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This factsheet does not bind the Court and is not exhaustive

# Pilot Judgments[1]

## What is the pilot judgment procedure?

Many of the about 72,000 cases pending before the European Court of Human Rights are so-called "repetitive cases", which derive from a common dysfunction at the national level. The pilot judgment procedure was developed as a technique of identifying the structural problems underlying repetitive cases against many countries and imposing an obligation on States to address those problems. Where the Court receives several applications that share a root cause, it can select one or more for priority treatment under the pilot procedure. In a pilot judgment, the Court's task is not only to decide whether a violation of the European Convention on Human Rights occurred in the specific case but also to identify the systemic problem and to give the Government clear indications of the type of remedial measures needed to resolve it.

A key feature of the pilot procedure is the possibility of adjourning, or "freezing," related cases for a period of time on the condition that the Government act promptly to adopt the national measures required to satisfy the judgment. The Court can, however, resume examining adjourned cases whenever the interests of justice so require.

## Objectives of the pilot judgment procedure

- assist the 46 European States that are party to the European Convention on Human Rights in solving systemic or structural problems at national level;

- offer a possibility of speedier redress to the individuals concerned;

- help the European Court of Human Rights manage its workload more efficiently and diligently by reducing the number of similar – usually complex – cases that have to be examined in detail.

***First pilot judgment***

It was in the case of **Broniowski v. Poland** (Grand Chamber judgment of 22 June 2004) that the Court delivered its first pilot judgment – on the subject of properties situated beyond the Bug River – which concerned some 80,000 people (see below, under "Violations of the right to the protection of property").

## Codification: Rule 61 of the Rules of Court

In February 2011 the Court added a new rule to its Rules of Court clarifying how it handles potential systemic or structural violations of human rights[2].

The new rule codifies the Court's existing "pilot-judgment procedure", introduced for cases where there is a systemic or structural dysfunction in the country concerned which has given or could give rise to similar applications before the Court. Taking into account

[1]. This factsheet refers only to pilot judgments in the strict sense, i.e. those which specify, in accordance with Rule 61 § 3 of the Rules of Court of the European Court of Human Rights, in the operative provisions (the conclusion) of the judgment the nature of the systemic problem and the type of remedial measures that the State concerned must adopt. It does not include judgments in which a systemic problem and the adoption of measures are merely mentioned in the reasons (Court's reasoning).
[2]. See the press release of 24 March 2011.

the Court's experience of implementing this procedure in different countries and situations, the new rule establishes a clear regulatory framework for pilot judgments.

## Violations of the right to the protection of property

### Broniowski v. Poland

22 June 2004 (Grand Chamber)

Structural problem: After Poland's eastern border had been redrawn in the aftermath of the Second World War, Poland undertook to compensate Polish citizens who had been repatriated and had had to abandon their property situated beyond the Bug River and now in Ukrainian, Belarusian or Lithuanian territory. Following an application by a Polish national who complained that he had not received the compensatory property to which he was entitled, the Court found that the case disclosed the existence, within the Polish legal order, of a structural deficiency which denied a whole class of individuals (some 80,000 people) the peaceful enjoyment of their possessions.

Measures requested by the Court: to ensure, through appropriate legal and administrative measures, the implementation of a property right in respect of the remaining Bug River claimants or provide them with equivalent redress in lieu.

Follow-up: Following this judgment and the Court's adjournment of similar applications (see the press release of 31 August 2004), Poland passed a new Law in July 2005 providing for financial compensation for properties abandoned beyond the Bug River. The Court, having found that the new law and the compensation scheme were effective in practice, struck out in 2007 and 2008 more than 200 similar applications which had been adjourned and decided that the continued application of the pilot-judgment procedure in the case was no longer justified (see the press releases of 12 December 2007 and 6 October 2008).

### Hutten-Czapska v. Poland

19 June 2006 (Grand Chamber)

Structural problem: deficiencies in the rent-control provisions of the housing legislation. The system imposed a number of restrictions on landlords' rights, in particular setting a ceiling on rent levels which was so low that landlords could not even recoup their maintenance costs, let alone make a profit. The Court estimated that about 100,000 landlords were potentially concerned.

Measures requested by the Court: to secure in the Polish domestic legal order a mechanism maintaining a fair balance between the interests of landlords and the general interest of the community, in accordance with the principles of the protection of property rights under the Convention.

Follow-up: In March 2011 the Court closed the pilot-judgment procedure after it was satisfied that Poland had changed its laws such that landlords could now 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" (see the press release of 31 March 2011).

### Suljagic v. Bosnia and Herzegovina

3 November 2009

Structural problem: systemic problem due to deficiencies in repayment scheme for foreign currency deposited before the dissolution of the Socialist Federal Republic of Yugoslavia (SFRY). The applicant, a Bosnian national, complained about the failure to issue State bonds which, as provided for by Bosnian law, would enable savings deposited by individuals in Bosnian banks before the dissolution of the SFRY to be reimbursed. The Court observed that more than 1,350 similar cases were pending before it.

Measures requested by the Court: to ensure, within six months from the date on which the judgment became final, that government bonds were issued, outstanding instalments paid and that, in the case of late payment, default interest was paid.

Follow-up: In November 2010, having concluded that the matter had been resolved, the Court closed the pilot-judgment procedure in question (see the **Zadrić v. Bosnia and Herzegovina** decision of 16 November 2010).

### Maria Atanasiu and Others v. Romania

12 October 2010

Structural problem: ineffectiveness of the system of compensation or restitution, a recurring and widespread problem in Romania. The three applicants complained of the delays on the part of the Romanian authorities in giving a decision on their applications for restitution or compensation of property nationalised or confiscated by the State before 1989.

Measures requested by the Court: general measures should be put in place, within 18 months from the date on which the judgment became final, to secure effective and rapid protection of the right to restitution. Pending the introduction of those measures, the Court adjourned the examination of all applications stemming from the same problem.

Follow-up: In April 2012 the Romanian Government requested that the time-limit be extended by nine months. In June 2012 the Court decided to grant the request and deferred the deadline until 12 April 2013. A further one-month extension of time-limit was granted to the Romanian Government in April 2013 (see the press release issued on the same day). On 16 May 2013 the Romanian Parliament passed a law on finalisation of the process of physical restitution or alternative compensation in respect of immovable property that wrongly passed into State ownership during the communist regime (Law no. 165/2013).

In the **Preda and Others v. Romania** judgment of 29 April 2014 the Court had to determine whether the remedies provided by the law adopted in 2013 and its implementing regulations were effective in dealing with the applicants' situation. In this case the Court found that – except in situations where there were multiple documents of title for the same building – the law in question in principle offered an accessible and effective framework of redress for alleged violations of the right to peaceful enjoyment of possessions; it was for litigants to avail themselves of that opportunity.

In a judgment delivered on 8 November 2022, in the case of **Văleanu and Others v. Romania**, concerning restitution of property, which had been nationalised by the communist regime, under the new Law no. 165/2013, the Court found that even though it had validated the law in question in its *Preda and Others* judgment, the restitution mechanism had nevertheless fallen short of being comprehensively effective and convincingly consistent and had thus placed an excessive individual burden on the applicants. In this case, the Court held that there had been a violation of Article 1 (protection of property) of Protocol No. 1 to the Convention. It also held that it was crucial that Romania continued its efforts to bring its legislation and practice into line with the Court's findings in the present case and with its relevant case-law, so as to achieve complete compliance with Article 1 of Protocol No. 1 and Article 46 (binding force and implementation of judgments) of the Convention

### Manushaqe Puto and Others v. Albania

31 July 2012

Structural problem: non-enforcement of administrative decisions awarding compensation for property confiscated under the communist regime in Albania. The case concerned the complaints by 20 Albanians that, despite their inherited title to plots of land having been recognised by the authorities, final administrative decisions awarding them

compensation in one of the ways provided for by law in lieu of restitution had never been enforced. There were 80 similar cases pending before the Court.

Measures requested by the Court: to take general measures in order to effectively secure the right to compensation within 18 months from the date on which the judgment became final. The Court in particular urged the authorities, as a matter of priority, to start making use of other alternative forms of compensation as provided for by Albanian legislation in 2004, instead of relying heavily on financial compensation. It was important to set realistic, statutory and binding time-limits in respect of every step of the compensation process.

Follow-up: In 2015 Albania's Parliament passed the Treatment of Property and Finalisation of the Property Compensation Process Act ("the 2015 Property Act"), which was intended, among other things, to finalise the examination of claims related to confiscated property and to regulate and award compensation.

In an inadmissibility decision of 17 March 2020, **Beshiri v. Albania and 11 other applications**, the Court in particular examined in detail the new domestic scheme for dealing with the many outstanding claims over decades-old compensation decisions which had not been enforced. The Court concluded that the mechanism introduced by the 2015 Property Act was an effective remedy which the applicants had to use, even if their applications had been lodged before the Act had come into force. It declared their applications inadmissible for non-exhaustion of domestic remedies, as premature, or because the applicants were no longer victims of a violation of their rights. The Court furthermore added a key proviso: it noted that the property valuations used by the 2015 Property Act might result, in some cases, in much lower levels of compensation than under previous legislation. To avoid such an excessive burden on this category of former owners, compensation under the new remedy therefore had to be at least equal to 10% of the value to which former owners would be entitled if the financial evaluation were to be carried out by reference to the current cadastral category of the expropriated property.

**M.C. and Others v. Italy (no. 5376/11)**

3 September 2013

Structural problem: systemic problem resulting from the authorities' unwillingness to adjust the supplementary part of a compensation allowance paid to them following accidental contamination as a result of blood transfusions or the administration of blood derivatives. The Court notably held that the Italian Government's enactment of the emergency legislative decree, which ruled on the disputed issue of adjustment of the supplementary part of the allowance, had infringed the principle of the rule of law and the 162 applicants' right to a fair hearing, had imposed "an abnormal and excessive burden" on them and, lastly, had disproportionately infringed their property rights.

Measures requested by the Court: to set, within six months from the date on which the judgment became final, a specific time-limit within which the State undertakes to secure the effective and expeditious realisation of the entitlements in question. The Italian Government is called on to pay a sum corresponding to the adjusted supplementary allowance to every person eligible for the allowance provided for as soon as that eligibility is recognised.

Follow-up: Pending the adoption by the authorities of the necessary measures within the specified time period, the Court decided to adjourn examination of similar applications not yet communicated to the Italian Government for a period of one year from the date on which the *M.C. and Others v. Italy* became final.

**Ališić and Others v. Bosnia and Herzegovina, Croatia, "the former Yugoslav Republic of Macedonia", Serbia and Slovenia**

16 July 2014 (Grand Chamber)

Structural problem: systemic problem resulting from the failure of the Serbian and

Slovenian Governments to include the applicants and all others in their position in their respective schemes for the repayment of "old" foreign-currency savings deposited in the former Socialist Federal Republic of Yugoslavia (SFRY). The applicants alleged in particular that they had not been able to withdraw their "old" foreign-currency savings deposited with two banks in what is now Bosnia and Herzegovina since the dissolution of the SFRY. The Court considered it appropriate to apply the pilot-judgment procedure, as there were more than 1,850 similar applications pending before it, involving more than 8,000 applicants.

Measures requested by the Court: The Court held that Serbia and Slovenia had to make all necessary arrangements, including legislative amendments, within one year and under the supervision of the Council of Europe Committee of Ministers, in order to allow the applicants, as well as all others in their position, to recover their "old" foreign-currency savings under the same conditions as Serbian and Slovenian citizens who had such savings in domestic branches of Serbian and Slovenian banks.

Follow-up: Following this pilot judgment, both Serbia and Slovenia introduced legislation intended to implement the requirements of the *Ališić* judgment. Under the legislations they each undertook to pay all unpaid "old" foreign-currency savings of citizens of other SFRY successor States deposited in their banks, as well as all such savings of their own citizens in foreign branches of their banks, together with accrued interest up until a cut-off date. In order that the actual amounts due could be assessed, those concerned had to lodge a request for verification by a set date (23 February 2018 for Serbia, 31 December 2017 for Slovenia).

In two inadmissibility decisions (**Muratović v. Serbia**, 21 March 2017; **Hodžić v. Slovenia**, 4 April 2017), the Court found that the implementing legislation in both States met the criteria set out in the *Ališić* pilot judgment. Consequently, the present applicants and all others in their position had to use the remedy introduced by that legislation, namely, a request for verification. Should they do so within the specified time-limits and ultimately be unsuccessful, it would be open to them to lodge a fresh application with the Court within a period of six months from the date on which the final domestic decision was taken. The Court pointed out that it was ready to change its approach as to the potential effectiveness of the remedy in question, should the practice of the domestic authorities show, in the long run, that savers were being refused on formalistic grounds, that verification proceedings were excessively long or that domestic case-law was not in compliance with the requirements of the Convention.

## Prolonged non-enforcement of court decisions and lack of domestic remedy

### **Burdov v. Russia (no. 2)**[3]

15 January 2009

Structural problem: recurring practice consistently highlighted by the Court since 2002 in more than 200 cases in which the Russian State failed to execute judgment debts. In this case the applicant complained of the authorities' failure to execute domestic judgments awarding him social benefits.

Measures requested by the Court: in particular, to set up, within six months from the date on which the judgment became final, an effective domestic remedy or combination of such remedies which would secure adequate and sufficient redress for non-enforcement or delayed enforcement of domestic judgments.

Follow-up: Following this pilot judgment, Russia passed two laws which came into force on 4 May 2010 and provided that an application could be made to the domestic courts

[3]. On 16 September 2022 the Russian Federation ceased to be a Party to the European Convention on Human Rights ("the Convention").

for compensation for delayed enforcement of judgments delivered against the State and for the excessive length of judicial proceedings.

In two inadmissibility decisions of 23 September 2010 (**Nagovitsyn and Nalgiyev v. Russia** and **Fakhretdinov and Others v. Russia**) the Court held that the applicants were required to exhaust the new domestic remedy, whilst specifying that it might review its position in the future depending on the Russian courts' ability to establish consistent case-law in line with the requirements of the European Convention on Human Rights.

In two subsequent judgments of 17 April 2012 (**Ilyushkin and Others v. Russia** and **Kalinkin and Others v. Russia**), the Court noted with regret that there was still no remedy available in Russia by which to complain of such delays where the judicial decisions in question imposed obligations in kind on the Russian State. That problem, in the Court's view, remained unresolved despite the Compensation Act enacted in 2010 following the *Burdov (no. 2)* judgment. The Court therefore considered that an application before it continued to be the only means by which these applicants could assert their rights and obtain effective redress for the clear violations of their Convention rights.

### Olaru and Others v. the Republic of Moldova

28 July 2009

Structural problem: Moldovan social housing legislation bestowed privileges on a very wide category of persons; however, because of chronic lack of funds available to local governments, final judgments awarding social housing were rarely enforced. In this case the six applicants complained that court decisions awarding them social housing had not been enforced.

Measures requested by the Court: The Court, deciding to adjourn all similar cases, held that, within six months from the date on which the judgment became final, the Moldovan State had to set up an effective domestic remedy for non-enforcement or delayed enforcement of final domestic judgments concerning social housing and, within one year from the date on which the judgment became final, grant redress to all victims of non-enforcement in cases lodged with the Court before delivery of the present judgment.

Follow-up: Following this pilot judgment, the Moldovan Government reformed its legislation by introducing a new domestic remedy in July 2011 against non-enforcement of final domestic judgments and unreasonable length of proceedings.

In an inadmissibility decision of 10 February 2012 (**Balan v. the Republic of Moldova**), the Court was satisfied that going back to the domestic courts did not constitute an excessive burden for the applicant and for other applicants in a similar position as the duration of the first instance procedure was limited to a maximum of three months, and the number of appeals to one, and given that no court fees were applied. The Court concluded that the applicant had not instituted the new domestic remedy in Moldova, as he had been required, and therefore rejected his application for non-exhaustion of domestic remedies.

### Yuriy Nikolayevich Ivanov v. Ukraine

15 October 2009

Structural problem: recurring practice consistently highlighted by the Court since 2004 in more than 300 cases in which Ukraine failed to honour judgment debts. In this case an army veteran complained of the prolonged non-enforcement of judgments ordering the authorities to pay him retirement payment arrears.

Measures requested by the Court: in particular, to introduce, within one year from the date on which the judgment became final, one or more effective remedies capable of affording adequate and sufficient redress for non-enforcement or delayed enforcement of domestic judgments.

Follow-up: Having stayed its examination of more than 2,000 similar applications pending before it, the Court noted on 21 February 2012 (see the press release of 29 February 2012) that, although a number of cases had been dealt with, Ukraine had not adopted the required general measures to solve the issues of non-enforcement at domestic level. Accordingly, the Court decided to resume the examination of applications raising similar issues.

In its Grand Chamber judgment of 12 October 2017 in the case of Burmych and Others v. Ukraine, concerning the prolonged non-enforcement of final judicial decisions, and raising issues similar to those assessed in the *Yuriy Nikolayevich Ivanov* pilot judgment, the Court noted that the five applications in question formed part of a group of some 12,143 similar applications currently pending before the Court, which all originated in the same systemic problem identified in the pilot judgment, namely the series of dysfunctions in the Ukrainian judicial system which hinder the enforcement of final judgments, thus entailing a systemic problem of non-enforcement or delayed enforcement of domestic court decisions, combined with the absence of effective domestic remedies in respect of such shortcomings. The Grand Chamber decided to join those five applications and 12,143 applications pending before the Court, and held that these applications should be dealt with in compliance with the obligation set out in the *Yuriy Nikolayevich Ivanov* pilot judgment. The Grand Chamber also decided to strike those applications out of the list of cases pursuant to Article 37 § 1 (c) (striking out applications) of the Convention and to transmit them to the Committee of Ministers of the Council of Europe in order to be dealt with in the framework of the general enforcement measures set out in the pilot judgment. Having regard in particular to the fact that the interests of the actual and potential victims of the impugned systemic problem were more appropriately protected in the framework of the execution procedure, the Grand Chamber found that the aims of the Convention were not best served if it continued to deal with *Yuriy Nikolayevich Ivanov* type cases. It therefore concluded that there was no justification for continuing to examine the cases before it.

### Gerasimov and Others v. Russia[4]

1 July 2014

Structural problem: excessive delays in the enforcement of Russian court decisions granting various benefits in kind (such as housing, housing maintenance and repair services, provision of a car for a disabled person, delivery of an administrative document, etc.). The Court observed that the Russian domestic law allowed no effective redress in respect of those complaints. It found that the case showed that major structural problems on those issues persisted in Russia, referring to its previous judgments on more than 150 similar applications.

Measures requested by the Court: to set up, in cooperation with the Council of Europe Committee of Ministers, within one year from the date on which the judgment became final, an effective remedy at national level securing adequate and sufficient redress for the non-enforcement or delayed enforcement of judgments imposing obligations in kind on the Russian authorities. As regards 600 other similar cases pending before it, the Court held that Russia had to grant redress, within two years from the date on which the judgment became final, to all victims of delayed enforcement of judgments imposing obligations in kind who had lodged their applications with the European Court of Human Rights before the judgment in the case of *Gerasimov and Others* and whose cases were or will be communicated to the Russian Government.

Follow-up: In December 2016, in response to this pilot judgment, the Russian Parliament amended the domestic Compensation Act, extending its scope to cases of non-enforcement of judgments imposing obligations in kind. The amendments entered into force on 1 January 2017.

[4]. On 16 September 2022 the Russian Federation ceased to be a Party to the Convention.

In an inadmissibility decision of 30 January 2018 (**Shtolts and Others v. Russia**), the Court found that the applicants, whose cases had been adjourned pending the implementation of the pilot judgment, were required to lodge a court action for compensation under the amended Compensation Act rather than maintain their applications to Strasbourg.

## Excessive length of proceedings and lack of domestic remedy

### Rumpf v. Germany

2 September 2010

Structural problem: recurring failure by Germany, consistently observed since 2006, to ensure that cases before the administrative courts were handled within a reasonable time and to introduce a domestic remedy by which to obtain redress for the excessive length of proceedings. The Court observed that some 55 similar applications were currently pending before it.

Measures requested by the Court: to introduce, at the latest within one year from the date on which the judgment became final, an effective domestic remedy capable of affording redress for excessively long court proceedings before the administrative courts.

Follow-up: In December 2011, following this pilot judgment, the Act on Protracted Court Proceedings and Criminal Investigations (the "Remedy Act") entered into force in Germany, which combines an instrument to expedite the proceedings and an objection to delay with a subsequent compensation claim to be lodged with the appeal court. Under a transitional provision, the Remedy Act was applicable also to pending proceedings and to proceedings which had been terminated, the duration of which could still become or had already become the subject of a complaint before the European Court of Human Rights. Compensation claims under the transitional provision had to be lodged with the relevant courts on 3 June 2012 at the latest.

In two inadmissibility decisions of 29 May 2012 (**Taron v. Germany** and **Garcia Cancio v. Germany**), while the German courts had not been able to establish any practice in the few months since the entry into force of the new law, the Court did not see at that stage any reason to believe that the new remedy was not to give the applicants the opportunity to obtain adequate and sufficient compensation for their grievances or that it would not offer reasonable prospects of success. The Court further observed that its position might be subject to review in the future, depending, in particular, on the German courts' capacity to establish consistent case-law under the Remedy Act in line with the Convention requirements. It both cases, the Court held that the applicants were required to avail themselves of that new remedy – which the first applicant was not planning to do and the second applicant had not yet done– and rejected the complaints for non-exhaustion of domestic remedies.

### Athanasiou and Others v. Greece

21 December 2010

Structural problem: deficiencies in the justice system at the root of excessive length of proceedings before the administrative courts and the lack of a remedy affording the applicants the possibility of obtaining recognition of their right to have their case heard within a reasonable time. Between 1999 and 2009 the Court had delivered about 300 judgments in similar cases

Measures requested by the Court: to introduce, within one year from the date on which the judgment became final, an effective remedy or a combination of effective remedies capable of affording adequate and sufficient redress where the length of proceedings before the administrative courts had exceeded a reasonable time.

Follow-up: Following that judgment, a law on fair proceedings within a reasonable time entered into force in Greece in April 2012. It introduced two remedies, one

compensatory and the other preventive, designed to afford redress in cases where the length of proceedings before the Greek administrative courts had been unreasonable.

In an inadmissibility decision of 1 October 2013 (**Techniki Olympiaki A.E. v. Greece**), the Court considered that the remedies instituted by the 2012 Law were effective and accessible, both in Greek law and in the practice of the domestic courts. It therefore held that, in accordance with the rule of exhaustion of domestic remedies, the applicant company should have made use of the compensatory remedy available to it in the Greek administrative courts before lodging an application with the Court.

### Dimitrov and Hamanov v. Bulgaria and Finger v. Bulgaria

10 May 2011

Structural problem: deficiencies in the justice system at the root of excessive length of civil/criminal proceedings and lack of domestic remedy giving applicants the possibility of obtaining recognition of their right to have their case heard within a reasonable time.

Measures requested by the Court: to introduce, within 12 months from the date on which the judgment became final, an effective remedy or remedies in respect of unreasonably long criminal proceedings and, above all, a compensatory remedy in respect of unreasonably long criminal or civil proceedings.

Follow-up: Following these two pilot judgments, the Judiciary Act 2007 and the State and Municipalities Liability for Damage Act 1988 were amended to introduce two new compensatory remedies, one administrative and the other judicial.

In two inadmissibility decisions of 18 June 2013 (**Valcheva and Abrashev v. Bulgaria**; **Balakchiev and Others v. Bulgaria**), although no long-term practice had been established in this domain, the Court considered that it could not be assumed at this current stage that the Bulgarian authorities and courts applying the new remedies provisions of the Acts would not give proper effect to them. Therefore, the new remedies could be regarded as effective. Moreover, the Court considered that mere doubts about the effective functioning of a newly created statutory remedy did not dispense the applicants from having recourse to it. Since the applicants had not apparently brought such proceedings and no special circumstances absolved them from doing so, their complaints were rejected for non-exhaustion of domestic remedies.

### Ümmühan Kaplan v. Turkey

20 March 2012

Structural problem: The Court had already found in numerous cases that the length of proceedings (in administrative, civil, criminal and commercial cases and before the employment and land tribunals) was excessive. This case concerned proceedings brought in 1970 by the applicant's father, who had since died, before the land tribunal concerning the classification of plots of land.

Measures requested by the Court: with regard to the applications pending before the Court and those lodged between now and 22 September 2012 – date on which the right of individual petition to the Turkish Constitutional Court would take effect – to put in place, within one year from the date on which the judgment became final, an effective remedy affording adequate and sufficient redress. The Court further decided to adjourn for one year its examination of pending applications not yet communicated to the Turkish Government (2,373 applications as of 31 December 2011) and those lodged between now and 22 September 2012. The Court also reserved the right to continue to examine under the normal procedure the 330 pending applications already communicated.

Follow-up: Following the pilot-judgment procedure applied in this judgment, the Turkish Grand National Assembly enacted a law on the settlement – by a compensation award – of "length of proceedings" applications not yet communicated to the Turkish Government and lodged with the Court before 23 September 2012.

In an inadmissibility decision of 26 March 2013 (**Müdür Turgut and Others v. Turkey**), the Court noted that the application had been lodged with it before that Law had come into force, at a time when the applicants had not had an effective remedy under Turkish law by which to complain of the length of the proceedings in question. However, Law no. 6384 was a direct and practical consequence of the pilot-judgment procedure applied in *Ümmühan Kaplan v. Turkey*, designed to remedy complaints relating to the excessive length of proceedings. Although that Law was not in force when the applicants lodged their application, the Court declared that it was not in a position to state at the present stage of the proceedings that the remedy currently available was not effective and accessible. It followed that the complaint had to be rejected for failure to exhaust domestic remedies.

In another inadmissibility decision of 4 June 2013 (**Demiroğlu and Others v. Turkey**), the Court observed that on 9 January 2013 the Turkish National Assembly had enacted Law no. 6384. Also, although the application had been lodged before the entry into force of the law, the Court deemed it justified to make an exception to the general principle whereby the assessment of whether domestic remedies had been exhausted was carried out with reference to the date on which the application was lodged. The Court considered that the applicants must apply to the compensation commission set up under Law no. 6384. Therefore the application had to be rejected for failure to exhaust domestic remedies. That finding was without prejudice to a possible re-examination of the issue of the actual effectiveness of the remedy in the light of practice and of the decisions given by the compensation commission and the national courts. The burden of proof with regard to the effectiveness of the remedy would fall on the respondent State.

In a judgment of 10 March 2015 (**Behçet Taş v. Turkey**), the Court observed that following the *Ümmühan Kaplan v. Turkey* pilot judgment, a new compensatory remedy in respect of the excessive length of proceedings had been introduced in Turkey. However, in delivering its pilot judgment in that case, the Court had reserved the right to pursue its examination of similar complaints of which the Turkish Government had already been given notice in other cases. Deciding to carry out an examination of this kind in the present case and thus declaring admissible the applicant's complaint concerning the length of the compensation proceedings instituted by him, the Court observed that the proceedings in question had lasted approximately eight years and three months and that their duration had not been attributable to the complexity of the case or the applicant's conduct. The Court therefore held that there had been a violation of Article 6 § 1 (right to a fair trial within a reasonable time) of the Convention as regards the length of the proceedings.

### Michelioudakis v. Greece and Glykantzi v. Greece

3 April 2012 and 30 October 2012

Structural problem:

- case of *Michelioudakis*: deficiencies in the justice system at the root of excessive length of proceedings. Since 2007 the Court had delivered more than 40 judgments finding violations of Article 6 § 1 on account of the length of proceedings before the criminal courts. More than 250 Greek cases concerning the length of judicial proceedings, 50 of which concerning the criminal courts, were pending before the Court.

- case of *Glykantzi*: deficiencies in the Greek legal system at the root of excessive length of proceedings in the civil courts. From 1999 to 2009 the Court delivered about 300 judgments against Greece finding excessive the duration of judicial proceedings, including of a civil nature, and often adding that there had been no effective remedy in that connection. Over 250 applications against Greece concerning, at least in part, the duration of judicial proceedings, including 70 that specifically concerned civil cases, were pending before the Court.

Measures requested by the Court:

- case of *Michelioudakis*: to institute, within one year from the date on which the

judgment became final, a domestic remedy in respect of length of proceedings before the criminal courts. The Court would freeze its examination of similar pending cases for one year.

- case of *Glykantzi*: to put in place, within one year from the date on which the judgment became final, an effective remedy that could provide appropriate and sufficient redress in such cases of excessively lengthy proceedings. The Court has now adjourned, for that period, its examination of all cases which solely relate to the length of civil proceedings in the Greek courts.

Follow-up: Following these two pilot judgments, the Greek authorities introduced a compensatory remedy, under Law no. 4239/2014, with the aim of providing appropriate and sufficient redress in cases where criminal and civil proceedings, or proceedings before the Audit Court, exceeded a reasonable time.

In a judgment of 9 October 2014 (**Xynos v. Greece**), the Court found that the new remedy could be regarded as effective and accessible. It concluded in particular that the applicant's complaint about the allegedly excessive length of two sets of proceedings he had brought before the Audit Court was to be rejected, as the application was out of time in respect of the first set and he had not exhausted domestic remedies as regards the second.

### Rutkowski and Others v. Poland

7 July 2015

Structural problem: the considerable scale of the problem of excessive length of proceedings in Poland accompanied by the lack of sufficient redress for a breach of the reasonable-time requirement. There were currently about 650 similar cases pending before the Court and over 300 Polish cases involving the excessive length of judicial proceedings were pending at the execution stage before the Council of Europe Committee of Ministers.

Measures requested by the Court: The Court considered that the systemic problem leading to a practice incompatible with Article 6 § 1 (right to a fair trial within a reasonable time) and Article 13 (right to an effective remedy) of the Convention required Poland to implement comprehensive large-scale legislative and administrative actions. As regards Article 6 § 1, the Court abstained from indicating any specific measures to be taken, noting that the Council of Europe Committee of Ministers, in the course of the execution of judgments, was better placed to monitor such measures that needed to be taken by Poland. As further regards the practice incompatible with Article 13, the Court was not persuaded by the Polish Government's argument that a 2013 resolution by the Polish Supreme Court, acknowledging that the previous practice as regards compensation for unreasonable length of proceedings had been defective, had put an end to that practice. The Court noted in particular that it had not been established that the lower courts in Poland had put the resolution in practice. Indeed in 2013 and 2014 there had been an increased inflow of repetitive cases before the Court involving length of proceedings and insufficient compensation at national level.

Follow-up: The Polish Government subsequently submitted unilateral declarations promising to adopt individual and general measures in order to implement this pilot judgment. In that context, new legislation was adopted by the Polish Parliament in November 2016 designed to eliminate the systemic dysfunctions identified.

In a decision of 20 June 2017 in the cases of **Załuska v. Poland and Rogalska v. Poland and 398 other applications**, the Court found no reason to justify continuing to examine the 400 applications and decided to strike them out of its list of cases. As concerned the *Załuska v. Poland and 269 other applications* where a friendly settlement had been reached, the Court was satisfied that the settlement was based on respect for human rights as defined in the Convention and its Protocols. The Court bore in mind both: the individual measures introduced, namely sums amounting to on average 50-60% of what would have been the Court's award if there had been no

remedy for excessive length of proceedings in Poland; as well as the fact that the State had adopted general measures 15 months after the pilot judgment had become final, and had also committed itself to taking such measures in the future. The Court further found that, since all the Government's unilateral declarations were set in identical terms, the same conclusions applied to the *Rogalska v. Poland and 129 other applications* in which the applicants had either refused or refrained from making any comments on the Government's proposals. In particular, as concerned those applicants who had called for higher just-satisfaction awards, the Court emphasised that its principal task was to secure respect for human rights, rather than compensate applicants' losses minutely and exhaustively, and that a unified approach was called for in such cases as the ones at hand.

**Gazsó v. Hungary**

16 July 2015

Structural problem: The Court noted that the violation of the applicant's rights in this case arose out of a structural problem in Hungary concerning excessive length of civil proceedings and that the domestic legal system offered no effective preventive remedy or redress for the damage created by such a problem. Against that background, the Court decided to apply the pilot-judgment procedure, in view of the number of people affected by the issue and their need for speedy and appropriate redress.

Measures requested by the Court: to introduce, at the latest within one year from the date on which the *Gazsó* judgment became final, an effective domestic remedy regarding excessively long civil proceedings. The Court recalled that States could choose between a remedy to expedite the proceedings and one offering compensation – while the former was preferred as prevention against delay, a compensatory remedy could be appropriate if proceedings had already been excessively long and in the absence of a preventive remedy – or a combination of both. The Court further decided to adjourn for one year the examination of any similar new cases introduced after the date on which the *Gazsó* judgment became final[5], pending the implementation of the relevant measures by Hungary.

Follow-up: On 15 June 2021 Parliament in Hungary passed Act no. XCIV of 2021 on the Enforcement of Pecuniary Satisfaction Relating to the Protractedness of Civil Contentious Proceedings, which introduced a compensatory remedy for protracted civil proceedings. The Act was intended as a response to the *Gazsó* judgment. It entered into force on 1 January 2022.

In a decision of 21 March 2023, **Szaxon v. Hungary**, concerning the effectiveness of the new compensatory remedy introduced by Hungary for protracted civil proceedings, as in the lengthy divorce proceedings involving the applicant, which were started in 2009 by his wife and only concluded before the Constitutional Court in 2022, the Court held that Act no. XCIV of 2021 set out an effective remedy for protracted civil proceedings, and that the applicant was required to lodge an application with the domestic courts under that Act before coming to Strasbourg. The Court therefore declared the application inadmissible for non-exhaustion of domestic remedies.

## Exclusion of convicted prisoners from voting

**Greens and M.T. v. the United Kingdom**

23 November 2010

Structural problem: UK legislation imposes a blanket ban on voting for convicted prisoners in detention. The Court observed that the United Kingdom had still not amended its legislation five years after the *Hirst (no. 2) v. the United Kingdom* judgment of 6 October 2005. The Court had received 2,500 similar applications.

[5]. This judgment became final on 16 October 2015.

Measures requested by the Court: Adjourning its examination of all similar applications, the Court gave the UK Government six months from the date when the judgment became final to introduce legislative proposals for bringing electoral law into line with the *Hirst (no. 2)* judgment.

Follow-up: This judgment became final on 11 April 2011; the deadline given to the UK authorities to introduce legislative proposals expired on 11 October 2011, but was extended for a period expiring six months after delivery of the Grand Chamber judgment in *Scoppola (no. 3) v. Italy* of 22 May 2012 (see the press release issued on the same day). The consideration of the approximately 2,000 pending cases against the United Kingdom was further adjourned until, at the latest, 30 September 2013 (see the press release of 26 March 2013). On 24 September 2013 the Court decided not to further adjourn its proceedings in the 2,281 pending applications and to process them in due course (see the factsheet on "Prisoners' right to vote").

## Inhuman and / or degrading conditions of detention

### Ananyev and Others v. Russia[6]

10 January 2012

Structural problem: dysfunction in the prison system at the root of a recurring structural problem of inadequate conditions of detention (acute lack of personal space in the cells, shortage of sleeping places, limited access to light and fresh air and non-existent privacy when using the sanitary facilities). The Court found that there had been a violation of Article 3 (prohibition of inhuman or degrading treatment) and Article 13 (right to an effective remedy) of the European Convention on Human Rights in more than 80 judgments since 2002 and that over 250 similar cases were pending before it.

Measures requested by the Court: to produce, in co-operation with the Council of Europe Committee of Ministers, within six months from the date on which the judgment became final, a binding time frame for implementing preventive and compensatory measures in respect of the allegations of violations of Article 3 of the Convention.

Follow-up: Following this pilot-judgment, a new law was introduced in Russia at the end of 2019, providing that any detainee who alleges that his or her conditions of detention are/were in breach of national or international standards can claim financial compensation in court.

In a decision of 4 April 2020, **Shmelev and Others v. Russia**, the Court declared inadmissible, for non-exhaustion of domestic remedies, six of 17 applications, concerning those applicants whose pre-trial or correctional detention was already over. It ruled in particular that the new compensatory remedy was an effective one where no other remedies were required, in particular, for all cases of past pre-trial detention and some situations of correctional detention in breach of domestic provisions. The six applicants in question, falling into those two categories, should therefore use the new remedy at national level before their complaints could be examined by the Court. The Court further stressed that it would apply this approach to all similar applications. Lastly, it decided to adjourn the examination of the remaining 11 applications and asked the parties to submit additional observations to clarify the effectiveness of the compensatory remedies for other types of past correctional detention; and of other types of remedies to improve situations of those in continued detention.

### Torreggiani and Others v. Italy

8 January 2013

Structural problem: The Court observed that the structural and systemic nature of overcrowding emerged clearly from the terms of the declaration of a national state of

[6]. On 16 September 2022 the Russian Federation ceased to be a Party to the Convention.

emergency issued by the Italian Prime Minister in 2010. The structural nature of the problem was confirmed by the fact that several hundred applications were currently pending before the Court raising the issue of the compatibility of the conditions of detention in a number of Italian prisons with Article 3 (prohibition of inhuman or degrading treatment) of the Convention. The Court decided to apply the pilot-judgment procedure in view of the growing number of persons potentially concerned in Italy and of the judgments finding a violation liable to result from the applications in question.

Measures requested by the Court: to put in place, within one year from the date on which the judgment became final, an effective domestic remedy or a combination of such remedies capable of affording, in accordance with Convention principles, adequate and sufficient redress in cases of overcrowding in prison.

Follow-up: Following the application of the pilot judgment procedure, the Italian State enacted a number of legislative measures aimed at resolving the structural problem of overcrowding in prisons, reformed the law to allow detained persons to complain to a judicial authority about the material conditions of detention and introduced a compensatory remedy providing for damages to be paid to persons who had been subjected to detention contrary to the European Convention on Human Rights.

In two inadmissibility decisions of 16 September 2014 (**Stella and Others v. Italy** and **Rexhepi and Others v. Italy**), after having examined the new individual remedies introduced by the Italian State following the application of the pilot judgment procedure, the Court considered that it had no evidence enabling it to find that those remedies did not offer, in principle, prospects of appropriate relief for the complaints submitted under Article 3 (prohibition of inhuman or degrading treatment) of the Convention. It followed that the applicants' complaint concerning overcrowding in prisons had to be rejected for non-exhaustion of domestic remedies. Consequently, litigants complaining of the overcrowding in Italian prisons were under an obligation to use them. The Court therefore rejected the applicants' complaint concerning prison overcrowding for failure to exhaust domestic remedies and declared the applications inadmissible.

### Neshkov and Others v. Bulgaria

27 January 2015

Structural problem: systemic problem within the Bulgarian prison system, justifying a pilot-judgment procedure because of the serious and persistent nature of the problems identified; structural problem also in Bulgarian law concerning the remedies for those prisoners who wished to challenge their detention conditions. In this respect, the Court observed in particular that there existed a compensatory remedy that sometimes operated well, but that, when examining claims concerning conditions of detention, the Bulgarian courts more often than not did not take into account the general prohibition against inhuman and degrading treatment under the European Convention on Human Rights, but only the relevant statutory or regulatory provisions. There was, moreover, no effective preventive remedy.

Measures requested by the Court: to set up, within 18 months from the date on which this judgment became final, a combination of effective remedies in respect of poor conditions of detention that have both preventive and compensatory effects.

Follow-up: The Court did not find it appropriate at this juncture to adjourn the examination of similar cases.

### Varga and Others v. Hungary

10 March 2015

Structural problem: The Court observed that, whilst the applicants' case, as well as previous similar cases against Hungary in which it had found violations of Article 3 (prohibition of inhuman or degrading treatment) of the Convention, related to various different detention facilities in Hungary, they all concerned recurring issues of a lack of personal space, restrictions on access to shower facilities and outdoor activities, and lack

of privacy when using sanitary facilities. The breaches were therefore not the consequence of isolated incidents; they originated in a widespread problem resulting from a malfunctioning of the Hungarian penitentiary system and insufficient safeguards against inhuman and degrading treatment. Approximately 450 similar cases currently pending against Hungary concerning complaints about inadequate conditions of detention also highlighted the existence of a recurrent structural problem.

Measures requested by the Court: Bearing in mind that at the end of 2013 over 5,000 inmates held in Hungarian prisons were detained on remand, the Court indicated one main avenue for improvement, namely reducing the number of prisoners by using as widely as possible non-custodial punitive measures. It also found that the domestic remedies in Hungarian law suggested by the Government to complain about detention conditions, although accessible, were ineffective in practice. It therefore held that the Hungarian authorities should produce a timeframe, within six months of the date of this judgment becoming final, for putting in place an effective remedy or combination of remedies, both preventive and compensatory, to guarantee genuinely effective redress for violations of the Convention originating in prison overcrowding.

Follow-up: Pending implementation of the relevant measures by Hungary, the Court did not consider it appropriate at this stage to adjourn any similar pending cases, the processing of which would serve to remind Hungary of its obligations under the Convention.

On 8 November 2016 the Court examined the situation of the pending applications (more than 6,800) brought before it concerning conditions of detention in Hungary. Having regard to the ensuing legislation adopted by the Hungarian Parliament on 25 October 2016 as well as to the currently on-going examination by the Committee of Ministers of the Council of Europe of the Hungarian Government's related Action Plan, the Court noted that new domestic remedies are being introduced in Hungary concerning this problem which may be capable of redressing the grievances of the applicants in the cases pending before it. In light of this development, the Court found it appropriate to suspend the examination of the entirety of these applications, including those of which notice has already been given to the Hungarian Government, until 31 August 2017.

In an inadmissibility decision of 14 November 2017 (**Domján v. Hungary**), the Court took note in particular of a new law ("the 2016 Act") which had entered into force in Hungary on 1 January 2017 following the Court's pilot judgment in the case of *Varga and Others*. The Court was satisfied that the 2016 Act had provided a combination of remedies, both preventive and compensatory in nature, guaranteeing in principle genuine redress for Convention violations originating in prison overcrowding and other unsuitable conditions of detention in Hungary. It therefore considered that the applicant and all others in his position had to use the remedies introduced by the Act. The applicant had made use of those remedies but the ensuing proceedings were still pending. His complaint was accordingly premature and had to be rejected.

### W.D. v. Belgium (application no. 73548/13)

6 September 2016

Structural problem: a structural deficiency specific to the Belgian psychiatric detention system, which had affected and remained capable of affecting a large number of people. The structural nature of the problem was borne out by the fact that there were some forty cases against Belgium pending before the Court in which an issue of compliance with Article 3 (prohibition of inhuman or degrading treatment) and/or Article 5 §§ 1 and 4 (right to liberty and security / right to a speedy review of the lawfulness of detention) of the Convention arose on account of the continued detention of offenders with mental disorders in various Belgian prisons without appropriate treatment and without any remedies capable of affording redress.

Measures requested by the Court: to organise the system for the psychiatric detention of offenders in such a way that the detainees' dignity is respected. In particular, the Court

encouraged the Belgian State to take action to reduce the number of offenders with mental disorders who were detained in prison psychiatric wings without receiving appropriate treatment, in particular by redefining the criteria for psychiatric detention along the lines envisaged by the legislative reform under way in Belgium. In the same vein, the Court welcomed the objective, now enshrined in law, of providing appropriate therapeutic support to such detainees with a view to their reintegration into society.

Follow-up: In a Chamber judgment of 6 April 2021, **Venken and Others v. Belgium**, the Court noted that implementation of the measures adopted by the domestic authorities had made it possible to reduce significantly the number of individuals in compulsory confinement who were being held in prisons. Many places had been made available outside prison structures over the past five years, including the opening of two forensic psychiatry centres. According to the most recent report from the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), the treatment of detainees in these institutions appeared to be satisfactory. However, on 1 December 2019 an appreciable number of individuals in compulsory confinement were still being detained in prisons in inappropriate conditions. The Court therefore urged Belgium to confirm this positive trend by continuing its efforts to resolve this problem definitively and to guarantee to each detainee living conditions that were compatible with the Convention.
The Court also recalled that proceedings in similar applications had been adjourned for two years with effect from the date on which the *W.D.* pilot judgment had become final[7]. It considered that it would be appropriate to continue examining these cases in the light of the principles established in the *Venken and Others* judgment, once it had become final[8].

**Rezmiveș and Others v. Romania**

25 April 2017

Structural problem: a general problem originating in a structural dysfunction specific to the Romanian prison system; this state of affairs had persisted despite having been identified by the Court in 2012 (in its judgment in **Iacov Stanciu v. Romania** of 24 July 2012).

Measures requested by the Court: to introduce measures to reduce overcrowding and improve the material conditions of detention.; to introduce remedies (a preventive remedy – which had to ensure that post-sentencing judges and the courts could put an end to situations breaching Article 3 of the Convention and award compensation – and a specific compensatory remedy – which had to ensure that appropriate compensation could be awarded for any violation of the Convention concerning inadequate living space and/or precarious material conditions).

Follow-up: Following this pilot judgment, Law no. 169/2017 introduced compensation in the form of a reduction in the prison sentence to be served, which was expressly granted in the event of poor conditions of detention in various prisons or police cells in the period from 24 July 2012 to 20 December 2019..
In an inadmissibility decision of 15 April 2020, **Dîrjan and Ştefan v. Romania**, the Court noted that the applicants had both been granted a reduction of their prison sentence by way of compensation for the poor conditions of detention, pursuant to the law in question. They had consequently benefited from early release. The Court considered, in particular, that the application of this law demonstrated, in essence, the national authorities' acknowledgment of a violation of Article 3 (prohibition of inhuman or degrading treatment) of the Convention. It also found that the compensation mechanism implemented, consisting in a reduction of sentence, was adequate and appropriate. The two applicants could therefore no longer claim to be victims of unsatisfactory conditions of detention.

7. This judgment became final on 6 December 2016.
8. This judgment became final on 6 September 2021.

In a Chamber judgment of 20 July 2021, **Polgar v. Romania**, the Court welcomed the steps taken by the national authorities since its pilot judgment in order to reduce prison overcrowding. With regard to the preventive remedy, it noted however that the downwards trend in prison overcrowding had stopped in June 2020 and that the numbers had risen again for six months. As a result, the Court was unable to reach a different conclusion from that reached in the *Rezmiveş and Others* pilot judgment. It therefore urged the Romanian State to ensure that the reforms to reduce prison overcrowding were continued and to maintain the prison population at manageable levels. With regard to the compensatory remedy, the Court held that an action in tort, based on Article 1349 of the Civil Code, as interpreted consistently by the national courts, had represented since 13 January 2021 an effective remedy for individuals who considered that they had been subjected to inadequate conditions of detention, and who were no longer, when they lodged their action, being held in conditions that were allegedly contrary to the Convention.

In an inadmissibility decision of 15 November 2022, **Vlad v. Romania**, the Court observed that the applicant's detention in Bucharest-Rahova Prison had comprised one period during which Law no. 169/2017 on compensation in the form of an automatic reduction of sentence for persons detained in conditions contrary to Article 3 of the Convention had been applicable, and a second period following the repeal of that Law on 23 December 2019. The Court decided to examine separately the period of detention in respect of which compensation had been awarded (that is, the period prior to 23 December 2019) and the period that had not given rise to any compensation (from 23 December 2019 onwards). Regarding the period prior to 23 December 2019, the Court held that the applicant could no longer claim to be a victim of the matter he complained of, namely his inadequate conditions of detention, in so far as he had received compensation in the form of an automatic reduction of sentence under Law no. 169/2017. As to the period after 23 December 2019 (the date on which Law no. 169/2017 was repealed), the Court considered that the applicant could have brought a civil action in tort against the authorities in the domestic courts in order to assert his complaint of inadequate conditions of detention in Bucharest-Rahova Prison, where he was detained until 19 August 2020. As the applicant had not informed the Court that he had brought such an action, the Court rejected this part of the application for failure to exhaust domestic remedies. The Court had also identified 13 January 2021 as the date from which the remedy in question could be deemed effective in respect of individuals who considered that they had been subjected to inadequate conditions of detention and who were no longer, when they lodged their action, being held in conditions that were allegedly contrary to the Convention. Consequently, the Court reaffirmed the crucial importance of the subsidiary nature of its role and held that in the present case it should apply an exception to the general principle that the effectiveness of a given remedy was to be assessed with reference to the date on which the application was lodged (in this case 13 February 2017). It specified that the applicant in the present case had, at the time of his release and to this day, the possibility of bringing an action of this kind on the basis of Articles 1349 and 1357 of the Civil Code in respect of the damage he had allegedly sustained during the period after 23 December 2019. Lastly, the Court observed that the national authorities' efforts to implement the recommendations made by the Court in the *Rezmiveș and Others* pilot judgment were aimed at enabling cases concerning prison overcrowding to be dealt with at the domestic level, so as to counter the growing threat posed to the Convention system by large numbers of similar cases deriving from the same structural or systemic problem.

### Sukachov v. Ukraine

30 January 2020

Structural problem: a widespread problem which had persisted at least since 2005, when the Court had given its first judgment on the matter of inadequate conditions of pre-trial detention, with no concrete solution having apparently been found yet. The problem had

affected and was capable of affecting a large number of people and there was an urgent need to provide speedy and appropriate redress at domestic level.

Measures requested by the Court: to make available effective preventive and compensatory remedies for inadequate conditions of detention, at the latest within 18 months of this judgment becoming final. The Court also listed comprehensive measures to deal with the structural problem.

Follow-up: the Court did not find it appropriate at this juncture to adjourn the examination of similar cases.

## Failure to regularise residence status of persons unlawfully removed from the register of permanent residents

**Kurić and Others v. Slovenia**

26 June 2012 (Grand Chamber)

Structural problem: Despite the efforts made since 1999, the Slovenian authorities had failed to remedy comprehensively and with the requisite promptness the situation of the "erased" – a group of former nationals of the Socialist Federal Republic of Yugoslavia (SFRY) who lost their status as permanent residents following Slovenia's declaration of independence in 1991, because they had not applied for Slovenian citizenship before the deadline, or because their request had not been granted. The number of "erased" people in 1991 amounted to 25,671 and in 2009, 13,426 of the "erased" still did not have a regulated status in Slovenia.

Measures requested by the Court: to set up, within one year, a compensation scheme for the "erased" in Slovenia. The Court decided it would adjourn examination of all similar applications in the meantime.

Follow-up: As regards the deadline fixed by the Court for the setting up of the compensation scheme, on 5 April 2013 the Slovenian authorities requested its extension until 26 June 2014. On 9 April 2013, the Court indicated that it was not disposed to grant the extension requested. On 22 April 2013, the Slovenian authorities nevertheless requested the Court to reconsider its position in this respect. On 14 May 2013, the Court decided not to grant this request.

In its judgment on just satisfaction of 12 March 2014, the Grand Chamber observed that the Slovenian Government had failed to set up a compensation scheme for the "erased" by 26 June 2013, when the one-year period referred to in the judgment on the merits expired. However, the Government had acknowledged that general measures at national level were required in order to execute the judgment beyond the interests of the applicants in the case. In this context, the Grand Chamber had due regard to the fact that the Act on the setting up of an *ad hoc* compensation scheme had entered into force in December 2013, and would become applicable on 18 June 2014. This statute was to introduce compensation on the basis of a lump sum for each month of the "erasure" and the possibility of claiming additional compensation under the general tort rules. While it was for the Council of Europe Committee of Ministers to evaluate the measures adopted, the Court considered in the exceptional circumstances of the present case that the solution introduced by the Act appeared to be appropriate. Lastly, noting that there were some 65 cases involving more than 1,000 applicants pending before the Court, the Court observed that swift implementation of the judgment was therefore of the utmost importance.

In October 2016, the Court decided to close the pilot-judgment procedure initiated in *Kurić and Others*, considering that it was no longer justified (see the **Anastasov and Others v. Slovenia** of 18 October 2016). The Court was satisfied that the system introduced by the Slovenian Government (and its functioning in practice) following the *Kurić and Others* judgment offered to the remaining "erased" persons who had regularised their legal status – such as the 212 applicants in the case of *Anastasov and*

*Others* – reasonable prospects of receiving compensation for the damage caused by the systemic violation of their Convention rights. It noted in particular that the Committee of Ministers of the Council of Europe, responsible for supervising the implementation of the European Court's judgments, had recently closed its examination of *Kurić and Others* as it was satisfied that all measures required in that judgment had been adopted. The Court concluded that the matter giving rise to the application *Anastasov and Others* and the remaining applications against Slovenia lodged by the "erased" – where the applicants had regularised their legal status – had thus been resolved at national level. Nor did the Court find any special circumstances regarding respect for human rights as defined in the European Convention and its Protocols which required the continued examination of the case.

## Issues raised in the context of the independence of the judiciary

**Wałęsa v. Poland**

23 November 2023[9]

Structural problem: In this case, and in the light of previous judgments concerning the judicial reform in Poland initiated in 2017, the Court held that the double violation of the right to a fair hearing under Article 6 § 1 of the Convention had originated in the interrelated systemic problems connected with the malfunctioning of domestic legislation and practice caused by: a defective procedure for judicial appointments involving the National Council of the Judiciary as established under the 2017 Amending Act; the resulting lack of independence on the part of the Chamber of Extraordinary Review and Public Affairs of the Supreme Court; the exclusive competence of the Chamber of Extraordinary Review and Public Affairs of the Supreme Court in matters involving a plea of lack of independence on the part of a judge or a court; the defects of the extraordinary appeal procedure as established in this judgment; the exclusive competence of the Chamber of Extraordinary Review and Public Affairs of the Supreme Court to deal with extraordinary appeals.

Measures requested by the Court: to take appropriate legislative and other measures to secure, in the national legal system, compliance with the requirements of an "independent and impartial tribunal established by law" and the principle of legal certainty.

Follow-up: Similar cases not yet notified to the Polish Government will be adjourned for 12 months as of the date of the delivery of this judgment pending the adoption of general measures by the Polish State. Cases already notified will be examined and proceed to judgment. The Court will continue to give notice to the Government of applications raising different issues in the context of the independence of the judiciary.

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[9]. This judgment will become final in the circumstances set out in Article 44 § 2 (final judgments) of the European Convention on Human Rights.