficiaries of the relevant provision from producing a certificate of completion of military service for their appointment in the public sector. (See [Resolution ResDH\(2005\)89](#))

- Maximum duration of detention pending expulsion must be set out in law. The applicant in the case of [Mathloom v. Greece](#) (Application No. 48883/07, judgment of 24 April 2012, available in French only) maintained, *inter alia*, that the length of his detention pending expulsion of more than two years and three months had been excessive. The Court found a violation of Article 5 (1) (f) of the Convention (right to liberty and security), noting, in particular, the absence of any provision in national law setting out the maximum duration of detention with a view to expulsion. To avoid such violations from reoccurring, the Criminal Code was amended in 2012, in conformity with the relevant EU Directive, setting out a maximum period of detention with a view to expulsion, as well as rules relating to regular judicial review. (See [Resolution CM/ResDH\(2014\)232](#))
- Entitlement to pension payments as mother of a large family regardless of children's nationality. The applicant in [Zeibek v. Greece](#) (Application No. 46368/06, judgment of 9 July 2009, available in French only) as well as her husband and their four children had their Greek nationality withdrawn by a decision of the Minister of the Interior, based on a provision in the Nationality Code which was later repealed. Upon application for naturalisation, the applicant and three of her children had their Greek nationality restored, but not her husband and one daughter. As a consequence, the applicant's request for a pension as the mother of a large family was rejected on grounds that one of her four children did not have Greek nationality. Against the background of the Court's finding of a violation of Article 1 Protocol No. 1 to the Convention (right to peaceful enjoyment of possessions), taken alone and together with Article 14 (prohibition of discrimination), the Legal Council of the State issued a legal opinion which was binding on the Administration, clarifying that "the nationality of the children of persons with large families should not be taken into consideration when processing the award of the relevant allowances". (See [Resolution CM/ResDH\(2012\)34](#))

## Hungary

- State can no longer compel individuals to change their family names if these are not compatible with the domestic rules governing the use of married names. The impact of the Convention in the field of family law becomes apparent from [Daróczy v. Hungary](#) (Application No. 44378/05, judgment of 1 July 2008). The applicant in this case was obliged to change the name she had taken (and used ever since) when she got married more than fifty years previously, because it had apparently not corresponded to the correct way to use her married name. The Court held that this had constituted to a breach of Article 8 of the Convention (right to respect for private life). In 2009, Parliament amended the relevant law, allowing that persons bearing the name of their former spouse, however incorrectly, may continue to do so if they can prove that they used to bear the name in that form. (See [Resolution CM/ResDH\(2012\)187](#))
- Whole life prison sentences must be subject to review. The Court's finding of a violation of Article 3 of the Convention (prohibition of inhuman or degrading treatment or punishment) in [László Magyar v. Hungary](#) (Application No. 73593/10, judgment of 20 May 2014) originated in provisions in Hungarian law allowing for whole life prison sentences without a possibility of parole. Legislative reforms initiated following this judgment culminated in the adoption, on 18 November 2014, of Act no. LXXII introducing mandatory pardon proceedings for prisoners serving life sentences without eligibility for parole. Whilst the Court has not to date assessed the Convention compatibility of the newly established provisions (see [T.P. v. Hungary](#) (Application No. 37871/14) and [A.T. v. Hungary](#) (Application No. 73986/14), communicated to the Government on 25 March 2015), it is noteworthy that the said law foresees an *ex officio* pardon procedure to be carried out once a prisoner has served 40 years of his or her sentence. (See information on the [status of execution](#), available from the website of the Execution Department)
- Severance pay must be taxed proportionately. The case of [N.K.M. v. Hungary](#) (Application No. 66529/11, judgment of 14 May 2013) concerned the disproportionately high taxation of severance pay. When dismissed from her job, the applicant, a civil servant, was entitled to a severance pay, a part of which was, however, taxed at 98%. The overall tax burden, amounting to 52%, was thus considerably higher than that applied to all other revenues, including severance pay in the private sector. The Court held that there had been a violation of Article 1 of Protocol No. 1 to the Convention (right to peaceful enjoyment of possessions). In September 2014, Act no. XXXIX regulating the Reimbursement of Unlawfully Levied Tax entered into force. Whilst the Convention compatibility of the new provisions remains to be ascertained, the tax rate on statutory severance payments was reduced to 75%, and the Act allows individuals to claim back overpaid taxes. (See document [DH-DD\(2015\)7](#))

## Iceland

- Right not to belong to an association. The right of taxi drivers not to be legally forced to belong to an association was recognised in the national legal order following the Court's judgment in [Sigurdur A. Sigurjónsson v. Iceland](#) (Application No. 16130/90, judgment of 30 June 1993), concerning an undue interference with the applicant's negative right to freedom of association (violation of Article 11 of the Convention). By Act No. 61/1995, which entered into force in March 1995 (before ultimately being abolished in 2001), Parliament eliminated the legislative requirement for taxi operators to belong to a specified union in order to obtain a license to conduct business. In addition, by Act No. 97/1995, Parliament added a provision to the Constitution, enshrining both the right to establish and not to join associations. Following the Court's judgment in [Vörður Ólafsson v. Iceland](#) (Application No. 20161/06, judgment of 27 April 2010), Iceland moreover abolished, by virtue of Act No. 124/2010, the legal obligation on non-members to pay an 'industry charge' to the Federation of Icelandic Industries. (See [Resolution DH \(95\) 36](#))
- Defamation of civil servants no longer a specific criminal offence. In [Thorgeir Thorgeirsson v. Iceland](#) (Application No. 13778/88, judgment of 25 June 1992) the Court held that the proceedings instituted against the applicant for defamation of a civil servant and his subsequent conviction had constituted a violation of his right to freedom of expression, as enshrined in Article 10 of the Convention. By Act No. 71/1995, which entered into force on 13 March 1995, Parliament abolished the impugned provision of the General Penal Code on the defamation of civil servants. A newly added article imposed stricter conditions for an indictment to be filed against defamation or insinuation of a (former) civil servant. (See [Resolution DH\(92\)59](#))
- Limits set out in law to the length of detention following arrest, including for public drunkenness. An example of a situation where national law was brought in line with Convention requirements even before the Court found a violation concerns the deprivation of liberty in case of drunken and disorderly conduct. Parliament *inter alia* adopted a new Police Act No. 90/1997, which entered into force on 1 July 1997 and contained new provisions stipulating that in the case of arrest, no person shall be detained longer than necessary. The Committee of Ministers accepted that this was capable of preventing further violations of Article 5 (1) of the Convention similar to that found in [Hilda Hafsteinsdóttir v. Iceland](#) (Application No. 40905/98, judgment of 8 June 2004). Here, the Court noted that the law applicable at the material time, based on which the applicant had been arrested and detained on several occasions for being drunk and disorderly, was neither precise enough nor clear enough with regard to, first, the length of such detention and, second, the exercise of the police's discretion. (See [Resolution CM/ResDH\(2008\)44](#))

## Ireland

- Prohibition of discrimination against children born to parents not married to each other. Amendments to Irish family law were triggered by the Court's judgment in [Johnston and Others v. Ireland](#) (Application No. 9697/82, judgment (Plenary) of 18 December 1986), which involved the prohibition of divorce and lack of recognition of the family life of parents who have lived in a family relationship with their daughter over many years but were unable to marry on account of the indissolubility of one of the spouses' existing marriage. The Court found that the legal situation of the daughter, who was not placed in a legally and socially akin position to that of child whose parents were married to each other, gave rise to a violation of Article 8 of the Convention (right to respect for private and family life). In implementation of the Court's judgment, Ireland enacted the Status of Children Act 1987, which put children born out of wedlock on a comparable footing with children whose parents are married to each other in the areas of guardianship, maintenance and property rights. (See [Resolution DH \(88\) 11](#))
- Decriminalisation of homosexuality. Reaffirming its judgment in [Dudgeon v. the United Kingdom](#) (Application No. 7525/76, judgment (Plenary) of 22 October 1981), the Court found Ireland to be in violation of Article 8 of the Convention (right to respect for private life) in [Norris v. Ireland](#) (Application No. 10581/83, judgment (Plenary) of 26 October 1988), since the Irish law made homosexual acts between consenting male adults a criminal offence. Homosexuality was decriminalised by virtue of the Criminal Law (Sexual Offences) Act 1993. (See [Resolution DH \(93\) 62](#))
- Access to court and legal aid. The applicant in the case of [Airey v. Ireland](#) (Application No. 6289/73, judgment of 9 October 1979) had been unable to obtain a judicial separation from her

violent husband because she could not afford the legal fees and had been refused legal aid. The Court concluded that this had amounted to a violation of her right to access to a court (Article 6 (1) of the Convention). Irish court proceedings were subsequently simplified and civil legal aid and advice schemes were set up. (See [Resolution DH \(81\) 8](#))

- Children not to be placed for adoption without consulting biological father. In [Keegan v. Ireland](#) (Application No. 16969/90, judgment of 26 May 1994) the Court upheld the applicant's complaint under Article 8 of the Convention that the State had failed to respect his family life by facilitating the placement of his daughter for adoption without his knowledge or consent, and by failing to create a legal nexus between himself and his daughter from the moment of birth. To comply with the Strasbourg Court's judgment, the Irish legislator adopted a new Adoption Act which entered into force on 29 April 1998. It enshrines a legally protected right to natural fathers to be consulted in matters of adoption of their children, providing them an opportunity to exercise their right to apply for guardianship and/or custody of their children if they so wish. (See [Resolution DH \(99\) 123](#))
- Tackling excessive length of domestic proceedings. [McFarlane v. Ireland](#) (Application No. 31333/06, Grand Chamber judgment of 10 September 2010) is one of a series of cases pertaining, *inter alia*, to the excessive delay in both criminal and civil proceedings, in violation of the right to a fair trial within a reasonable time pursuant to Article 6 of the Convention. Further to a [constitutional amendment](#), approved in a referendum in October 2013, and implementing legislation (the [Court of Appeal Act 2014](#)), a new Court of Appeal was established to deal with both civil and criminal appeals. It became operational on 28 October 2014, thus decreasing the backlog of appeals cases pending before the Supreme Court. (See information on the [status of execution](#), available from the website of the Execution Department)
- Abortion laws. A referendum held one month after the Court concluded, in [Open Door and Dublin Well Woman v. Ireland](#) (Application Nos. 14234/88 and 14235/88, judgment (Plenary) of 29 October 1992), that the restrictions imposed on the applicant companies to make available information to pregnant women about abortion services in the United Kingdom had violated their right to freedom of expression (Article 10 of the Convention) resulted in two amendments to the Constitution. These allowed information about lawfully available abortions abroad to be disseminated and obtained in Ireland, and lifted a previously existing ban on travelling abroad for abortion. Moreover, the source of the violation of Article 8 (right to respect for private life) in respect of one of the applicants in [A, B and C v. Ireland](#) (Application No. 25579/05, Grand Chamber judgment of 16 December 2010), namely the lack of an accessible and effective procedure by which she could have tested her qualification for a lawful abortion in Ireland on the basis of a possible risk to her life, was addressed by the adoption of the *Protection of Life During Pregnancy Act 2013* and accompanying regulations. The Act, which came into operation on 1 January 2014, specifies the procedure for determining whether there is a risk to the life of a pregnant woman which would make an abortion permissible. (See [Resolution DH \(96\) 368](#) and [Resolution CM/ResDH\(2014\)273](#))
- Disenfranchisement of prisoners must be proportionate. An example of a Contracting Party changing its law following a violation judgment against another State Party is [Hirst v. the United Kingdom \(No. 2\)](#) (Application No. 74025/01, Grand Chamber judgment of 6 October 2005) concerning the absolute ban, under UK law, of prisoners' voting. The Electoral Law of Ireland was amended, since it contained the same blanket voting ban upon prisoners that the Grand Chamber had found to be in breach of Article 3 of Protocol No. 1 to the Convention (right to vote). (See document [AS/Jur/Inf \(2010\) 04](#), page 24)
- Psychiatric detention must be judicially reviewable. An example of how the Convention has positive repercussions at the domestic level even in the absence of an adverse judgment by the Court is the case of [Croke v. Ireland](#) (Application No. 33267/96, judgment of 21 December 2000). The applicant had complained that the absence of an independent and automatic review prior to or immediately after his initial detention in a psychiatric institution, and the absence of a periodic, independent and automatic review of his detention thereafter, violated his right to liberty under Article 5 of the Convention. The case was struck out of the list on the basis of a friendly settlement based on the Government's intention to enact a new Mental Health Bill, bringing its legislation into conformity with the Convention. The new Bill entered into force in 2001. (See [Resolution ResDH\(2003\)8](#))
- Investigation into fatal police shooting. The case of [Nic Gibb v. Ireland](#) (Application No. 17707/10, decision (struck out) of 25 March 2014) also exemplifies the impact of the Convention absent a



violation finding of the Court. The application was struck out on the basis of a detailed unilateral declaration from the Government, in which it acknowledged a procedural violation of the right to life enshrined in Article 2 of the Convention, and pledged to establish a statutory Commission of Inquiry charged with investigating the fatal shooting by police of the applicant's partner.

## Italy

- Defendant must be able to cross-examine co-accused. In [Lucà v. Italy](#) (Application No. 33354/96, judgment of 27 May 2001) the Court held that the applicant's conviction, solely on the basis of pre-trial statements made by a co-accused person whom he had not been allowed to cross-examine, had violated the fair trial guarantees enshrined in Article 6 (1) and Article 6 (3) (d) of the Convention. Subsequent constitutional and legislative amendments provided that statements made in a non-adversarial context may be used in criminal proceedings only with the consent of the accused person. (See [Resolution ResDH\(2005\)86](#))
- Opportunity for children abandoned at birth to find out about their origins. In response to [Godelli v. Italy](#) (Application No. 33783/09, judgment of 25 September 2012), the Constitutional Court reversed its jurisprudence and declared the impugned provision of Law no. 184/1983 which had given rise to a violation of Article 8 of the Convention (right to respect for private life) unconstitutional. Ms Godelli had challenged the blanket ban under Italian law for children abandoned at birth to request access to non-identifying information on their origin, or the waiver of confidentiality by their birth parents. Italian courts have adjusted their practice accordingly, and will now seek to establish if the parents still wish to preserve their anonymity. (See [Resolution CM/ResDH\(2015\)176](#))
- Individuals cannot be detained before the enforcement of a preventive measure. In its [report](#) of 8 May 1987 concerning [Cuilla v. Italy](#) (Application No. 11152/84, available in French only), the European Commission of Human Rights found that the applicant's deprivation of liberty to secure preventive police measures had been unlawful and thus contrary to Article 5 (1) of the Convention. In anticipation of the Court following this reasoning in its [judgment](#) (Plenary) of 22 February 1989, legislative amendments by means of Law no. 327 of 3 August 1988 abolished the possibility of holding a person in custody while an application for a compulsory residence order or another preventive measure is being considered. (See [Resolution DH \(90\) 13](#))
- Effective remedy for complaints about prison overcrowding. Italy has adopted a range of measures to remedy a structural and systemic problem relating to overcrowding in prisons in order to comply with the Court's pilot judgment [Torreggiani v. Italy](#) (Application Nos. 43517/09 et al., judgment of 8 January 2013, available in French only), which raised an issue under Article 3 of the Convention (prohibition of inhuman or degrading treatment). Legislative reforms were introduced to combat overcrowding, and a compensatory remedy providing for damage was established which the Strasbourg Court recognised as effective in two inadmissibility decisions issued on 16 September 2014, [Stella and Others v. Italy](#) (Application Nos. 49169/09 et al.) and [Rexhepi and Others v. Italy](#) (Application Nos. 47180/10 et al.) (See the [Decision](#) adopted by the Committee of Ministers at the 1201st meeting (June 2014), as well as the information on the [status of execution](#) available from the website of the Execution Department)
- Prohibition of arbitrary inspection of prisoners' correspondence. In the case of [Calogero Diana v. Italy](#) (Application No. 15211/89, judgment of 21 October 1996) concerning the monitoring of the applicant's correspondence during his detention, the Court found violations of Article 8 (right to respect for correspondence) and 13 (right to an effective remedy) of the Convention. Legislation was subsequently amended to prohibit arbitrary inspections and extend judicial review to cover the monitoring or restriction of prisoners' correspondence. (See [Resolution ResDH\(2005\)55](#))
- Reforms of the judicial system to tackle problems relating to length of proceedings. Italy has had long-standing problems relating to excessive length of domestic judicial proceedings and the lack of an effective remedy in that regard, leading to numerous violations of Articles 6 (1) (right to a fair trial in a reasonable time) and 13 (right to an effective remedy) of the Convention, such as in the cases of [Ceteroni v. Italy](#) (Application Nos. 22465/93 and 22461/93, judgment of 15 November 1996) and [Bottazzi v. Italy](#) (Application No. 34884/97, Grand Chamber judgment of 28 July 1999). Parliament adopted the so-called 'Pinto' law (Law no. 89 of 24 March 2001), setting out a right to compensation in cases of unduly lengthy proceedings. Following the case of [Gaglione and Others v. Italy](#) (Application Nos. 45867/07 et al., judgment of 21 December 2010,

available in French only), which dealt with 475 cases of substantial delay in the payment of 'Pinto' compensation, the funds for these payments were increased, and the Ministry of Justice was authorised to pay them even if the funds in relevant budgetary chapter were insufficient, by using a separate procedure. Moreover, the 'Pinto' law was amended in 2012 with a view to expediting the procedure. (See Addendum to Assembly's report on 'Implementation of judgments of the European Court of Human Rights: 8th report', [Doc. 13864](#), paragraphs 15-22) More broadly, the legislative and organisational measures taken to remedy this situation included the introduction of a simplified procedure for less complex civil disputes and of an out-of-court dispute resolution procedure, computerisation and the digitalisation of case files, as well as the hiring of 400 'auxiliary judges' at courts of appeal, and the appointment of judges as law clerks at the Court of Cassation. (See Appendix 1 to the Assembly's report on 'Implementation of judgments of the European Court of Human Rights: 8th report', [Doc. 13864](#), paragraphs 6-14)

- Reform of bankruptcy proceedings. The Court found a number of Convention violations in relation to bankruptcy proceedings, most notably in the cases of [Luordo v. Italy](#) (Application No. 32190/96, judgment of 17 July 2003) and [Bottaro v. Italy](#) (Application No. 56298/00, judgment of 17 July 2003, available in French only), relating in particular to respect for correspondence (Article 8 of the Convention), freedom of movement (Article 2 of Protocol No. 4), the right to a fair trial (Article 6 (1)) and an effective remedy (Article 13), as well as the right to peaceful enjoyment of possessions (Article 1 of Protocol No. 1). Italy subsequently reformed its bankruptcy law through Legislative Decree No. 5/2006, which brought about a number of modifications to remedy the violations found by the Court. It should be noted, however, that the Committee of Ministers has called upon Italy to take further measures to rectify prevailing shortcomings before it will close its examination of these cases. (See [Interim Resolution CM/ResDH\(2010\)224](#) and [Interim Resolution CM/ResDH\(2007\)27](#))

## Latvia

- Provision of pension rights for former Soviet workers. Individuals who earned pension entitlements in the former Soviet Union have benefited from the Convention and the Court's case law. In [Andrejeva v. Latvia](#) (Application No. 55707/00, Grand Chamber judgment of 18 February 2009) the Court ruled that the refusal to grant the applicant a retirement pension in respect of her years of employment in the former Soviet Union, on the ground that she did not have Latvian citizenship, was in violation of Article 14 of the Convention (prohibition of discrimination) in conjunction with Article 1 of Protocol No. 1 (right to peaceful enjoyment of possessions). On 19 January 2011, the *Agreement on Cooperation concerning Social Security* between the Republic of Latvia and the Russian Federation entered into force, allowing a Latvian non-citizen who had accrued periods of work on the territory of the Russian Federation a right to submit an application to the State Social Insurance Agency, requesting the recalculation of the amount of his or her retirement pension. (See information on the [status of execution](#), available from the website of the Execution Department)
- Fewer limitations on standing for election. Changes to the election laws came about in implementation of two judgments finding a violation of Article 3 of Protocol No. 1 to the Convention on account of the applicants' disqualification from standing for election. As a result of [Podkolzina v. Latvia](#) (Application No. 46726/99, judgment of 9 April 2002), the Law on Election to Parliament was amended on 9 May 2002 and the provisions requiring higher proficiency in Latvian language for all persons running for parliamentary election were deleted. On 1 April 2009 and 7 March 2014, further amendments to that law entered into force, *inter alia* narrowing the scope of limitations on standing for election which were at the origin of the violation found in [Adamsons v. Latvia](#) (Application No. 3669/03, judgment of 24 June 2008, available in French only). Whereas such limitations could previously be applied to all former members working in the KGB or a KGB controlled department, without taking into account the duration of employment, the duties assigned to the person and his or her behaviour and attitude, persons who were directly performing primary functions in the KGB are now eligible to stand for elections. (See [Resolution ResDH\(2003\)124](#) and [Resolution CM/ResDH\(2014\)279](#))
- Reforms to tackle excessive length of proceedings. In [Korņakovs v. Latvia](#) (Application No. 61005/00, judgment of 15 June 2006, available in French only) the Court found violations of Articles 5 (1) (right to liberty and security of the person), 5 (3) (right to be brought promptly before a judge) and 6 (1) (right to a fair trial) of the Convention due to the length of criminal proceedings in Latvia. New legislation was adopted to ensure that judicial proceedings be conducted within a

reasonable time. The new Law of Criminal Procedure from 1 October 2005 was found to be Convention compliant in [Trūps v. Latvia](#) (Application No. 58497/08, decision (inadmissible) of 20 November 2012).

- Investigation into ill-treatment by police. In several cases – including, but not limited to [Jasinskis v. Latvia](#), Application No. 45744/08, judgment of 21 December 2010 and [Holodenko v. Latvia](#) (Application No. 17215/07, judgment of 2 July 2013) – the Court concluded that the investigation into alleged ill-treatment by police officers was not effective, given the lack of institutional independence: the complaints were investigated by a unit subordinated to the Chief of Police. To prevent future violations of the procedural aspects of Articles 2 (right to life) and 3 (prohibition of torture and inhuman or degrading treatment) of the Convention on this account, Parliament adopted, on 17 December 2014, the *Law on Internal Security Office*. Since the latter's entry into force on 1 November 2015, a separate Internal Security Office, operating under the supervision of the Minister of Justice, has had authority to investigate alleged offences by officials of the institutions subordinated to the Ministry of the Interior, prison officials, as well as the Municipal Police. (See the Government's action report in the case of [Djundiks v. Latvia](#) (Application No. 14920/05, judgment of 15 April 2014), document [DH-DD\(2015\)1007E](#))

## Liechtenstein

- Removal of absolute sovereign immunity. In [Wille v. Liechtenstein](#) (Application No. 28396/95, Grand Chamber judgment of 28 October 1999) the Court found a violation of Article 13 of the Convention (right to an effective remedy) since it was not possible for the applicant to file a constitutional complaint before the Liechtenstein Constitutional Court against the Prince, who enjoyed immunity. As a result, the Liechtenstein legislator amended the Constitutional Court Act to henceforth allow for any person to file a complaint against any public authority alleging a breach of the Constitution or the Convention – including the Prince. (See [Resolution ResDH\(2004\)84](#))
- Detainee will be heard in proceedings on extension of pre-trial detention. A change in the procedural practice of the Superior Court came about as a response to the Court's conclusion, in [Frommelt v. Liechtenstein](#) (Application No. 49158/99, judgment of 24 June 2004), that the fact that the applicants had not been entitled to an adversarial hearing in the proceedings leading to the extension of his remand detention to the maximum of one year had infringed his right to have the lawfulness of his detention speedily reviewed by a court (Article 5 (4) of the Convention). In order to prevent cases such as the applicant's from reoccurring, pre-trial detainees have since had a possibility to comment on the requests of the investigating judge and the prosecutor. (See [Resolution CM/ResDH\(2007\)55](#))

## Lithuania

- Prohibition of preventive and arbitrary pre-trial detention. The case of [Jėčius v. Lithuania](#) (Application No. 34578/97, judgment of 31 July 2000) concerned two issues under Article 5 (1) of the Convention (right to liberty and security): preventive detention (which the Court found to be unlawful), and the lack of clear legal norms to regulate pre-trial detention (which the Court found to be arbitrary). Preventive detention was abolished in June 1997, following the communication of the application (pending before the European Commission) to the Government. Furthermore, and in the light of the Commission's [report](#) and the Court's judgment, Parliament adopted a new Code on Criminal Procedure in March 2002 in order, *inter alia*, to comply with Strasbourg case law relating to the application and interpretation of Article 5. (See [Resolution ResDH\(2004\)56](#))
- Effective remedy for length-of-proceeding complaints. Up until the inadmissibility decision in [Savickas and Others v. Lithuania](#) (Application Nos. 66365/09 et al., decision (inadmissible) of 15 October 2013) the Court used to consider that, even though Article 6.272 of the Civil Code (2001) allowed a civil claim to be lodged for pecuniary and non-pecuniary damage in respect of unlawful actions of the investigating authorities or the courts, the Lithuanian courts' practice had never proved that legislation to be effective in respect of excessively lengthy domestic proceedings. In [Savickas](#), the Court concluded that the Lithuanian courts had eventually started applying the Convention and the Court's case law in interpreting Article 6.272 of the Civil Code, and was ready to accept that their practice had become such that an action for damages under that provision could be seen as an effective remedy in respect of length-of-proceedings complaints.

- Protection from undue interference with prisoners' correspondence. The rather vague definition of the term 'censorship' in the legislation used to give rise to numerous cases of alleged abuse by the authorities, who engaged in extensive screening or withholding of detainees' correspondence. The Court found this interference to violate Article 8 of the Convention (right to respect for one's correspondence) in [Jankauskas v. Lithuania](#) (Application No. 59304/00, judgment of 24 February 2005) and [Čiapas v. Lithuania](#) (Application No. 4902/02, judgment of 16 November 2006). To illustrate the impact of the Court's case law in this connection, mention can be made of the follow-up given to [Valašinas v. Lithuania](#) (Application No. 44558/98, judgment of 24 July 2001) concerning the censorship of the applicant's correspondence with the Strasbourg Court: Lithuanian legislation was amended to set out the conditions under which the correspondence of persons in detention may be controlled, and to expressly proscribe interference with prisoners' correspondence with the Strasbourg Court. (See [Resolution ResDH\(2004\)44](#))

## Luxembourg

- Judicial impartiality of the Conseil d'Etat. [Procola v. Luxembourg](#) (Application No. 14570/89, judgment of 28 September 1995) raised the issue of the composition of the Judicial Committee of the Conseil d'Etat and had a bearing on the domestic legal order in that it led to a change in the composition of the Conseil d'Etat. Members of the Judicial Committee can no longer perform both advisory and judicial functions in the same proceedings, and thus the source of the Court's finding that the applicant's proceedings had not met the requirements of impartiality embodied in Article 6 (1) of the Convention was eradicated. Subsequent constitutional amendments created the Administrative Tribunal and the Administrative Court, which have since performed the judicial functions previously carried out by the Conseil d'Etat. (See [Resolution DH \(96\) 19,](#))
- Recognition of a full adoption order in favour of a single woman. In [Wagner and J.M.W.L. v. Luxembourg](#) (Application No. 76240/01, judgment of 28 June 2007) the Court held that the domestic courts' refusal to recognise a full adoption order by a Peruvian court, due to the prohibition under the Civil Code of full adoption by a single person, was in violation of Articles 6 (right to a fair trial), 8 (right to family life), and 14 (prohibition of discrimination) of the Convention. Shortly after the Court's judgment became final, the District Court of Luxembourg established that the Peruvian judgment in favour of the applicants was enforceable in Luxembourg. Establishing a precedent in case law, a subsequent decision by the Court of Appeal declared the relevant provision of the Civil Code inapplicable inasmuch as it excluded full adoption for the sole reason that the applicant was a single person. (See [Resolution CM/ResDH\(2013\)33](#))
- Respect for ethical opposition to hunting. Legislative reforms undertaken to give effect to the Court's judgment in [Schneider v. Luxembourg](#) (Application No. 2113/04, judgment of 10 July 2007, available in French only) brought an end to a situation whereby land owners could be forced to join a hunting association (with the consequence that their land would be included in a hunting ground) even if this conflicted with their ethical convictions. In response to the Court's finding of a violation of Article 11 of the Convention, which contains a right not to belong to an association, a new Law on Hunting was adopted on 12 May 2011, which provides that land owners who are ethically opposed to hunting may withdraw from hunting associations. (See [Resolution CM/ResDH\(2013\)34](#))

## Malta

- Ability for magistrate to order release pending trial. Up until 2002, when a person was arraigned under arrest before the Court of Magistrates, that court could not review the validity of the arrest as such, but was limited to granting bail (if the accused requested it, and only after hearing the Attorney General). In two Grand Chamber judgments of 29 April 1999, [Aquilina v. Malta](#) (Application No. 25642/94) and [T.W. v. Malta](#) (Application No. 25644/94), the Strasbourg Court held that the lack of power of the magistrate to order release of his or her own motion was not in compliance with Article 5 (3) of the Convention (right to be promptly brought before a judge or other officer authorised by law to exercise judicial power). As a result, Act III of 2002 introduced a new provision into the Criminal Code, conferring upon the magistrate the power to order unconditional release or release on bail, and stipulating that the magistrate must henceforth review the various circumstances militating for or against detention.



- Right to marry for post-operative transsexuals. In [Joanne Cassar v. Malta](#) (Application No. 36982/11, decision (strike out) of 9 July 2013), the inability for a person who had undergone gender re-assignment surgery to marry a person of the opposite sex was challenged, leading to a unilateral declaration by the Maltese Government, binding itself “to present and pilot a Bill in Parliament with the purpose of making all necessary amendments in order to enable the applicant to marry a person of the sex opposite to that of the applicant’s acquired sex in Malta.” Accordingly, the application was struck out of the list of cases, and Article 257C of the Civil Code was amended by Act VII in 2013.
- Introduction of review with respect to deprivation of parental rights. The impact of the Convention on family law matters in Malta is illustrated by the case of [M.D. and Others v. Malta](#) (Application No. 64791/10, judgment of 17 July 2012), in which the Court had to examine the compatibility of the automatic and perpetual deprivation of all parental rights following criminal conviction for ill-treatment of children, and of the lack of access to a court in this regard, with the Convention. Given the absence of a procedure allowing the applicant to request an independent and impartial tribunal to consider whether the forfeiture of her parental authority was justified, the Court found a violation of Articles 6 (1) (right of access to a court) and 8 (right to respect for family life) of the Convention. Amendments were subsequently made to the Children and Young Persons (Care Orders) Act (by amending Act XXXIII of 2014) and to the Criminal Code (by amending Act II of 2014), allowing for judicial review of final care orders and for applications to remove or vary the conditions of the forfeiture of parental authority, which is moreover no longer automatic in respect of parents convicted of certain criminal offenses related to minors. (See [Resolution CM/ResDH\(2014\)265](#))

## Republic of Moldova

- Enforcement of judgments concerning social housing. In its pilot judgment in [Olaru and Others v. Moldova](#) (Application Nos. 476/07 et al., judgment of 28 July 2009) the Court highlighted structural problems concerning the enforcement of final domestic judgments awarding social housing rights or money in lieu of housing, in violation of the applicants’ rights of access to a court (Article 6 (1) of the Convention) and right to peaceful enjoyment of their possessions (Article 1 of Protocol No. 1). In response, Parliament adopted Law No. 87, which entered into force on 1 July 2011 and provides for a compensatory remedy in cases of excessive length of judicial and enforcement proceedings. The Court confirmed the effectiveness of this remedy in declaring the case of [Balan v. Moldova](#) (Application No. 44746/08, decision (inadmissible) of 24 January 2012) inadmissible.
- MPs may hold dual citizenship. The case of [Tănase v. Moldova](#) (Application No. 7/08, Grand Chamber judgment of 27 April 2004) put an end to the discriminatory practice to exclude persons holding dual or multiple nationality from being elected to parliament. The Court found that this practice was in breach of Article 3 of Protocol No. 1 to the Convention enshrining the right to free elections. The law banning MPs and certain other public servants from holding dual citizenship was lifted in December 2009. (See [Resolution CM/ResDH\(2012\)40](#))
- No arbitrary ban on LGBT rights demonstration. In [Genderdoc-M v. Moldova](#) (Application No. 9106/06, judgment of 12 June 2012) the Court held that the banning of a demonstration by an LGBT rights non-governmental organisation (NGO) had violated, *inter alia*, the applicant NGO’s freedom of assembly (Article 11 of the Convention), as conceded by the Government. By means of a new Law on the Organisation and Conduct of Assemblies, the grounds for imposing restrictions on peaceful assemblies have been limited. Moreover, anti-discrimination legislation was adopted in May 2012, and there have been positive developments in the conduct of law enforcement authorities towards LGBT rights organisations. (See information on the [status of execution](#), available from the website of the Execution Department)

## Monaco

- Notification of right to remain silent and to be assisted by a lawyer. In [Navone and Others v. Monaco](#) (Application Nos. 62880/11 et al., judgment of 24 October 2013, available in French only) the Court upheld the applicants’ complaint that they had not been informed of their right to remain silent and that they had been deprived of their right to be assisted by a lawyer while in police custody. Finding a violation of Article 6 (1) and (3) (c) (right to a fair trial and right to be assisted by a lawyer), it noted that, after the case had been communicated to the Government, the Principality

passed a new law in 2013 to reform the Code of Criminal Procedure relating to pre-trial detention in order to align it with European standards. (See [Resolution CM/ResDH\(2014\)266](#))

- Legislative reform of the Code of Criminal Procedure. These past years have seen reforms of the Code of Criminal Procedure aimed at aligning legislation with the Convention and the Court's case law, such as in relation to the duration of pre-trial detention which has been found to violate Article 5 (3) of the Convention in [Prencipe v. Monaco](#) (Application No. 43376/06, judgment of 16 July 2009, available in French only). Law No.1343 of 26 December 2007 *inter alia* limits the duration of pre-trial detention. Further amendments by virtue of Law No. 1399 of 25 June 2013 and Law No. 1394 of 9 October 2014 pertain respectively to guarantees for individuals held in police custody and the use of special investigation techniques. (See the Assembly's reports on 'Honouring the obligations and commitments by Monaco', [Doc. 12012](#) of 14 September 2009, and on 'Post-monitoring dialogue with Monaco', [Doc. 13739](#) of 25 March 2015; as well as [Resolution CM/ResDH\(2011\)135](#))

## Montenegro

- Access to the Supreme Court. In [Garžičić v. Montenegro](#) (Application No. 17931/07, judgment of 21 September 2010) the Court concluded that there had been a violation of Article 6 (1) of the Convention (access to a court) due to the Supreme Court's rejection of the applicant's appeal on points of law concerning a property-related claim. It considered that the court fees she had paid did not correspond to the established values of her claim, which was a prerequisite for her appeal to be allowed. Two days after the judgment became final, the Supreme Court allowed the applicant's request for the procedures to be re-opened, and took its decision the same day. In terms of general measures, the case law of the Supreme Court was changed even before the finalisation of the Strasbourg proceedings, to the effect that the Supreme Court no longer declares requests for an appeal on points of law inadmissible for the sole reason that the value of the matter of dispute had not been properly established in the first instance civil procedure. (See [Resolution CM/ResDH\(2011\)136](#))
- Lawfulness of limitations imposed on freedom of expression. In *Kusturica v. Nikolaidis*, delivered by the Constitutional Court of Montenegro in early 2012, the latter applied, for the first time, the sophisticated test of lawfulness of an interference with a person's freedom of expression as required by the Strasbourg Court under Article 10 (2) of the Convention. In so doing, it overturned the decision of the Supreme Court ordering Mr Nikolaidis, a journalist, to pay a fine of 12,000 euros to Mr Kusturica for libel. This decision came in the wake of the Court's judgment in the cases of [Koprivica v. Montenegro](#) (Application No. 41158/09, judgment of 22 November 2011) and [Šabanović v. Montenegro](#) (Application No. 5995/06, judgment of 31 May 2011), which were based on similar facts, as well as a binding position adopted by the Supreme Court of Montenegro in March 2011, stating that the amount of damages in civil proceedings instituted against journalists should be in line with the Court's case law. Legislative amendments to reflect the latter Supreme Court position by decriminalising defamation were made in July 2011. (See information on the [status of execution](#) of the *Koprivica* and *Šabanović* cases, available from the website of the Execution Department, as well as Human Rights Action Montenegro, [Press release on the decision of the Constitutional Court in the case Kusturica against Monitor and Nikolaidis](#) (19 January 2012))
- Retired persons may resume work without losing pension entitlement. The Convention also appears to have contributed to the adoption of legislative changes aimed at preventing violations of the right to peaceful enjoyment of possessions (Article 1 of Protocol No. 1 to the Convention), by establishing, in the specific circumstances of the case, that once acquired pension entitlements cannot be repealed on the basis of resumed professional activities. The corresponding amendments to the Pension and Disability Insurance Act were adopted pending the application of [Lakićević and Others v. Montenegro and Serbia](#) (Application Nos. 27458/06 et al., judgment of 13 December 2011) before the Strasbourg Court, which concerned the suspension, for several years, of pension payments to four retired legal professionals because they had resumed to work on a part-time basis. (See [Resolution CM/ResDH\(2013\)91](#))

## Netherlands

- Judicial review of involuntary psychiatric detention. The inability for the applicant to challenge his involuntarily detention in a psychiatric hospital before a court was found to violate Article 5 (4)

(right to have lawfulness of detention speedily examined by a court) in [Winterwerp v. the Netherlands](#) (Application No. 6301/73, judgment of 24 October 1979). Dutch legislation was subsequently revised by virtue of the 1992 Psychiatric Hospitals (Compulsory Admission) Act to ensure that, in all cases of involuntary admission, the patient has the right to be heard by a court. (See [Resolution DH \(82\) 2](#))

- Protection of journalist sources. In [Goodwin v. the United Kingdom](#) (Application No. 17488/90, Grand Chamber judgment of 27 March 1996) the Court concluded that requiring a journalist to disclose the identity of his source and imposing a fine because he refused to do so had been in breach of his right to impart information (protected by Article 10 of the Convention, the right to freedom of expression). This led the Dutch Supreme Court to adjust its case law, in a ruling handed down two months after the Strasbourg Court's judgment (NJ 1996/578), to acknowledge that Article 10 of the Convention should generally weigh in favour of non-disclosure of journalist sources. The Supreme Court has since held that any order upon a journalist to disclose his or her source needed to satisfy the requirements of necessity and proportionality under Article 10 (2) of the Convention, and that the burden of proof was on the person seeking disclosure.
- Equality of children born out of wedlock. The [Marckx v. Belgium](#) case (Application No. 6833/74, judgment (Plenary) of 13 June 1979, summarised above) concerning the legal status of children born to parents not married to each other also had ramifications in the Dutch legal order. Expressly referring to this judgment, the Supreme Court of the Netherlands reversed, in January 1980 (NJ 1980/643), of a lower court's decision not to grant an aunt's motion to adopt her niece, because the latter was born out of wedlock and, as such, was not recognised to have any blood relative other than her deceased mother. Remitting the case, the Supreme Court ordered the appellate court not to make a distinction between children born to married and children born to unmarried parents. The legal distinctions were subsequently eradicated by means of a change to the Civil Code with retroactive effect (*Staatsblad* 1982, 608).
- Right to counsel in pre-trial criminal proceedings. Another example of the Court's case law having an impact beyond the borders of the respondent State in a particular proceeding is [Salduz v. Turkey](#) (Application No. 36391/02, Grand Chamber judgment of 27 November 2008), which prompted the Netherlands Supreme Court to adjust its case law regarding a suspect's right to legal counsel in pre-trial criminal proceedings. In a judgment of 30 June 2009 (no. 2411.08 J, NbSr 2009, 249), it ruled that a suspect had a right to consult with a lawyer prior to being interrogated, and that arrested minors were entitled to have a lawyer present during interrogations.
- Time limit of 'pre-placement detention'. [Morsink v. the Netherlands](#) (Application No. 48865/99, judgment of 11 May 2004) concerned the so-called 'pre-placement detention', for 15 months and in the conditions of an ordinary remand centre, of a person suffering from a mental disorder awaiting his transfer to a custodial clinic after having served his prison sentences, which the Court determined to be unlawful and thus contrary to Article 5 (1) of the Convention. Dutch jurisprudence is today in line with a precedent established by the Supreme Court on 21 December 2007, in light of the Court's judgment, in which it held that pre-placement detention lasting longer than four months was unlawful. The Government took measures to expand the operational capacity of custodial clinics, and established a compensation scheme. (See [Resolution CM/ResDH\(2014\)294](#))
- Child must have ability to have recognised family relationship with father, deceased before birth. In the case of [Camp and Bourimi v. the Netherlands](#) (Application No. 28369/95, judgment of 3 October 2000) the Court found a violation of Article 14 (prohibition of discrimination) in conjunction with Article 8 (right to respect for family life) of the Convention due to the impossibility for a child to secure recognition of his family relationship with his father, who had died before his birth. The provisions in the Civil Code pertaining to parental rights and the conditions for recognition of a biological father's paternity were subsequently amended to provide for a declaration of paternity with retroactive force from the time of the child's birth. (See [Resolution CM/ResDH\(2007\)57](#))
- Defence rights of the accused absent during trial. In two judgments, [Lala v. the Netherlands](#) and [Pelladoah v. the Netherlands](#) (Application Nos. 14861/89 and 16737/90, respectively, both issued on 22 September 1994) the Court ruled that the Appeal Court's refusal to allow the applicants' respective legal representatives to conduct the defence in their absence had deprived them of their right to be defended by counsel (Article 6 (1) of the Convention, in conjunction with Article 6 (3) (c)). These judgments were given effect by means of a change in the Supreme Court's case law: an accused who is absent from the public hearing to which he or she has been summoned has a right to have the defence presented by counsel, even if the absence is not considered

justified. A corresponding provision was introduced into Article 279 of the Dutch Code of Criminal Procedure, which entered into force on 1 February 1998. (See [Resolution DH \(95\) 240](#) and [Resolution DH \(95\) 241](#))

## Norway

- Trial judge must not have made decision on pre-trial detention. It became settled practice in Norway, after the Court found a violation of Article 6 (1) (right to a fair trial) in [Hauschildt v. Denmark](#) (Application No. 10486/83, judgment (Plenary) of 24 May 1989, summarised above), that a trial judge who had taken part in a decision on pre-trial custody of an accused in cases of qualified suspicion should not sit in the trial of the same person. (See also [Ekeberg v. Norway](#) (Application Nos. 11106/04 et al., judgment of 31 July 2007))
- Civil liability for defamation. Two Grand Chamber judgments prompted a change in the national jurisprudence relating to civil liability for defamation. [Bladet Tromsø and Stensaas v. Norway](#) (Application No. 21980/93, Grand Chamber judgment of 20 May 1999) and [Nilsen and Johnsen v. Norway](#) (Application No. 23118/93, Grand Chamber judgment of 25 November 1999) found violations of the applicants' right to freedom of expression. The applicants had been held liable for defamation in civil proceedings instituted against them for having published, respectively, critical statements regarding police brutality (*Nilsen and Johnsen*) and factual statements on the controversial matter of seal hunting, relying, in good faith, on official reports without having undertaken independent research (*Bladet Tromsø and Stensaas*). The Supreme Court adapted its case law in a judgment of 25 February 2000 (Inr. 12B/2000), and courts have since strictly applied the necessity and proportionality test in their interpretation of the offence of defamation, as required by Article 10 (2) of the Convention as interpreted by the Strasbourg Court. (See [Resolution ResDH\(2002\)70](#) and [Resolution ResDH\(2002\)71](#))
- Speedy judicial review of deprivation of liberty. The case of [E. v. Norway](#) (Application No. 11701/85, judgment of 29 August 1990) concerned the speediness of judicial review of administrative decisions ordering the continuance or resumption of security measures against a person with impaired mental capacity who was found likely to re-offend. The Court observed that the delay of eight weeks between the filing of the application for judicial review and the delivery of the judgment had not satisfied the requirement of speediness under Article 5 (4) of the Convention (right to have lawfulness of detention speedily reviewed). National judicial practice was brought in line with Strasbourg requirements without necessitating legislative amendments, and special expeditious measures are now taken in such proceedings. (See [Resolution DH\(91\)16](#))
- Prohibition of double jeopardy. The Convention, as interpreted by the Strasbourg Court, has also had an impact on Norwegian jurisprudence relating to the principle of *ne bis in idem* (nobody shall be tried or punished twice for the same offence). In its application of Article 4 of Protocol No. 7, which codifies this principle, the Norwegian Supreme Court makes extensive reference to the case law of the Strasbourg Court, and Norway has never been found by the latter to have violated that provision. (See the English translations of three rulings of the Supreme Court, [Rt-2006-1498](#), [Rt-2010-1121](#) and [Rt-2012-1051](#); and the Court's inadmissibility decisions of 1 February 2007 in [Storbråten v. Norway](#) (Application No. 12277/04) and [Mjelde v. Norway](#) (Application No. 11143/04))

## Poland

- Compensation for property abandoned in the Eastern provinces of pre-war Poland. Substantial improvements for the so-called 'Bug River claimants' have come about as a result of the implementation of the Court's pilot judgment in [Broniowski v. Poland](#) (Application No. 31443/96, judgment of 22 June 2004), which affected almost 80,000 people and concluded that there had been a violation of the applicant's right to peaceful enjoyment of his possessions (Article 1 of Protocol No. 1 to the Convention) as a result of his inability to assert his entitlement to compensation for property abandoned in the territories beyond the Bug River in the aftermath of WWII. Since the entry into force of the 2005 *Act on realisation of the right to compensation for property abandoned beyond the present borders of the Republic of Poland*, claimants may seek to obtain compensation through the auctioning of state-owned land, or by receiving a pecuniary benefit, i.e. cash payment secured by a special Compensation Fund. (See [Final Resolution](#)



[CM/ResDH\(2009\)89](#), as well as the Grand Chamber's [strike out decision](#) of 28 September 2009 following a friendly settlement)

- Rights of landlords under Polish housing legislation. The applicant in [Hutten-Czapska v. Poland](#) (Application No. 35014/97, Grand Chamber judgment of 19 June 2006) was one of around 100,000 landlords affected by a restrictive system of rent control, which originated in laws passed under the former communist regime and was found to systematically violate Article 1 of Protocol No. 1 to the Convention (protection of property). Poland has since changed its laws and procedures, allowing landlords to, *inter alia*, recover the maintenance costs for their property, include in the rent charged a gradual return for capital investment and make a 'decent profit', and have a reasonable chance of receiving compensation for past violations of their property rights. The case was finally [struck out](#) on 28 April 2008 following a friendly settlement, with the Court finding that the fundamental problems had been resolved.
- Judicial review of decisions prohibiting an assembly. Changes in the Law of Assemblies were triggered by the Court's ruling in [Bączkowski and Others v. Poland](#) (Application No. 1543/06, judgment of 3 May 2007), which concluded that the Warsaw municipal authority's refusal to grant permission for a demonstration against homophobia and other forms of discrimination had been unlawful and influenced by the mayor's publicly expressed negative opinion on the matter, and that the applicants had been denied an effective remedy in this respect (in violation of Articles 11, 14 and 13 of the Convention). In the same vein, the Constitutional Court, in mid-September 2014, found the existing appellate procedure ineffective. A new Act on Assemblies was adopted on 24 July 2015 and entered into force on 13 October 2015, which *inter alia* provides for an opportunity to have a local authority's decision prohibiting an assembly judicially reviewed before the planned date of the assembly. (See [Resolution CM/ResDH\(2015\)234](#))
- Decision on pre-trial detention to be taken by a judge. With a view to bringing legislation in conformity with the standards set forth in Article 5 (3) (right to be brought promptly before a judge) of the Convention, as interpreted by the Strasbourg Court, an amendment to the Code of Criminal Proceedings was approved in June 1995. It prescribed that decisions on whether to impose pre-trial detention would no longer be taken by the public prosecutor, but by a court. (See document [CDDH\(2006\)008 Addendum III Bil](#) (7 April 2006), page 423; and [Niedbala v. Poland](#), Application No. 27915/95, judgment of 4 July 2000, paragraphs 19, 22-23 and 35-36)
- Lawfulness of psychiatric detention. In the case of [Musiał v. Poland](#) (Application No. 24557/94, judgment of 25 March 1999) the Court found that the impossibility for the applicant to have the lawfulness of his psychiatric detention speedily reviewed breached Article 5 (4) of the Convention (right to have lawfulness of detention speedily examined by a court). Measures were taken to avoid delays in expert psychiatric assessments, including an increase in the number of psychiatric experts attached to regional courts. (See [Resolution ResDH\(2001\)11](#))
- Provision of ethics classes in schools. The case of [Grzelak v. Poland](#) (Application No. 7710/02, judgment of 15 June 2010) concerned the inability of a pupil to attend ethics classes and the absence of a mark for 'religion/ethics' on his school certificates, which the Court found to have amounted to discrimination in violation of Article 14 taken in conjunction with Article 9 (right to freedom of thought, conscience and religion). This breach had stemmed from the fact that, despite repeated requests, it had been impossible for the school to organise ethics classes owing to the insufficient number of interested pupils. An amendment to the relevant Ordinance of the Minister of Education which deleted the minimum participants requirement for organising an inter-school group was introduced following the Court's judgment, thus ensuring that any interested pupil could henceforth participate in ethics classes. (See [Resolution CM/ResDH\(2014\)85](#))
- Correspondence and visitation rights of remand prisoners. Changes to the Code of Execution of Criminal Sentences were prompted by the Court's judgment in [Klamecki \(No. 2\) v. Poland](#) (Application No. 31583/96, judgment of 3 April 2003) (and a number of similar cases), in which the Court found a violation of Article 8 (right to respect for family life and correspondence) on two accounts: whilst being detained on remand, the applicant had not been allowed any contact with his wife for a year; and all of his correspondence was censored. Legislative changes introduced clearer limits to restrictions on family visits and the monitoring of prisoners' and detainees' correspondence. (See [Resolution CM/ResDH\(2013\)228](#))

- Detention on remand must not be excessively long. Measures adopted in response to a number of cases including [Trzaska v. Poland](#) (Application No. 25792/94, judgment of 11 July 2000) brought an end to systemic violations of the right under Article 5 (3) of the Convention to a reasonable length of detention on remand. The formerly incorrect judicial practice which had given rise to these violations has been changed thanks to training for judges and prosecutors on the Convention. Moreover, legislative amendments have limited the grounds for ordering and extending detention on remand, resulting in a significant reduction in the use of pre-trial detention. (See [Resolution CM/ResDH\(2014\)268](#))
- Remedy for excessively lengthy proceedings. In response to [Kudła v. Poland](#) (Application No. 30210/96, Grand Chamber case of 26 October 2000) which concerned the excessive length of criminal proceedings (violation of Article 6 (1) of the Convention) and the lack of an effective remedy (violation of Article 13), a Law enacted on 17 June 2004, and amendments adopted on 20 February 2009, introduced an acceleratory and a compensatory remedy against length of proceedings, which the Court found to be effective for the purposes of the Convention (see, exemplarily, [Charzyński v. Poland](#) (Application No. 15212/03, decision (inadmissible) of 1 March 2005, paragraphs 36-43). This is a noteworthy development, although there prevail deficiencies in the application of the new legislation. (See information on the [status of execution](#), available from the website of the Execution Department, as well as the Court's pilot judgment in [Rutkowski and Others v. Poland](#) (Application No. 72287/10, judgment of 7 July 2015, paragraphs 215 and 222))

## Portugal

- Custody decisions following divorce must not hinge on parent's sexual orientation. It is thanks to the Strasbourg Court's jurisprudence that courts in Portugal can no longer discriminate against parents living in homosexual relationships in custody proceedings. A court's refusal to grant custody to a parent living in a homosexual relationship came under scrutiny in [Salgueiro da Silva Mouta v. Portugal](#) (Application No. 33290/96, judgment of 21 December 1999) and was found to constitute discrimination and to breach the parent's right to respect for private and family life (Article 14 together with Article 8 of the Convention). Given the direct effect that the Convention enjoys in the Portuguese legal order, the courts' practice was brought in line with the Court's case law, and the judgment formed part of trainings of judges on the Convention. (See [Resolution ResDH\(2007\)89](#))
- Protection of employees' private life. The Court held in [Antunes Rocha v. Portugal](#) (Application No. 64330/01, judgment of 31 May 2005, available in French only) that the law was insufficiently clear on the scope and manner of security investigations, thus finding a violation of Article 8 of the Convention (right to respect for private life) in relation to the collection of information about the applicant, including placing her home under surveillance and questioning her close acquaintances. In order to implement this judgment, the National Security Cabinet (*Gabinete Nacional de Segurança*) was set up by Decree-Law No. 170/2007, and charged with protecting individual freedoms in the light of the Convention. (See [Resolution CM/ResDH\(2013\)230](#))
- Effective remedy in length-of-proceedings cases. The ineffectiveness of a remedy provided for in the national legal order to afford redress in the event of a breach of the right to a judicial decision within a reasonable time (section 12 of Law no. 67/2007) led the Court to conclude, in [Martins Castro and Alves Correia de Castro v. Portugal](#) (Application No. 33729/06, judgment of 10 June 2008, available in French only) and nearly 50 subsequent cases, that this remedy need not be exhausted prior to bringing a complaint before the Strasbourg Court. In [Valada das Neves v. Portugal](#) (Application No. 73798/13, judgment of 29 October 2015, available in French only) the Court reassessed the effectiveness of the domestic administrative action to establish non-contractual liability, and, in view of consolidated changes introduced by the praxis of the administrative courts, found it to be effective for the purposes of Article 13 of the Convention.
- Family reunification after international child abduction. Worthy of remark are the measures taken to prevent reoccurrence of situations such as those underlying the cases of [Dore v. Portugal](#) (Application No. 775/08, judgement of 1 February 2011, available in French only) and [Karoussiotis v. Portugal](#) (Application No. 23205/08, judgement of 1 February 2011). The Court found a violation of the right to respect for family life (Article 8 of the Convention) in relation to the right for a parent to have measures taken with a view to being reunited with his or her child where the latter had been abducted by the other parent, and an obligation for the national authorities to take such action promptly. In response, the judgment was disseminated amongst judges and authorities

organised several trainings, seminars and round-tables on the matter. (See [Resolution CM/ResDH\(2012\)133](#))

## Romania

- Restitution or compensation for properties nationalised in communist Romania. In [Maria Atanasiu and Others v. Romania](#) (Application Nos. 30767/05 and 33800/06, pilot judgment of 12 October 2010) the Court ordered Romania to take specific measures to remedy a structural problem connected with the ineffectiveness of the mechanism set up to afford restitution or compensation for properties that had been nationalised before 1989. Whilst certain issues remain to be resolved (see [Preda and Others v. Romania](#), Application No. 9584/02, judgment of 29 April 2014, available in French only, paragraph 124), important legislative amendments reformed the reparation mechanism, providing for restitution or (where restitution is not possible) compensation, and setting binding time-limits and providing for judicial review. (See information on the [status of execution](#), available from the website of the Execution Department)
- Final court decision cannot be quashed upon discretionary request by the prosecutor. The issue underlying the case of [Brumărescu v. Romania](#) (Application No. 28342/95, judgment of 28 October 1999) was the Convention-compatibility of the Procurator General's competence to challenge final court decisions at any time. The Court held that the quashing by the Supreme Court, upon request by the Procurator General, of a final decision concerning the restitution of the applicant's previously nationalised property had been in disregard of the principle of legal certainty and thus in violation of Article 6 (1) of the Convention (right to a fair trial) and Article 1 of Protocol No. 1 (right to the peaceful enjoyment of possessions). Subsequently, the pertinent provision of the Civil Procedure Code was repealed, with the effect that it is no longer possible to annul final judicial decisions establishing the right to have nationalised property restored. (See [Resolution CM/ResDH\(2007\)90](#))
- Civilians should not be tried by military court. The source of the Court's finding of a violation of Article 6 (1) of the Convention (right to an independent and impartial tribunal) in [Maszni v. Romania](#) (Application No. 59892/00, judgment of 21 September 2006, available in French only) was the applicant's conviction by a military court on the ground that the ordinary offences of which he, a civilian, had been accused were closely connected to the charges against a police officer, who was treated as equivalent to a member of the armed forces under the applicable national law. The Court's judgment led to an amendment to the Code of Criminal Procedure, pursuant to which in cases of indivisibility or connection of offences, if one of the courts is a civil court and the other military, jurisdiction will lie with the civil court. Moreover, since the entry into force of a Law on the Status of Police Officers in 2002, policemen have been considered civil servants and will be tried by ordinary courts if accused of an offence. (See [Resolution CM/ResDH\(2013\)168](#), and the Committee of Ministers' [7<sup>th</sup> annual report 2013](#), at page 128)
- Detention must be ordered by a judge, not the prosecutor. In the wake of the Court's judgment in [Pantea v. Romania](#) (Application No. 33343/96, judgment of 3 June 2003), in which it held, *inter alia*, that a detention order by a prosecutor was contrary to Article 5 (3) of the Convention (right to be promptly brought before a judge or other officer authorised by law to exercise judicial power), a range of powers were transferred from prosecutors to judges by Law No. 281/2003. Prosecutors were henceforth no longer authorised to order detention.
- Decriminalisation of insult and defamation. The repeal of communist-era laws that severely restricted criticism of the state apparatus was influenced by [Dalban v. Romania](#) (Application No. 28114/95, Grand Chamber judgment of 28 September 1999), a case in which the applicant, a journalist, had been convicted for libel and sentenced to three months imprisonment (suspended) and a fine after having published two articles about alleged fraud involving the chief executive of a State-owned agricultural company as well as a Senator. Noting that the articles in question concerned a matter of public interest, the Court found a violation of Article 10 of the Convention (freedom of expression). In order to implement the Court's judgment, imprisonment was removed as punishment for both insult and defamation, and the possible use of the defence of truth has been widened. By means of Law No. 278/2006, which entered into force on 11 August 2006, insult and defamation were ultimately removed as offences from the Criminal Code. (See [Resolution CM/ResDH\(2011\)73](#) and [Interim Resolution ResDH\(2005\)2](#))

## Russian Federation

- Compensation for victim of Chernobyl disaster. The non-enforcement of domestic court decisions was found by the Court to violate Articles 6 (1) (right to a fair hearing) and Article 1 of Protocol 1 (right to protection of property) of the Convention, as well as of Article 13 (right to an effective remedy) in [Burdov v. Russia](#) (Application No. 59498/00, judgment of 7 May 2002) and [Burdov v. Russia \(No. 2\)](#) (Application No. 33509/04, judgment of 15 January 2009). The applicant in that case had sustained damages to his health when exposed to radioactive emissions in the emergency operations at the Chernobyl nuclear plant. In response to the pilot judgment of 15 January 2009, a Federal Compensation Act was adopted, providing for the possibility to claim compensation for prolonged non-enforcement of a judgment establishing a debt to be recovered from the State budgets. This law was accompanied by a Federal Law amending certain legislative acts as well as by various measures to guarantee the effectiveness of this new remedy. (See [Resolution CM/ResDH\(2011\)293](#))
- Extension of journalists' freedom of expression to criticism of public officials. On 24 February 2005, the Plenum of the Supreme Court of the Russian Federation issued Decree No. 3, which contained guidelines to be followed by lower courts in the application of Article 152 of the Civil Code regarding defamation. Referring to the Committee of Ministers' 2004 *Declaration on freedom of political debate in the media*, which, in turn, makes reference to Article 10 of the Convention (freedom of expression), the Supreme Court highlighted, in particular, that public officials must accept that they will be subject to public scrutiny and criticism. Whilst noting that certain problems regarding journalists' freedom of expression prevail, the Committee of Ministers signalled, by closing the cases of [Grindberg v. Russia](#) (Application No. 23472/03, judgment of 21 July 2005) and [Zakharov v. Russia](#) (Application No. 14881/03, judgment of 5 October 2006), that the Supreme Court's guidance was capable of preventing similar violations in the future. (See [Resolution CM/ResDH\(2008\)18](#))
- Avoiding a judicial vacuum when courts refuse to hear a case. The authorities took measures to ensure that situations such as the one that had given rise to a violation of Article 6 (1) of the Convention (right to access to a tribunal) in [Bezmyannaya v. Russia](#) (Application No. 21851/03, judgment of 22 December 2009) would not re-occur. The applicant had found herself unable to have her civil claim examined as the domestic courts all declined jurisdiction over her case. The Strasbourg Court's judgment was implemented by means of a ruling of the Commercial Court of the Belgorod Region, which clarified that judges have an obligation to hear a case, regardless of whether they have jurisdiction over it, if a court of another order of jurisdictions refused to do so on account of an apparent lack of jurisdiction. (See [Resolution CM/ResDH\(2011\)152](#))
- Special investigations into torture allegations. There have a number of judgments against Russia finding violations of Article 3 of the Convention on account of torture or inhuman and degrading treatment inflicted on persons held in police custody, and a lack of effective investigations into such acts. Following [Mikheyev v. Russia](#) (Application No. 77617/01, judgment of 26 January 2006) and other, similar judgments, special investigation units were created within the Investigative Committee, and tasked with investigating particularly complex crimes by police and other law enforcement bodies. (See information on the [status of execution](#), available from the website of the Execution Department)
- Less frequent recourse to remand detention to tackle overcrowding. Progress can be seen in the implementation of the Court's pilot judgment in [Ananyev and Others v. Russia](#) (Application Nos. 42525/07 and 60800/08, judgment of 10 January 2012) concerning a structural problem of inhuman and degrading conditions in Russian remand centres and the lack of an effective remedy in this respect, resulting in numerous violations of Articles 3 and 13 of the Convention. The Court observed that these endemic problems stemmed, among other factors, from a general problem of overcrowding and the excessive length of pre-trial detention. Changes introduced to the Criminal Procedural Code in December 2012 aimed at tackling overcrowding by establishing that remand detention should not be imposed on persons accused of crimes carrying a sentence of less than three years (previously: two years). (See the Government's action plans, documents [DH-DD\(2012\)1009](#) and [DD\(2014\)580](#))
- Convention compatibility of remand detention. A number of measures have been taken to remedy numerous violations of the right to liberty, guaranteed by Article 5 of the Convention, owing *inter alia* to unlawful and lengthy unreasoned (or poorly reasoned) detention on remand. A number of legislative changes were made between 2008 and 2011 with the effects of providing greater clarity



as regards the calculation of the detention period when the court refers a case back to the investigation stage; limiting the period of time spent in remand detention; and promoting alternatives to remand detention, such as by allowing for release on bail at any stage of the criminal proceedings. Both the Constitutional Court and the Supreme Court have emphasised that a suspect or accused may be detained only on the basis of a valid judicial decision. Further changes in legislation and judicial practice have aimed to redress the absence of reasoning in certain decisions ordering detention and the absence of time-limits for the detention period. (See the abovementioned action plans concerning the *Ananyev and Others* group; as well as the Government's latest action plan concerning the *Klyakhin* group (Application No. 46082/99, [judgment](#) of 30 November 2004), document [DH-DD\(2015\)1171](#); the latest [decision](#) of the Committee of Ministers (December 2015); and [Final Resolution CM/ResDH\(2015\)249](#))

## San Marino

- Right for defendant to be heard by appellate judge. The positive impact of the Convention on the rights of defendants in criminal proceedings manifests itself in the follow-up to the Court's judgments in [Stefanelli v. San Marino](#) (Application No. 35396/97, judgment of 8 February 2000) and [Tierce and Others v. San Marino](#) (Application Nos. 24954/94 et al., judgment of 25 July 2000), where the Court *inter alia* found a violation of Article 6 (1) of the Convention (right to a fair hearing) because of the lack of a public hearing on appeal. With the adoption of Law No. 20 of 2000, the pertinent provision in the Code of Criminal Proceedings was modified to provide for a public hearing in criminal appeal proceedings. Further legislative amendments by means of Law No. 89 of 27 June 2003 subsequently codified a defendant's right to be heard in person during the public appeal hearing, and allowed for the institution, in certain cases, of revision proceedings where the Strasbourg Court found that the pertinent judgment was pronounced in violation of Convention standards. (See [Resolution ResDH\(2004\)3](#) and [Resolution ResDH\(2004\)4](#))
- Prohibition of arbitrary detention pending extradition. In [Toniolo v. San Marino](#) (Application No. 44853/10, judgment of 26 June 2012) the Court found a violation of Article 5 (1) (f) of the Convention (right to liberty and security of the person) since San Marino's extradition procedure was not sufficiently precise and foreseeable to avoid arbitrary detention pending extradition. Following the Court's judgment, Parliament adopted Law No. 41 of 31 March 2014 which contains both procedural and substantive safeguards relating to the review of extradition requests and corresponding decisions on detention. (See [Resolution CM/ResDH\(2014\)283](#))
- Restitution of land expropriated from church. One of the accounts on which the Court found a violation of Article 6 (1) of the Convention (right to a fair trial) in the case of [Beneficio Cappella Paolini v. San Marino](#) (Application No. 40786/98, judgment (merits) of 13 July 2004, available in French only) was the fact that both the civil and administrative courts had declined jurisdiction over proceedings brought by the applicant church to recover possession which used to belong to it. That land had been expropriated by the State but was not being used. The Court also held that the upholding of a decision not to return the land had amounted to a violation of the church's right to protection of its property (Article 1 of Protocol No. 1). The application was ultimately struck out by [judgment](#) of 3 May 2007 (available in French only) following a friendly settlement, which provided for restitution of the land in question to the church.
- MPs must no longer take religious oath. The applicants' reference to the Convention in the course of the domestic proceedings contributed to legislative changes with respect to the Strasbourg Court's finding of a violation of the Convention in [Buscarini and Others v. San Marino](#) (Application No. 24645/94, Grand Chamber judgment of 18 February 1999). Even before the Grand Chamber held that requiring elected representatives to swear allegiance to a particular religion was incompatible with Article 9 of the Convention (right to freedom of religion and conscience), Law No. 115 of 29 October 1993 introduced a choice for newly elected members of Parliament between the traditional oath and one in which the reference to the Gospels was replaced by the words 'on my honour'. (See [Resolution ResDH 2001\)13](#))

## Serbia

- State is liability for debts of socially-owned companies. The case of [R. Kačapor and Others v. Serbia](#) (Applications Nos. 2269/06 et al., judgment of 15 January 2008) concerned violations of the applicants' right to a fair trial (Article 6 (1) of the Convention) due to the authorities' failure to

enforce domestic judgments ordering socially-owned enterprises to pay salary arrears and employment benefits. The Court held that the State was liable for the applicants' claims from those judgments. Following the *Kačapor* judgment and a number of follow-ups, the Constitutional Court ultimately harmonised its approach with the Strasbourg Court's relevant case law; the constitutional appeal was deemed effective as regards this type of cases in [Ferizović v. Serbia](#) (Application No. 65713/13, decision (inadmissible) of 26 November 2013).

- Extension of freedom of expression to cover criticism of public figures. The Court held in [Lepojić v. Serbia](#) (Application No. 13909/05, judgment of 6 November 2007) that the applicant's conviction for defamation on the basis of an article he had published about a town mayor during an election campaign had been in violation of Article 10 of the Convention (right to freedom of expression). The Supreme Court subsequently recognised the direct effect of the Court's case law at the domestic level in the context of freedom of expression cases with the effect, in particular, of extending the degree of acceptable criticism of public figures as compared with private individuals. The applicant's conviction was deleted from his criminal record. (See [Resolution CM/ResDH\(2009\)135](#))
- Prohibition of routine interference with prisoners' correspondence with the Court. In [Stojanović v. Serbia](#) (Application No. 34425/04, judgment of 19 May 2009), as well as the follow-up cases of [Jovančić v. Serbia](#) (Application No. 38968/04, judgment of 5 October 2010) and [Milošević v. Serbia](#) (Application No. 32484/03, judgment of 18 January 2011), the Court concluded that the routine interference with the applicants' correspondence with the Strasbourg Court, in the absence of a specific court decision to this effect, was not 'in accordance with the law' applicable at the material time and thus in violation of Article 8 of the Convention (right to respect for one's correspondence). Following the Court's judgment, the Directorate for Enforcement of Prison Sanctions requested all prison authorities not to open prisoners' letters. Ultimately, in September 2009, Serbia amended the Law on Enforcement of Criminal Sanctions, which now guarantees prisoners an (in principle) unlimited right to correspondence that may only be limited by a decision of a court. (See [Resolution CM/ResDH\(2011\)77](#))
- Judicial review for excessive length of detention in police custody. Although the Committee of Ministers has not to date closed the examination of these cases, the Court's judgments in [Vrencev v. Serbia](#) (Application No. 2361/05, judgment of 23 September 2008) and [Milošević v. Serbia](#) (Application No. 31320/05, judgment of 28 April 2009) have prompted changes of the Criminal Procedure Code as regards the right to be brought promptly before a judge under Article 5 (3) of the Convention. The Court found violations of this provision on account of the excessive length of the applicants' detention in police custody without any judicial review (20 days in the case of *Vrencev* and 41 days in the case of *Milošević*) and, in the latter case, that the Criminal Procedure Code did not satisfy the Convention requirements with regard to the right of a detainee to be brought in person before a judge who had both an obligation to review his detention and the necessary power to order his release. An amendment to the Criminal Procedure Code in 2009 established that a detention order can be rendered only once the defendant has been heard. (See information on the [status of execution](#) available from the website of the Execution Department)

## Slovak Republic

- Proportionate compensation for compulsorily-leased agricultural land. Under the communist regime, the applicant in the case of [Urbárska Obec Trenčianske Biskupice v. Slovakia](#) (Application No. 74258/01, judgment of 27 November 2007), a registered association of landowners, was obliged to put its land at the disposal of a garden colony consisting of individual gardeners, who later obtained transfer of ownership. The Court concluded that the State, in offering disproportionately low compensation, had failed to strike a fair balance between the interests at stake, which amounted to a violation of the right to the peaceful enjoyment of possessions (Article 1 of Protocol No. 1 to the Convention). Slovakia subsequently amended Act No. 64/1997 Coll. on the Use of Land in Garden Allotments and Arrangements of their Ownership and Regulation No. 492/2004 Coll. on Determining the General Value of Property, with a view to allowing the actual value of land and current market conditions to be taken into account when determining the rental terms for letting of land, and to ensure that compensation for the transfer of ownership of land have a reasonable relation to the market value of the property at the time of the transfer. (See [Resolution CM/ResDH\(2013\)87](#))

- Possibility to re-open procedures based on new scientific evidence. The violations of Article 8 (right to respect for private life) and 14 (prohibition of discrimination) of the Convention in [Paulík v. Slovakia](#) (Application No. 10699/05, judgment of 10 October 2006) stemmed from the fact that it had been impossible for the applicant to challenge his paternity – which had previously been established by a court – notwithstanding that recent DNA tests showed that he was not the father of the child. As a result of the Court’s judgment, domestic proceedings were reopened, and the applicant was removed as the father from the birth register and the child’s birth certificate. New legislation entered into force in January 2013, providing individuals the possibility of applying to have proceedings reopened based on DNA evidence or other scientific methods which had not been available in the original court proceedings. (See [Resolution CM/ResDH\(2013\)195](#))
- Judicial review of administrative decisions concerning minor offences. The applicants in the cases of [Lauko v. Slovakia](#) (Application No. 26138/95, judgment of 2 September 1998) and [Kadubec v. Slovakia](#) (Application No. 27061/95, judgment of 2 September 1998) had been convicted of minor offences by administrative bodies without further recourse to a judicial appeal satisfying the Convention requirements as to independence and impartiality, in breach of Article 6 (1) (right to a hearing by an independent and impartial tribunal). The Court’s judgments were implemented by way of a decision of the Constitutional Court, declaring the pertinent provisions of the Minor Offences Act which had prevented the courts from reviewing administrative decisions in cases where a fine of less than 2,000 Slovak crowns had been imposed, contrary to both the Convention and the national Constitution. (See [Resolution DH \(99\) 554](#) and [Resolution DH \(99\) 553](#))
- Constitutional complaint available for alleged human rights violations. In addition to the abovementioned legislative changes which were influenced by the Court’s case law, a reform to the Constitution which came into force in 2002 introduced the right of individual petition before the Constitutional Court for complaints of violations of human rights protected by international treaties, including the European Convention on Human Rights. Shortly afterwards, this procedure was accepted by the Court as an effective remedy for the purposes of Article 13 of the Convention in the case of [Andrášik and Others v. Slovakia](#) (Application Nos. 57984/00 et al., decision (inadmissible) of 22 October 2002).

## Slovenia

- Compensation for removal from permanent population register. In its pilot judgment in [Kurić and Others](#) (Application No. 26828/06, [Grand Chamber judgment](#) (merits and just satisfaction) of 26 June 2012) the Court held that the applicants’ loss of their status as permanent residents following Slovenia’s declaration of independence in 1991 was contrary to the right to respect for their private and family life (Article 8 of the Convention). After the [Chamber handed down its judgment](#) on 13 July 2010, amendments to the Legal Status Act aimed at further regularising the situation of those 25,000 citizens of former Yugoslavia who had been ‘erased’ from the register, as well as that of their children, entered into force on 24 July 2011. Following the Grand Chamber’s judgment, Parliament adopted, on 21 November 2013, the Act Regulating Compensation for Damage to Persons Erased from the Permanent Population Register, setting up a compensation scheme as well as other benefits in medical, social, education and other sectors aimed at facilitating the ‘erased’s’ reintegration into society. (See the [Grand Chamber’s judgment on just satisfaction](#) of 12 March 2014; and information on the [status of execution](#), available from the website of the Execution Department)
- Access to and free disposal of foreign currency savings. The continued inability, for over twenty years, for the applicants to freely dispose of their ‘old’ foreign-currency savings deposited with two branch offices of the Ljubljana Bank in Sarajevo and Zagreb (now Bosnia and Herzegovina and Croatia, respectively) was found to be in breach of the right to peaceful enjoyment of their possessions (Article 1 of Protocol No. 1 to the Convention) in the pilot judgment in [Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and “The former Yugoslav Republic of Macedonia”](#) (Application No. 60642/08, Grand Chamber judgment of 16 July 2014). This finding affected many thousands of potential applicants in a similar situation. On 3 July 2015, Parliament adopted a law aimed at introducing a repayment scheme for ‘old’-currency savings deposited in these banks. The law stipulates that outstanding savings (and associated interest rates) will be repaid in a single instalment following the final decision made on the claim. (See information on the [status of execution](#), available from the website of the Execution Department)

- Coming to grips with excessive length of proceedings. Progress has been made – in the process of implementing the Court's pilot judgment in [Lukenda v. Slovenia](#) (Application No. 23032/02, judgment of 6 October 2005) – in preventing and remedying systemic problems relating to excessive length of judicial and administrative proceedings, resulting in numerous violations of Articles 6 (1) (right to a fair hearing within a reasonable time) and 13 (right to an effective remedy) of the Convention. The 'Lukenda Project' has to date led to an increase in the number of posts in judiciary; the introduction of electronic records in criminal proceedings and other measures aimed at accelerating procedures and reducing the backlog of cases; as well as the setting up of acceleratory and compensatory remedies through a special law in 2006. Progress is particularly obvious as regards the length of proceedings in civil and labour matters. (See information on the [status of execution](#), available from the website of the Execution Department)
- Prevention of injuries during police arrest. In [Rehbock v. Slovenia](#) (Application No. 29462/95, judgment of 28 November 2000) the Court ruled that the use of force during the applicant's arrest had amounted to inhuman treatment in violation of Article 3 of the Convention. Whilst the findings of the European Committee on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) suggest that vigilance is still required on the part of the senior police management to prevent any use of force going beyond what is strictly necessary to apprehend a person, it is noteworthy that, following the judgment, the authorities adopted measures aimed at preventing ill-treatment, such as police force training and regular inspections carried out by the Ministry of Internal Affairs. In November 2007, a specialised division was established within the State Prosecutor's Office, mandated to carry out investigations into allegations about police ill-treatment. (See [Resolution CM/ResDH\(2009\)137](#), as well as the CPT's report on its visit to Slovenia from 31 January to 6 February 2012, [CPT/Inf\(2013\)16](#), and the Government's response, [CPT/Inf\(2013\)17](#))

## Spain

- Clear limits to telephone tapping. In [Valenzuela v. Spain](#) (Application No. 27671/95, judgment of 30 July 1998) and [Prado Bugallo v. Spain](#) (Application No. 58496/00, judgment of 18 February 2003, available in French only) the Court found Spain in violation of Article 8 of the Convention (right to respect for private life and correspondence) since the legislation relating to the interception of phone lines applicable at the time was not sufficiently clear. Subsequent jurisprudence of the Supreme Court not only established that the case law of the Strasbourg Court was directly applicable in the Spanish legal order, but also remedied the legislative gaps by setting out the conditions of telephone monitoring and its judicial supervision. (See [Resolution DH \(99\) 127](#), [Resolution CM/ResDH\(2008\)81](#) and [Coban v. Spain](#) (Application No. 17060/02, decision (inadmissible) of 25 September 2009, available in French only))
- Defendants in criminal cases cannot be convicted by appellate court without a public hearing after acquittal at first instance. Legislative changes in the field of criminal law have been provoked by the case of [Iguar Coll v. Spain](#) (Application No. 37496/04, judgment of 10 March 2009, available in French only) and a number of similar applications, in which the Court held that the applicants' convictions on appeal by the *Audiencia Provincial* without having been examined at a public hearing, and after having been acquitted in the first instance, had not been compatible with their right to a fair trial under Article 6 (1) of the Convention. Law 41/2015 of 5 October 2015 limited the powers of the appellate court in cases where it finds that the first instance court had not properly assessed the evidence. It provides that, in such circumstances, the appeal court can no longer sentence a defendant who was acquitted at first instance or aggravate the sentence, but can only set the judgment aside and remit the case to the first instance court.
- No retroactive extension of imprisonment. The case of [Del Río Prada v. Spain](#) (Application No. 42750/09, Grand Chamber judgment of 21 October 2013) pertained to the principle of non-retroactivity in criminal law matters, which constitutes a fundamental component of the rule of law. The Grand Chamber held that the delay of the applicant's final release date from prison by almost nine years, on the basis of a new system of calculating maximum terms of sentences adopted by the Supreme Court of Spain which was not foreseeable at the time when she had been sentenced, amounted to punishment without legal basis (Article 7 of the Convention), and her continued detention was in breach of her right to liberty (Article 5). In the wake of the Court's ruling, the applicant and about 60 prisoners in a similar situation were immediately released. (See [Resolution CM/ResDH\(2014\)107](#))



- Protection against noise pollution. The source of the violation of the applicant's right to respect for private life and the home (Article 8 of the Convention) in [Moreno Gómez v. Spain](#) (Application No. 4143/02, judgment of 16 November 2004) was the noise caused by nightclubs near her house: although several reports had indicated noise levels above the permissible limits, the authorities failed to comply with the requirements of domestic law and take action to deal with these night-time disturbances. Two Royal Decrees, passed in 2005 and 2007, respectively, added detail to Law 37/2003 which deals with noise pollution, notably by elaborating on the assessment and management of environmental noise and by providing for clearer definitions of acoustic zoning and acoustic emissions. (See [Resolution CM/ResDH\(2008\)57](#), as well as information on the [status of execution](#) of the case of [Martínez Martínez v. Spain](#) (Application No. 21532/08, judgment of 18 October 2011, available in French only))

## Sweden

- Individuals can seek compensation for Convention violations domestically. In a judgment of 3 December 2009 (NJA 2009 N 70) the Swedish Supreme Court confirmed that compensation may be granted for violations of the Convention, even though domestic law did not expressly provide for that. Individuals may either bring a civil action against the State before the ordinary courts or lodge a claim for compensation with the Chancellor of Justice. The level of compensation for non-pecuniary damage has been aligned to the Strasbourg Court's practice. (See [Eriksson v. Sweden](#) (Application No. 60437/08, judgment of 12 April 2012, paragraphs 29-36, and [Johansson Prakt and Salehzade v. Sweden](#) (Application No. 8610/11, decision (partly admissible, partly inadmissible) of 16 December 2014, paragraphs 52-60))
- Better protection against police storage of private information. In response to the judgment in the case of [Segerstedt-Wiberg and Others v. Sweden](#) (Application No. 62332/00, judgment of 6 June 2006), which concerned the unjustified storage by the Security Service of information regarding the applicants' former political activities (in violation of their right to privacy, and to freedom of expression and association (violations of Articles 8, 10 and 11 of the Convention)), the Swedish Commission on Security and Integrity Protection was set up and started operating in January 2008. Individuals may request this control agency to assess whether they have been subject to secret surveillance or to processing of personal data by the Swedish police (including the Swedish Security Service). The Data Inspection Board may apply to the administrative courts to obtain an order on the erasure of data unlawfully processed. Also, individuals can apply to the administrative courts to obtain the correction or deletion of such data. In addition, a new Police Law entered into force on 1 March 2012, notably containing a new chapter regulating the processing of data by the Police and the Security Service. (See [Resolution CM/ResDH\(2012\)222](#))
- Social authorities' decisions regarding public care. In a number of cases – including [Olsson v. Sweden \(No. 1\)](#) (Application No. 10465/83, judgment (Plenary) of 24 March 1988), [Olsson v. Sweden \(No. 2\)](#) (Application No. 13441/87, judgment of 27 November 1992), [Eriksson v. Sweden](#) (Application No. 11373/85, judgment (Plenary) of 22 June 1989) and [Nyberg v. Sweden](#) (Application No. 12574/86, judgment of 31 August 1990) – the Court found violations of the applicants' rights to respect for their private and family life (Article 8 of the Convention) and to a fair trial (Article 6 (1)). These stemmed from different aspects of the system in place for public care of children, notably the absence of judicial review of visiting rights, separations of brothers and sisters, and placement far away from parents. These problems were remedied by a new Act Containing Special Provisions on the Care of Young Persons, adopted on 1 July 1990, which *inter alia* provides that a decision regarding parents' right of access to a child subjected to a prohibition on removal from a foster home may be appealed to the administrative courts. (See [Resolution DH\(91\)14](#) and [Resolution DH\(93\)3](#))
- Hearings in freedom of the press cases. In [Holm v. Sweden](#) (Application No. 14191/88, judgment of 25 November 1993), the jury trial in freedom of expression cases was found to be in breach of Article 6 (1) of the Convention (right to a fair trial by an independent and impartial tribunal) since jurors were chosen from lists established by political parties, raising questions about their impartiality in cases with political connotations. The Government subsequently indicated in a Bill concerning the Scope of Constitutional Rules on Freedom of Expression that, as a result of the formal incorporation of the Convention in Swedish law through special legislation in 1995, Swedish courts would revisit their practice and apply the rules on judicial bias in conformity with Convention requirements to avoid conflicts of the kind at issue. (See [Resolution DH\(1998\)205](#))

- Time limits for expropriation permits. In [Sporrong and Lönnroth v. Sweden](#) (Application Nos. 7151/75 and 7152/75, judgment (Plenary) of 23 September 1982), the effects of long-term expropriation permits and prohibitions on construction on their estate were held to have breached the applicants' right to peaceful enjoyment of their property, as guaranteed by Article 1 of Protocol No. 1 to the Convention. Whilst Sweden had already passed a new Expropriation Act in 1972, which introduced time limits to ensure such violations would not be repeated, the Court's judgment prompted further legislative amendments to the effect that existing construction bans would expire, and no new bans of this kind would be imposed. (See [Resolution DH \(85\) 17](#))
- Exemption from compulsory religious education. As part of the friendly settlement concluded in [Karnell and Hardt v. Sweden](#) (Application No. 4733/71, Commission report of 28 May 1973), the applicant parents were granted, through two Royal Decrees issued on 28 December 1972, that their children be exempted from the obligation to attend religious instruction in comprehensive and upper secondary schools.
- Right of arrested persons to be brought speedily before a judge. Following the friendly settlement in [Skoogström v. Sweden](#) (Application No. 8582/79, judgment of 2 October 1984) and the Court's judgment in [McGoff v. Sweden](#) (Application No. 9017/80, judgment of 26 October 1984), the Swedish Code of Criminal Procedure was changed with a view to ensuring the functioning of criminal courts 24 hours a day, so as to guarantee speedy judicial control of the lawfulness of detention in criminal cases. Before that, such control could depend on the prosecutor's decision and take place only up to three weeks after arrest, in violation of the right to have the lawfulness of one's arrest speedily reviewed by a judge set out in Article 5 (3) of the Convention. (See [ResDH\(1985\)16](#) and [ResDH\(1985\)10](#))
- Sanctions for negligent or fraudulent tax declaration. In the wake of the friendly settlement before the Commission in [Von Sydow v. Sweden](#) (Application No. 11464/65, Commission report of 8 October 1987), public hearings were introduced in cases concerning tax sanctions. A number of subsequent cases – notably [Janosevic v. Sweden](#) (Application No. 34619/97, judgment of 23 July 2002) – found further violations, in particular due to excessive length of proceedings and the fact that the tax authority's decisions on taxes and tax surcharges had been enforced while a court determination of the dispute was still pending (resulting in the applicant's bankruptcy in the *Janosevic* case). In response, the Tax Payment Act was changed on 1 July 2003, introducing an unconditional right to obtain the stay of enforcement proceedings in case of judicial review. In addition, the tax authorities issued new guidance concerning time limits for the reconsideration of taxation decisions, and tax authorities and courts were empowered to remit or reduce tax sanctions in case of unreasonably lengthy proceedings. (See [Resolution CM/ResDH\(2007\)59](#))

## Switzerland

- Equal voting rights for women. Granting women the right to vote, on the federal level, was deemed a prerequisite before Switzerland could ratify the Convention. By way of a referendum on 7 February 1971, women's right to vote was accepted on the national level. On the cantonal level, the last Canton to finally introduce women's right to vote, in 1990, was the Canton of Appenzell Innerrhoden, based on a judgment of the Swiss Federal Court which thereby also relied on the European Convention on Human Rights.
- Restrictions on telephone tapping. The case of [Kopp v. Switzerland](#) (Application No. 23224/94, judgment of 25 March 1998) concerned the unlawful monitoring of a law firm's telephone lines on orders of the Federal Public Prosecutor, in violation of Article 8 of the Convention (right to respect for private life and correspondence). The Court based its finding of a violation on the fact that Swiss law did not clearly enunciate under what conditions and by whom the scope of a lawyer's legal professional privilege was to be determined, and criticised that in practice this task was assigned to an official of the Post Office's legal department, without supervision by an independent judge. New legislation regarding telephone tapping was adopted in January 2000, setting out clearly the conditions under which telephone calls may be intercepted and general monitoring measures applied, and clarifying the scope and organisation of monitoring and the procedures to be complied with. (See [Final Resolution ResDH\(2005\)96](#))
- No 'waiting period' before re-marriage. Subsequent to the Court's judgment in [F. v. Switzerland](#) (Application No. 11329/85, judgment (Plenary) of 18 December 1987), finding of a violation of

Article 12 of the Convention (right to marry) with respect to the prohibition to re-marry for the period of three years after a divorce, this prohibition was deleted from the Civil Code. (See [Resolution DH \(94\) 77](#))

- Compensation claims of asbestos victims. In [Howald Moor and Others v. Switzerland](#) (Application Nos. 52067/10 and 41072/11, judgment of 11 March 2014, available in French only) the Court ruled that the application of the fixed ten-year limitation period for asbestos related claims had restricted the applicants' access to a court to the point of impairing the very essence of their right, in violation of Article 6 (1) of the Convention. The Court reasoned that any claims for damages would be bound to fail, given that the latency period for asbestos-related diseases could be several decades. The judgment was given effect by means of a ruling of the Federal Court of Switzerland (Decision 4F\_15/2014 of 11 November 2015) upholding the applicants' complaint and quashing the initial judgments which had considered their claims to be time-barred. (See the Federal Court's [press release](#) (in German))
- Couple can bear wife's name as family name. The applicants in the case of [Burghartz v. Switzerland](#) (Application No. 16213/90, judgment of 22 February 1994), a married couple, complained that Mr Burghartz had not been granted the right to put his own surname before their family name, despite the fact that Swiss law afforded that possibility to married women. The Court held that this amounted to discrimination contrary to Article 14 in conjunction with Article 8 (right to respect for private and family life) of the Convention. In line with the Court's findings, the Civil Status Ordinance was amended in 1994. It now provides the possibility for a married couple to bear the wife's name as family name, and for the husband to put his own name before the family name. (See [Resolution DH \(94\) 61](#))
- Acceptance of Jesuits and the (re)building of monasteries. Prior to Switzerland's ratification of the Convention, Article 51 of the Constitution provided that the Jesuit Order and affiliated societies were not to be admitted into any part of Switzerland, and that the activity of their members was prohibited in church and school. Article 52 of the Constitution proscribed the construction or restoration of dissolved monasteries or religious orders. With a view to bringing its Constitution in line with the Convention before accession to the Council of Europe, Switzerland abolished both provisions in 1971.

#### **'The former Yugoslav Republic of Macedonia'**

- Direct applicability of the Court's case law. In the case of [Stoimenov v. 'The former Yugoslav Republic of Macedonia'](#) (Application No. 17995/02, judgment of 5 April 2007) the Court held that the respondent State had breached the principle of equality of arms, as protected by Article 6 (1) of the Convention (right to a fair trial), in that the national courts had convicted the applicant on the basis of expert reports produced by the same ministry which had brought criminal charges against him. The Court's judgment was implemented by way of a legal finding of the Supreme Court, clarifying that the case law of the European Court of Human Rights was directly applicable in the national legal order, and that the domestic courts should in their reasoning refer to the Strasbourg Court's judgments. (See [Resolution CM/ResDH\(2009\)139](#))
- Re-opening of civil procedures following a judgment by the Court. In the light of the Court's judgment in [Petkovski and Others v. 'The former Yugoslav Republic of Macedonia'](#) (Application No. 27736/03, judgment of 8 January 2009), finding a violation of Article 6 (1) of the Convention in respect of (some of) the applicants' rights of access to a court in proceedings in which they had requested that a decision to restructure their agricultural cooperative be annulled, the Supreme Court concluded that Section 400 of the Civil Proceedings Act of 2005 provides that a case may be reopened if the Strasbourg Court has given a final judgment finding a violation of the Convention.
- Accelerating administrative proceedings. In order to remedy a situation whereby the excessive length of proceedings before administrative bodies and domestic courts resulted in breaches of the right to a hearing within a reasonable time (Article 6 (1) of the Convention) – see [Dumanovski v. 'The former Yugoslav Republic of Macedonia'](#) (Application No. 13898/02, judgment of 8 December 2005) – legislative and other measures were adopted to accelerate administrative proceedings and prevent multiple re-examination of cases. A new Law on Courts was adopted in 2006 and established a specialised Administrative Court with jurisdiction over administrative disputes which were previously decided by the Supreme Court. Also, amendments to a new Law

on General Administrative Procedure, adopted in 2008, introduced the concept of ‘tacit authorisation’, stipulating that any request made to the administration will be considered to have been accepted if the administration fails to respond to that request within a certain deadline. (See [Resolution CM/ResDH\(2011\)81](#))

## Turkey

- Stricter limits to dissolution of political parties. Turkey adopted Constitutional and legislative reforms following the Grand Chamber’s judgment in [United Communist Party of Turkey and Others v. Turkey](#) (Application No. 19392/92, Grand Chamber judgment of 30 January 1998) and a number of similar cases, in which the Court held that the dissolution of the political parties concerned by the Constitutional Court had been disproportionate, and thus in breach of Article 11 of the Convention (freedom of association). As to the individual measures taken to implement the judgment, the political bans imposed on the applicants who were leaders or active members of the dissolved parties were all lifted. The above-mentioned reforms, in 2001 and 2003, aimed at restricting the possibility of dissolving political parties (which shall no longer be possible without any evidence of clearly anti-democratic activity), established a right for political parties to appeal against a motion for dissolution, and removed the obstacles to re-registering dissolved parties. (See [Resolution CM/ResDH\(2007\)100](#))
- Remedy for those subjected to forced eviction. The measures taken to remedy the violation of Articles 8 (right to respect for home) and 13 (right to an effective remedy) of the Convention, as well as Article 1 of Protocol No. 1 (right to peaceful enjoyment of possessions) found in [Doğan and Others v. Turkey](#) (Application Nos. 8803/02 et al., judgment of 29 June 2004) on account of the applicants’ forced eviction from their village by the security forces and the subsequent refusal of the authorities to allow them to return to their homes and land, included the adoption of the Law on Compensation for Losses resulting from Terrorism and the Fight against Terrorism of 27 July 2004. The law provides reparation for damages caused in the context of terrorism and anti-terrorist activities to movable or immovable property; damages resulting from injury, disability and death; and damages suffered because of inability to access one’s property. The effectiveness of this remedy was confirmed by the Court in [İçyer v. Turkey](#) (Application No. 18888/02, decision (inadmissible) of 9 February 2006). (See [Resolution CM/ResDH\(2008\)60](#))
- Removal of military judges from national security courts. In order to remedy the violations of Article 6 (1) of the Convention (right to a fair trial before an independent and impartial tribunal) found in a line of cases – including [Incal v. Turkey](#) (Application No. 22678/93, judgment of 9 June 1998), [Karataş v. Turkey](#) (Application No. 23168/94, Grand Chamber judgment of 8 July 1999) and [Çiraklar v. Turkey](#) (Application No. 19601/92, judgment of 28 October 1998) – which had arisen from the presence of a military judge on the bench of the national security court, military judges were removed from the national security courts in 1999. (See [Resolution ResDH\(2006\)79](#) and [Resolution DH \(99\) 555](#))
- Individual access to Constitutional Court. In its inadmissibility decision in the case of [Uzun v. Turkey](#) (Application No. 10755/13, decision (inadmissible) of 30 April 2013, available in French only) the Court accepted as principally effective a newly introduced remedy for excessive length of proceedings before ordinary courts: by virtue of constitutional amendments adopted in 2010, which entered into force on 23 September 2012, the right of individual application had been introduced, allowing all persons who consider that their constitutional rights set forth in the Convention have been breached by a public authority to apply to the Constitutional Court after exhausting domestic remedies. (See the Committee of Ministers’ [7<sup>th</sup> annual report 2013](#) (March 2014), at page 176)
- Suspect is entitled to legal assistance in pre-trial criminal proceedings. The Code of Criminal Procedure was modified in the light of the Court’s conclusion that criminal proceedings against the applicant in [Salduz v. Turkey](#) (Application No. 36391/02, Grand Chamber judgment of 27 November 2008) had been unfair, in violation of Article 6 (3) (c) of the Convention. Law No. 4928 of 15 June 2003 lifted the restriction on the right of access to a lawyer in proceedings before state security courts which had been the source of this violation. On 1 July 2005 the new Code of Criminal Procedure entered into force pursuant to which a suspect or an accused has the right to consult counsel in private before being interrogated and to have counsel present during interrogation. (See information on the [status of execution](#), available from the website of the Execution Department)



## Ukraine

- Reinstatement of judge following unfair dismissal. In the case of [Oleksandr Volkov v. Ukraine](#) (Application No. 21722/11, judgment of 9 January 2013) the Court made the order for the respondent State to “secure the applicant’s reinstatement in the post of judge of the Supreme Court”, as his dismissal had been in breach of Article 6 (1) of the Convention (right to a fair trial by an impartial and independent tribunal). In accordance with the terms of a Decree of the Ukrainian Parliament of 25 December 2014, Mr Volkov was eventually reinstated on 2 February 2015. (See the relevant [news item](#) of 2 February 2015 on the website of the Supreme Court of Ukraine: ‘Mr Oleksandr Volkov Was Reinstated to his Post of a Judge of the Supreme Court of Ukraine’)
- Exemption of liability for value statements in defamation proceedings. In [Ukrainian Media Group v. Ukraine](#) (Application No. 72713/01, judgment of 29 March 2005) the Court held that there had been a disproportionate interference in the freedom of expression of the applicant company when a civil court ordered it to pay compensation in defamation proceedings brought following publication of two articles criticising the complainants, who were presidential candidates. The violation of Article 10 of the Convention (freedom of expression) stemmed from the fact that the law on defamation in force at the material time required defendants to prove the truth of any impugned negative statements, irrespective of whether they were factual statements or, as in this case, value judgments which should not be susceptible of proof. Legislative amendments made in April 2003 (pending the application before the Court) and December 2005 exempted value judgments from liability in defamation proceedings. (See [Resolution CM/ResDH\(2007\)13](#))
- Parties can lodge appeal against court decisions in respect of administrative offences. At the time of the Court’s judgment in [Gurepka v. Ukraine](#) (Application No. 61406/00, judgment of 6 September 2005), only a prosecutor or the president of a higher court could introduce an appeal against a court decision in respect of administrative offences. Against this background, the Court upheld the applicant’s claim that his inability to lodge an appeal against the court decision by which he had been found guilty of an administrative offence and sentenced to seven days administrative detention had constituted a violation of his right to have a conviction or sentence reviewed by a higher tribunal (Article 2 of Protocol No. 7 to the Convention). In order to execute the Court’s judgment, Parliament revised the Administrative Offences Code in September 2008, providing the possibility for parties to the proceedings to appeal against court decisions in respect of administrative offences. (See [Resolution CM/ResDH\(2010\)185](#))
- Supervisory review procedure in light of legal certainty principle. [Sovtransavto Holding v. Ukraine](#) (Application No. 48553/99, judgment of 25 July 2002), [Svetlana Naumenko v. Ukraine](#) (Application No. 41984/98, judgment of 9 November 2004) and [Tregubenko v. Ukraine](#) (Application No. 61333/00, judgment of 2 November 2004) concerned the application of the ‘protest’ or ‘supervisory review’ procedure, allowing the quashing of final judicial decisions without limitation. Pending these applications, and in the light of the Court’s finding of a violation of Article 6 (1) of the Convention (right to a fair trial by an independent and impartial tribunal) in [Brumărescu v. Romania](#) (Application No. 28342/95, judgment of 28 October 1999, summarised above), which pertained to the same matter, a legislative reform abolished the supervisory review procedure. (See [Interim Resolution ResDH\(2004\)14](#), [Resolution CM/ResDH\(2011\)313](#) and information on the [status of execution](#), available from the website of the Execution Department)

## United Kingdom

- No restriction of media coverage of matters of public interest unless there is a ‘pressing social need’. The violation of Article 10 of the Convention (freedom of expression) found by the Court in [The Sunday Times v. the United Kingdom \(No. 1\)](#) (Application No. 6538/74, judgment of 26 April 1979) stemmed from an injunction placed on an article that the newspaper had intended to publish about the causes of thalidomide-related birth defects in children while there were still settlement negotiations ongoing. This judgment was implemented by means of adoption of the 1981 Contempt of Court Act, which lay down guidelines to align domestic judicial practice to the principles enunciated by the Court, which reasoned that restrictions on the freedom to impart information on matters of public interest could only be overridden by a ‘pressing social need’. (See [Resolution DH \(81\) 2](#))
- Decriminalisation of homosexuality and protection of privacy for homosexuals serving in the military. The invasive questioning and eventual dismissal of the applicants from the military due to

a blanket ban on homosexual servicemen was held to violate Articles 8 (right to respect for private life) and 13 (right to an effective remedy) in [Smith and Grady v. the United Kingdom](#) (Application Nos. 33985/96 and 33986/96, judgment of 27 September 1999). In response to this judgment and the similar case of [Lustig-Prean and Beckett v. the United Kingdom](#) (Application Nos. 31417/96 and 32377/96, judgment issued the same day), the United Kingdom lifted the ban on homosexuals serving in the military, and the Ministry of Defence formally [apologised](#) in 2007. The decriminalisation of homosexuality in Northern Ireland in 1982 had also come about as a result of the Court's case law, namely in response to the Court's finding of an Article 8 violation in [Dudgeon v. the United Kingdom](#) (Application No. 7525/76, judgment (Plenary) of 22 October 1981). (See [Resolution ResDH\(2002\)35](#); [Resolution ResDH\(2002\)34](#); and [Resolution DH \(83\) 13](#))

- Protection from threats to life. In [Osman v. the United Kingdom](#) (Application No. 23452/94, Grand Chamber judgment of 28 October 1998) the applicants complained that police forces had failed to prevent the harassment of their family by a stalker, eventually ending in the murder of the applicants' father/husband. The Court ruled, *inter alia*, that total police immunity for alleged failures in investigation and suppression of a crime was an unjustifiable restriction of Article 6 (1) of the Convention (access to a court). Following the judgment, the authorities confirmed that all cases alleging negligence against the police in the conduct of their investigations would henceforth be given full consideration on the merits (see [Resolution DH\(99\) 720](#)). The case also led to the introduction of so-called '[Osman warnings](#)', requiring police to notify individuals and offer protection if there is a threat made against their life.
- Protection of transsexuals from discrimination. In the case of [Christine Goodwin v. the United Kingdom](#) (Application No. 28957/95, Grand Chamber judgment of 11 July 2002), the source of the violation of Articles 8 (right to respect for private life) and 12 (right to marry) found was the lack of legal recognition for post-operative transsexuals, resulting in discriminatory treatment, *inter alia* under the criminal law and in the administration of social security benefits, and the inability for the applicant to marry her male partner. This decision led to the passing of the Gender Recognition Act 2004, allowing for transsexuals to apply for legal recognition of their acquired gender. (See [Resolution DH \(2011\) 175](#))
- Prohibition of corporal punishment in schools. The case of [Campbell and Cosans v. the United Kingdom](#) (Application Nos. 7511/76 and 7743/76, judgment of 25 February 1982) – in which the Court upheld the applicants' complaint that by allowing their sons to be belted at school, the authorities failed to respect the right of parents to ensure education in conformity with their convictions under Article 2 of Protocol No. 1 to the Convention – led to the abolition of corporal punishment in state schools in 1986. (See [Resolution DH \(87\) 9](#))
- DNA profiles of innocent people must be destroyed. Privacy guarantees were strengthened in response to [S. and Marper v. the United Kingdom](#) (Application Nos. 30562/04 and 30566/04, Grand Chamber judgment of 16 January 2007), where the Court found that the blanket and indefinite retention of DNA profiles and fingerprints by authorities in cases where a defendant in criminal proceedings was acquitted or discharged constituted a disproportionate interference with their private life, in violation of Article 8 of the Convention. In the light of this finding, the Supreme Court ruled that blanket, indefinite DNA retention was unlawful, and the Protection of Freedoms Act 2012 was enacted, providing that DNA profiles of innocent people can only be retained in certain circumstances and for limited periods of time. (See the Government's action report, document [DD\(2015\)836](#))
- Limits to the interception of communications. Legislation governing the interception of individuals' communication was subject to modifications following [Malone v. the United Kingdom](#) (Application No. 8691/79, judgment (Plenary) of 2 August 1984). In this case, the Court had to decide on the lawfulness of police interception of communications and the release, by the Post Office, of telephone records to the police. In response to its finding of a violation of Article 8 (right to respect for private and family life), the Interception of Communications Act was adopted and came into force on 10 April 1986, establishing a clear framework for authorised interception. (See [Resolution DH \(86\) 1](#))
- Access to a lawyer before police interview. Similar to the Netherlands, in the wake of [Salduz v. Turkey](#) (Application No. 36391/02, Grand Chamber judgment of 27 November 2008), Scots criminal law was altered to require the police to offer individuals consultation with a lawyer prior to interview. (See [Cadder v Her Majesty's Advocate](#) [2010] UKSC 43)

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