Pending cases against the Russian Federation

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47095/99	KALASHNIKOV	15/07/2002	15/10/2002	1035	4.2
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52854/99	RYABYKH	24/07/2003	03/12/2003	1043	4.3
58263/00	TIMOFEYEV	23/10/2003	23/01/2004	1043	4.3
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70276/01	GUSINSKIY	19/05/2004	10/11/2004	1035	4.2
60408/00	YEMANAKOVA	23/09/2004	02/02/2005	1035	4.2
15021/02	WASSERMAN	18/11/2004	18/02/2005	1043	4.3
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63527/00	LEVSHINY	09/11/2004	30/03/2005	1035	4.2
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43883/02	PLOTNIKOVY	24/02/2005	24/05/2005	1043	4.3
7023/03	MAKAROVA AND OTHERS	24/02/2005	24/05/2005	1043	4.3
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55520/00	BABURIN	24/03/2005	24/06/2005	1035	4.2
48758/99	VOLKOVA	05/04/2005	05/07/2005	1043	4.3
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57942/00	KHASHIYEV	24/02/2005	06/07/2005	1035	4.3
57947/00	ISAYEVA	24/02/2005	06/07/2005	1035	4.3
57950/00	ZARA ISAYEVA	24/02/2005	06/07/2005	1035	4.3
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7363/04	MIKRYUKOV	08/12/2005	08/03/2006	1043	4.2
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55762/00	TIMISHEV	13/12/2005	13/03/2006	1043	4.2
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14983/04	RYBAKOV	22/12/2005	22/03/2006	1035	4.2
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39866/02	SHESTOPALOVA and others	17/11/2005	12/04/2006	1043	4.3
1144/03	ZAUGOLNOVA	15/12/2005	12/04/2006	1043	4.3
13995/02	KAZARTSEVA AND OTHERS	17/11/2005	12/04/2006	1043	4.3
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24659/03	IVANNIKOVA	17/11/2005	12/04/2006	1043	4.3
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66543/01	VASILYEV	13/10/2005	12/04/2006	1043	4.3
77617/01	MIKHEYEV	26/01/2006	26/04/2006	1035	4.2

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3504/02	BOGDANOV	09/02/2006	09/05/2006	1043	4.3
36407/02	IGUSHEVA	09/02/2006	09/05/2006	1043	4.3
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55669/00	NAKHMANOVICH	02/03/2006	02/06/2006	1035	4.2
37927/02	NIKOLAYEV	02/03/2006	02/06/2006	1035	4.2
59261/00	MENESHEVA	09/03/2006	09/06/2006	1035	4.2
11886/05	DOLGOVA	02/03/2006	03/07/2006	1035	4.2
75470/01	SUKHOBOKOV	13/04/2006	13/07/2006	1043	4.3
22519/02	ALEKHINA AND OTHERS	13/04/2006	13/07/2006	1043	4.3
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67051/01	ZASURTSEV	27/04/2006	27/07/2006	1043	4.3
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4171/04	GRIDIN	01/06/2006	01/09/2006	1043	4.3
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63501/00	KONOVALOV	23/03/2006	13/09/2006	1043	4.2
73225/01	FEDOTOVA	13/04/2006	13/09/2006	1043	4.2
5964/02	CHERNITSYN	06/04/2006	13/09/2006	1043	4.3
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72374/01	KAZMINA	15/06/2006	15/09/2006	1043	4.3
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30395/04	AVAKOVA	22/06/2006	22/09/2006	1035	4.2
76964/01	KIRSANOVA	22/06/2006	22/09/2006	1035	4.2
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77089/01	OLSHANNIKOVA	29/06/2006	29/09/2006	1035	4.2
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8011/02	VASILYEVA and others	29/06/2006	29/09/2006	1043	4.3
72558/01	BLAGOVESTNYY	04/07/2006	04/10/2006	1035	4.2
70501/01	SHAMINA	13/07/2006	13/10/2006	1043	4.3
21410/04	KOVALENKO	13/07/2006	13/10/2006	1043	4.3
21417/04	SHIRYAYEVA	13/07/2006	13/10/2006	1043	4.3
21419/04	GRIGORYEVA	13/07/2006	13/10/2006	1043	4.3
21425/04	TEREKHOVA	13/07/2006	13/10/2006	1043	4.3
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43726/02	KANAYEV	27/07/2006	27/10/2006	1043	4.3
26853/04	POPOV	13/07/2006	11/12/2006	1035	4.2
40250/02	BELYATSKAYA	27/07/2006	11/12/2006	1043	4.3
69481/01	BAZORKINA	27/07/2006	11/12/2006	1035	3.B, 4.3
3852/02	UGLANOVA	21/09/2006	21/12/2006	1035	3.B, 4.2
26089/02	KORNEV	28/09/2006	28/12/2006	1043	4.3

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14139/03	BOLAT	05/10/2006	05/01/2007	1035	3.Aint, 4.2
54632/00	Stanislav ZHUKOV	12/10/2006	12/01/2007	1035	4.2
66041/01	ALDOSHKINA	12/10/2006	12/01/2007	1035	4.2
10929/03	GLAZKOV	12/10/2006	12/01/2007	1035	4.2
60272/00	ESTAMIROV and Others	12/10/2006	12/01/2007	1035	4.3
36496/02	KESYAN	19/10/2006	19/01/2007	1043	4.3
1752/02	IRINA FEDOTOVA	19/10/2006	19/01/2007	1043	4.3
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44374/04	KUDINOVA	02/11/2006	02/02/2007	1035	4.2
19126/02	KOMAROVA	02/11/2006	02/02/2007	1035	4.2
21779/04	TYTAR	02/11/2006	02/02/2007	1043	4.3
15969/02	Vladimir NIKITIN	02/11/2006	02/02/2007	1035	3.B, 4.2
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7615/02	IMAKAYEVA	09/11/2006	09/02/2007	1035	4.3
69480/01	LULUYEV and others	09/11/2006	09/02/2007	1035	3.B, 4.3
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75473/01	KONDRASHOVA	16/11/2006	16/02/2007	1043	4.3
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12793/02	SEREGINA	30/11/2006	28/02/2007	1043	4.3
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55565/00	BARTIK	21/12/2006	21/03/2007	1043	4.2
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33689/05	DEYKINA	01/02/2007	01/05/2007	1043	4.3
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20518/04	Sergey TARASOV	08/02/2007	08/05/2007	1043	4.3
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30686/03	DANILCHENKO	15/02/2007	15/05/2007	1043	4.3
30731/03	SEPTA	15/02/2007	15/05/2007	1043	4.3
30777/03	GREBENCHENKO	15/02/2007	15/05/2007	1043	4.3
30671/03	BORIS VASILYEV	15/02/2007	15/05/2007	1043	4.3
30674/03	GAVRILENKO	15/02/2007	15/05/2007	1043	4.3
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74286/01	LARIN AND LARINA	07/06/2007	07/09/2007	1043	4.2
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2993/03	AKALINSKIY	07/06/2007	07/09/2007	1043	4.3
28639/03	SAVENKO	14/06/2007	14/09/2007	1035	4.2
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65734/01	SHUKHARDIN	28/06/2007	28/09/2007	1035	4.2
3906/06	SIVOLDAYEVA	28/06/2007	28/09/2007	1043	4.3
62866/00	BOYCHENKO AND GERSHKOVICH	28/06/2007	28/09/2007	1043	4.3
36398/04	BAYGAYEV	05/07/2007	05/10/2007	1043	4.3
6558/06	SAIDOV	05/07/2007	05/10/2007	1043	4.3
18557/06	LYKOV	12/07/2007	12/10/2007	1043	4.3
18762/06	TELYATYEVA	12/07/2007	12/10/2007	1043	4.3
7111/05	PYLNOV	12/07/2007	12/10/2007	1035, 1043	3.B, 4.3
36898/03	TREPASHKIN	19/07/2007	19/10/2007	1035	4.2
21932/03	BAKHAREV	19/07/2007	19/10/2007	1035	4.2
13296/03	ZVEREV AND OTHERS	19/07/2007	19/10/2007	1043	4.3

10519/03	BARANKEVICH	26/07/2007	26/10/2007	1043	4.2
35082/04	MAKHMUDOV	26/07/2007	26/10/2007	1035	4.2
3462/04	VERSHININA	26/07/2007	26/10/2007	1043	4.3
3519/05	SIDORENKO	26/07/2007	26/10/2007	1043	4.3
72683/01	CHEMODUROV	31/07/2007	31/10/2007	1035	4.2
25968/02	DYULDIN AND KISLOV	31/07/2007	31/10/2007	1035	4.2
39013/05	SVITICH	31/07/2007	31/10/2007	1035	4.2
33986/02	SOMCHENKO	31/07/2007	31/10/2007	1043	4.3
19134/05	BOLYUKH	31/07/2007	31/10/2007	1043	4.3
36911/02	MISHKETKUL AND OTHERS	24/05/2007	12/11/2007	1035	4.2
64140/00	ROZHKOV	19/07/2007	12/11/2007	1035	4.2
2708/02	VLADIMIR SOLOVYEV	24/05/2007	12/11/2007	1035	4.2
52058/99	GORODNITCHEV	24/05/2007	12/11/2007	1035	4.2
52697/99	MIKADZE	07/06/2007	12/11/2007	1035	4.2
78145/01	KOVALEV	10/05/2007	12/11/2007	1035	4.2
67579/01	KUZNETSOVA	07/06/2007	12/11/2007	1043	4.2
65582/01	RADCHIKOV	24/05/2007	12/11/2007	1035	4.2
71362/01	SMIRNOV	07/06/2007	12/11/2007	1035	4.2
32718/02	TULESHOV AND OTHERS	24/05/2007	12/11/2007	1035	4.2
40464/02	AKHMADOVA and SADULAYEVA	10/05/2007	12/11/2007	1035	4.3
3790/05	OOO PTK `MERKURIY`	14/06/2007	12/11/2007	1043	4.3
21198/05	AYRAPETYAN	14/06/2007	12/11/2007	1043	4.3
24842/04	KLETSOVA	12/04/2007	10/12/2007	1043	4.3
2047/03	SHAPOVALOVA	05/10/2006	12/12/2007	1043	4.3
30160/04	DZHAVADOV	27/09/2007	27/12/2007	1043	4.2
942/02	ZEMENTOVA	27/09/2007	27/12/2007	1035	3.A, 4.2
33459/04	GALKIN	04/10/2007	04/01/2008	1035, 1043	3.A, 4.2
656/06	NASRULLOYEV	11/10/2007	11/01/2008	1035, 1043	3.A, 4.2
11712/06	KRASYUCHENKO	11/10/2007	11/01/2008	1035, 1043	3.A, 4.2
67253/01	BABUSHKIN	18/10/2007	18/01/2008	1035	3.A, 4.2
6857/02	STADUKHIN	18/10/2007	18/01/2008	1035, 1043	3.A, 4.2
42940/06	GOVORUSHKO	25/10/2007	25/01/2008	1035	4.2
38971/06	KORSHUNOV	25/10/2007	25/01/2008	1035	4.2
966/03	ALMAYEVA	25/10/2007	25/01/2008	1035	3.A, 4.2
934/03	KOZEYEV	31/07/2007	30/01/2008	1043	4.2
24552/02	MELNIKOVA	21/06/2007	30/01/2008	1035	3.A, 4.2
34000/02	IGOR IVANOV	07/06/2007	30/01/2008	1035	3.A, 4.2
37213/02	KANTYREV	21/06/2007	30/01/2008	1035	3.A, 4.2
38411/02	GARABAYEV	07/06/2007	30/01/2008	1035, 1043	3.A, 4.2
18465/05	TIMISHEV (III)	14/06/2007	30/01/2008	1035, 1043	3.A, 4.2
69533/01	KONDRASHINA	19/07/2007	30/01/2008	1035, 1043	3.A, 4.2
73294/01	KUMKIN AND OTHERS	05/07/2007	30/01/2008	1035, 1043	3.A, 4.2
68007/01	ALIKHADZHIYEVA	05/07/2007	30/01/2008	1035	3.A, 4.3
57953/00	BITIYEVA	21/06/2007	30/01/2008	1035	3.A, 4.3
44543/04	PAROLOV	14/06/2007	30/01/2008	1035, 1043	3.A, 4.3

22625/02	MIRONOV	08/11/2007	08/02/2008	1035	4.2
41842/04	FITISOV	08/11/2007	08/02/2008	1035	3.A, 4.2
1573/02	MEDOV	08/11/2007	08/02/2008	1035	3.A, 4.3
37810/03	BAGEL	15/11/2007	15/02/2008	1035	3.A, 4.2
21777/04	GLEBOV and GLEBOVA	29/11/2007	29/02/2008	1043	4.2
3509/06	BEREZKINA	29/11/2007	29/02/2008	1035, 1043	3.A, 4.2
16115/06	ARAPOVY	29/11/2007	29/02/2008	1035, 1043	3.A, 4.2
73219/01	FILATENKO	06/12/2007	06/03/2008	1035	3.A, 4.2
21268/04	KHARITICH	06/12/2007	06/03/2008	1035, 1043	3.A, 4.2
23542/04	BOLDYREVA	06/12/2007	06/03/2008	1035, 1043	3.A, 4.2
37641/04	KRIVONOS	06/12/2007	06/03/2008	1035, 1043	3.A, 4.2
2814/04	SINITSYNA	13/12/2007	13/03/2008	1035, 1043	3.A, 4.2
33820/04	ANGELOVA	13/12/2007	13/03/2008	1035	3.A, 4.2
35760/04	Aleksandr ZHUKOV	20/12/2007	20/03/2008	1035	2
57941/00	MUSAYEV AND OTHERS	26/07/2007	31/03/2008	1035	2
58643/00	GONCHARUK	04/10/2007	31/03/2008	1035	2
58701/00	MAKHAURI	04/10/2007	31/03/2008	1035	2
68004/01	MAGOMADOV AND MAGOMADOV	12/07/2007	31/03/2008	1035	2
74239/01	MUSAYEVA and Others	26/07/2007	31/03/2008	1035	2
74240/01	GOYGOVA	04/10/2007	31/03/2008	1035	2
560/02	NIKOLAY ZHUKOV	05/07/2007	31/03/2008	1035	2
842/02	VOLKOVA AND BASOVA	05/07/2007	31/03/2008	1035	2
852/02	SMIRNITSKAYA AND OTHERS	05/07/2007	31/03/2008	1035	2
944/02	LEVOCHKINA	05/07/2007	31/03/2008	1035	2
25580/02	VEDERNIKOVA	12/07/2007	31/03/2008	1035	2
31296/02	OSHER AND OSHER	25/10/2007	31/03/2008	1035	2
27790/03	KUDRINA	21/06/2007	31/03/2008	1035	2
17864/04	KRASNOV	19/07/2007	31/03/2008	1035	2
38103/05	NEVOLIN	12/07/2007	31/03/2008	1035	2
75025/01	ALEKSENTSEVA AND OTHERS	17/01/2008	17/04/2008	1035	2
37647/04	SMORODINOVA	17/01/2008	17/04/2008	1035	2
6859/02	NAGOVITSYN	24/01/2008	24/04/2008	1035	2
12115/03	PARFENENKOV	24/01/2008	24/04/2008	1035	2
37645/04	LESNOVA	24/01/2008	24/04/2008	1035	2
42752/04	PLEKHOVA	31/01/2008	30/04/2008	1035	2
7412/02	CHERKASHIN	07/02/2008	07/05/2008	1035	2
23490/03	KOSTENKO	07/02/2008	07/05/2008	1035	2
20430/04	GLADYSHEV and others	07/02/2008	07/05/2008	1035	2
34439/04	AGAPONOVA AND OTHERS	07/02/2008	07/05/2008	1035	2
66802/01	DOROKHOV	14/02/2008	14/05/2008	1035	2
24277/03	ZAKOMLISTOVA	14/02/2008	14/05/2008	1035	2
4537/04	SIDOROVA	14/02/2008	14/05/2008	1035	2

43209/04	LEDOVKIN	21/02/2008	21/05/2008	1035	2
18123/04	MATSKUS	21/02/2008	21/05/2008	1035	2
72118/01	KHAMIDOV	15/11/2007	02/06/2008	1035	2
6846/02	KHAMILA ISAYEVA	15/11/2007	02/06/2008	1035	2
28965/02	ALEKSANDROVA	06/12/2007	02/06/2008	1035	2
29361/02	KUKAYEV	15/11/2007	02/06/2008	1035	2
30983/02	GRISHIN	15/11/2007	02/06/2008	1035	2
24770/04	USTALOV	06/12/2007	02/06/2008	1035	2
2245/05	SUBOCHEVA	15/11/2007	02/06/2008	1035	2
25664/05	LIND	06/12/2007	02/06/2008	1035	2
25948/05	KNYAZEV	08/11/2007	02/06/2008	1035	2
34283/05	OOO PKG 'SIB-YUKASS'	08/11/2007	02/06/2008	1035	2
42086/05	LIU AND LIU	06/12/2007	02/06/2008	1035	2
4493/04	LEBEDEV	25/10/2007	02/06/2008	1035	2
38405/02	ABDEYEVY	06/03/2008	06/06/2008	1035	2
9769/04	TRUNOV	06/03/2008	06/06/2008	1035	2
34433/04	DENISOV	06/03/2008	06/06/2008	1035	2
37643/04	KURYANOV	06/03/2008	06/06/2008	1035	2
69524/01	BULGAKOVA	18/01/2007, 10/06/2008	10/06/2008	1035, 1043	3.A, 4.2

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

Application Number	English Case Title	Date of Judgment	Date of Definitive Judgment	Meeting Number	Meeting Section
58255/00	PROKOPOVICH	18/11/2004	18/02/2005	1035	6.2
58254/00	FRIZEN	24/03/2005	30/11/2005	1035	6.2
68443/01	BAKLANOV	09/06/2005	30/11/2005	1035	6.2
74826/01	SHOFMAN	24/11/2005	24/02/2006	1035	6.2
30138/02	NURMAGOMEDOV	07/06/2007	07/09/2007	1035	6.2*

Main pending cases (or groups of cases) against the Russian Federation

Case name : **VANYAN v. Russia** **Appl N° :** **53203/99**
Judgment of : 15/12/2005
Final on : 15/03/2006
Violation :
Theme / Domain :
Payment status : Paid in the time limit

Next exam : 1035-4.2(15/09/2008)
Last exam : 1020-4.2(04/03/2008)
First exam : 966-2(06/06/2006)

NOTES OF THE AGENDA

- Cases concerning the failure to summons the accused in criminal supervisory-review proceedings
53203/99 Vanyan, judgment of 15/12/2005, final on 15/03/2006
66041/01 Aldoshkina, judgment of 12/10/2006, final on 12/01/2007
54632/00 Zhukov Stanislav, judgment of 12/10/2006, final on 12/01/2007
These cases concern a breach of the principle of equality of arms in that the Presidia of the Supreme Court and of Moscow City Court determined the applicants' cases in the absence of the applicants and their counsels on the ground that applications for supervisory review lodged in 1999 and in 2000 respectively by

the Deputy President of the Supreme Court were not to the applicants' detriment. According to the Code of Criminal Procedure of 1960 then in force, the question of whether to summons the applicant and his counsel was left to the court's discretion (violation of Article 6§1 or in conjuction with Article 6§3c).
The Vanyan case also concerns the unfairness of the criminal proceedings against the applicant in that he was convicted of drug-dealing whilst the commission of the offence had been procured by undercover agents of the state and in the absence of any other element suggesting the applicant's guilt (violation of Article 6§1).
Individual measures: The applicants are entitled under Article 413 of the Code of Criminal Procedure to apply for re-opening of proceedings in their cases on the ground of the violations of the Convention found by the European Court. No further claim has been lodged by the applicants since then.
General measures:

1) Gathering of evidence through undercover agents:

• *Information provided by the Russian authorities:* The Russian authorities consider that the violation in this case was due to the lack of an updated procedure for submitting to investigating authorities the results of operational search activities and to the loopholes in the legislation governing such activities. These shortcomings were remedied through the adoption of the following measures:
- *Legislative measures:* By Federal Law of 24/07/2007 No211-FZ On amendments to certain legislative acts of the Russian Federation aiming at the improvement of state regulation in the prevention of extremist activities, two additional paragraphs were added to paragraph 8 of Section 5 of the Federal Law of 12/08/1995 No144-FZ On operational search activities. According to these amendments, organs in charge of operational search activities (or their officials) may not incite, instigate or impell someone directly or indirectly to commit unlawful actions (provocation), or falsify the results of operational search activities.
- *Regulatory measures*: On 17/04/2007, after consultations with the General Prosecutor's office, the Ministry of Internal Affairs issued interministerial Order No 368/185/164/481/32/184/97/147 approving an Instruction on the procedures according to which the results of operational search activities should be submitted to the investigating authority.
- *Measures taken by the Supreme Court of the Russian Federation*: On 15/06/2006, the Plenum of the Supreme Court adopted Ruling No. 14 on judicial practice concerning offences related to drugs and other powerful and poisonous substances. Point 14 provides that if it results from the case-file submitted to the court that a purchase-test was carried out, the courts should bear in mind that in order to be lawful, this purchase-test should have been ordered on the grounds provided by Section 7 of the Federal Law On operational search activities and complied with the requirements provided by paragraph 7 of Section 8. This paragraph specifies that a purchase-test shall be carried out on the basis of a decision approved by the head of the organ in charge of operational search activities.
This Ruling also specifies that the results of the purchase-test may only be taken into account for the verdict if they show that the criminal intent of the accused was formed independently of the actions of the police officers and if they are accompanied by evidence showing that the accused person has carried out all preparatory actions with a view to committing an offence.
• *Assessment*: *The Ruling of the Supreme Court should be particularly welcomed. As regards legislative and regulatory changes, it remains unclear how the measures mentioned will contribute to preventing new, similar violations of the Convention. Indeed, it would appear that in this case the violation was not due to the fact that the purchase-test was carried out without authorisation of the head of the relevant investigating body, as required by Section 8 of Operational Search Activities Act. The European Court rather found a violation of the Convention because Russian legislation did not specify any precondition to meet for such an authorisation (see in particular §49 of the judgment).*
• *Information is therefore awaited on the circumstances in which the head of the relevant investigating body may authorise a purchase-test, in particular on whether there must be preconditions, i.e. reasons to suspect that the person concerned may be, for example, a drug dealer and on whether these reasons should be specified in the authorisation. Information is also awaited on the circumstances in which persons concerned may challenge such authorisation before the courts and/or the admissibility of evidence collected against them through the purchase-test. The authorities may also wish to envisage the introduction of additional guarantees with regard to other techniques listed in the Law, including the use of undercover agents. In so doing, they might take into account the experience of other countries that solved such problems to comply with the Court's judgments (see Resolution ResDH(2001)12 in the case Teixeira de Castro against Portugal).*

2) Supervisory review procedure: According to the new Code of criminal procedure in force since 2002, the convicted person and his counsel are notified of the date, time and place of hearings before the supervisory review court and may attend them provided they have made a specific request to that effect (Article 407§2 of the Code of criminal procedure).
• *Information provided by the Russian authorities:* On 11/01/2007, the Plenum of the Supreme Court of the Russian Federation adopted Ruling No. 1 on the application by the courts of Chapter 48 of the Code of Criminal Procedure governing the supervisory-review procedure. Point 6 provides that, while examining

supervisory-review applications, courts must comply with the requirements of Article 407§2 of the Code of Criminal Procedure. The accused's right to participate in the hearings of the supervisory-review court is also garanteed by Article 47§4 16), on the rights of the accused during the trial.
• *Assessment*: *The Ruling of the Plenum of the Supreme Court is welcome. However, it results from the judgment that the applicant and his lawyer were not informed of the application for supervisory-review and that the issue as to whether or not to summons the applicants and their counsels was left to the court's discretion. This situation was due to the fact that applications for supervisory-review to the detriment of the convicted persons were not allowed (Article 405 of the same Code). The situation has changed since then. On 11/05/2005, the Constitutional Court declared Article 405 unconstitutional. It would appear that a draft law has been prepared by the authorities with a view also to allowing the supervisory-review of convictions to the detriment of convicted persons. In these circumstances, it becomes even more important to secure the rights of convicted persons to be present at hearings before the supervisory-review courts.*
• *Information is thus awaited on how to secure the right of convicted persons to participate in hearings before the supervisory-review court (what authority has to notify the convicted person and his/her counsel, and and at what stage, if an application for supervisory-review has been lodged by other parties to the proceedings, whether the supervisory-review court is bound to check the reasons why the convicted person and his/her counsel are not present prior to the examination of case on the merits, etc).*

3) Publication and dissemination: By a letter from the Russian Government Agent, the Vanyan judgment was disseminated to the Minister of Internal Affairs and to the President of the Supreme Court with a view to taking individual and general measures to prevent new, similar violations. The judgment was sent out by the General Prosecutor's office to all its departments so they might bear it in mind in their daily practice.
The judgment was also included in the training programmes of the General Prosecutor's office and of the Supreme Court of the Russian Federation.
The Government Agent also disseminated the judgment to the President of the Constitutional Court and to the Representative of the President of the Russian Federation in the Central federal district, for information and for use in daily practice.

The Deputies decided to resume consideration of these items at the latest at their 1035th meeting (16-18 September 2008) (DH), in the light of further information to be provided on general measures.

Case name :	**RUSSIAN CONSERVATIVE PARTY OF ENTREPRENEURS v. Russia**		
			Appl N° :
	55066/00		
Judgment of :	11/01/2007		
Final on :	11/04/2007		
Violation :		Payment status :	Paid outside time limit,
short delay			
Theme / Domain :			
Next exam :	1035-4.2(15/09/2008)		
Last exam :	1020-4.2(04/03/2008)		
First exam :	997-2(05/06/2007)		

NOTES OF THE AGENDA

55066/00+ Russian Conservative Party of Entrepreneurs and others, judgment of 11/01/2007, final on 11/04/2007
The case primarily concerns the authorities' refusal to register the applicant party's full list of candidates for the legislative elections in 1999 on the basis of section 51(11) of the Elections Act of 29/06/1999, then in force, on the ground that certain candidates, including the second on the list, had submitted incorrect information. Although this section only provided the disqualification of the entire party's list in the event of "withdrawal" of one of the top three candidates, the Central Electoral Commission interpreted it broadly as encompassing all instances of "withdrawal" for whatever reasons. The applicants obtained a final decision in their favour at appeal in 1999, authorising them to register the party. However, this decision was eventually overruled by the Supreme Court in supervisory review proceedings at the application of a deputy Prosecutor general.
The European Court noted first that the use of supervisory review to set aside the final judgment infringed the principle of legal certainty. Secondly, the Court found that disqualification of all candidates for reasons unrelated to their conduct unduly impaired their passive voting rights and was contrary to the legal principle *nulla poena sine sulpa* (violation of Article 3 of Protocol No. 1).

The case also concerns the denial of an effective remedy to the applicant in respect of the violation of their electoral rights since, at the material time, application for supervisory review could not have been set in motion by a party but only by state officials (violation of Article 13).
Lastly, the case concerns the dismissal of the applicant party's request for the return of its election deposit because it had been disqualified from standing for election on the basis of section 51(11) (violation of Article 1 of Protocol 1).
Individual measures: The European Court awarded compensation to the applicant party in respect of pecuniary damage and covering the damages sustained as a result of the non-return of the deposit. No individual measures appear to be necessary since the violation concerned the applicant party's right to stand for the elections in 1999 without impeding its right to stand for subsequent elections. The party's full enjoyment of its rights under the Convention is contingent on the adequacy of the present legal framework. This issue is addressed under general measures.
General measures:

1) Violation of Article 3 of Protocol No. 1

It would appear that the Elections Act has been changed following the decision of the Constitutional Court of Russian Federation of April 2000 which declared the relevant part of section 51(11) of the Elections Act unconstitutional.
• *Information is awaited on possible changes introduced in response to the Constitutional Court's decision and the current rules governing the situation of those in the applicant's position.*
• *Information is also awaited on the publication and dissemination of the judgment of the European Court to the relevant authorities, including the Central Electoral Commission and the Supreme Court.*

2) Violation of Article 13: see the Ryabykh group of cases (Section 4.2).

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

Case name :	**ZAGORODNIKOV v. Russia**	**Appl N° :**	**66941/01**
Judgment of :	07/06/2007		
Final on :	07/09/2007		
Violation :		Payment status :	Paid in the time limit
Theme / Domain :			
Next exam :	1035-4.2(15/09/2008)		
Last exam :	1013-2(03/12/2007)		
First exam :	1013-2(03/12/2007)		

NOTES OF THE AGENDA

66941/01 Zagorodnikov, judgment of 7/06/07, final on 7/09/07
The case concerns the violation of the applicants' right to a public hearing in the proceedings initiated against a bank by its 188,900 creditors, one of whom was the applicant, before the Moscow Commercial Court in August-December 2000. The European Court considered there was nothing suggesting that admitting the public to the hearings could have jeopardised public order or affected the length of the proceedings (violation of Article 6§1).
Individual measures: The European Court awarded just satisfaction in respect of non-pecuniary damage.
General measures: The new Code of Commercial Procedure entered into force in 2002, i.e. after the events at issue.
• *Information is thus awaited on the current rules applicable in similar situations, in particular when the case involves a large number of people. Information would also be useful on other measures taken to secure the right to a public hearing to all persons in the framework of a mass claim.*
Publication of the European Court's judgments and dissemination to all relevant domestic courts seem appropriate.

The Deputies decided to resume consideration of this item:
1 at their 1020th meeting (4-6 March 2008) (DH), in the light of information to be provided on the payment of the just satisfaction, if necessary;

2. at the latest at their 1035th meeting (16-18 September 2008) (DH), in the light of information to be provided concerning the general measures.

Case name :	**ARSHINCHIKOVA v. Russia**	**Appl N° :**	**73043/01**
Judgment of :	29/03/2007		
Final on :	29/06/2007		
Violation :		Payment status :	Paid in the time limit
Theme / Domain :			
Next exam :	1035-4.2(15/09/2008)		
Last exam :	1020-4.2(04/03/2008)		
First exam :	1007-2(15/10/2007)		

NOTES OF THE AGENDA

73043/01 Arshinchikova, judgment of 29/03/2007, final on 29/06/2007
This case concerns the violation of the applicant's right to a court in that, in 2000, the Presidium of the Supreme Commercial Court of the Russian Federation quashed a final judicial decision in the applicants' favour, following an application for supervisory review (*nadzor*) lodged by a Deputy President of the same court, under the 1995 Code of Commercial Procedure, then in force. This Code gave different state officials discretionary powers to challenge final court decisions at any moment. The European Court found that the use of supervisory review infringed the principle of legal certainty and thus the applicants' right to a court (violation of Article 6§1).
Individual measures: The consequences of the violation found were remedied through just satisfaction awarded by the Court.
• *Assessment: no further individual measure appears necessary.*
General measures: This case presents similarities to the Ryabykh group of cases in which the Committee is examining the reform carried out by the Russian authorities in order to bring the Code of Civil Procedure in line with the Convention (Section 4.3).
Unlike the Code of Civil Procedure, the new Code of Commercial Procedure introduced an in-depth modification of this procedure on 24/07/2002. It limited the right to initiate supervisory review solely to parties to the proceedings or persons whose legal interests are affected by the judgments concerned and set a 3-month time-limit for lodging application for supervisory review. It also created courts of appeal between first-instance courts and cassation courts. The introduction of an additional degree of jurisdiction contributed to a significant decrease in applications for supervisory review, thus allowing further simplification of this procedure and its limitation only to the Supreme Commercial Court.
In addition, in 2005, a reference to the international obligations of the Russian Federation (Article 304 §2) was added to other grounds for supervisory review, thus enabling the Supreme Commercial Court in particular to rectify violations of the Convention at the domestic level.
• *Examples of the case-law under Article 304§2 of the Code of Commercial Procedure would be useful in order to assess whether new system fully complies with the Convention's requirements.*

The Deputies agreed to resume consideration of this item:
1. at their 1013th meeting (3-5 December 2007) (DH), in the light of further information to be provided concerning payment of the just satisfaction, if necessary;
2. at their 1st DH meeting in 2008, in the light of information to be provide concerning general measures.

Case name :	**SOLODYUK v. Russia**	**Appl N° :**	**67099/01**
Judgment of :	12/07/2005		
Final on :	30/11/2005		
Violation :		Payment status :	Paid in the time limit
Theme / Domain :			
Next exam :	1035-4.2(15/09/2008)		
Last exam :	1028-4.2(03/06/2008)		
First exam :	955-2(07/02/2006)		

NOTES OF THE AGENDA

67099/01 Solodyuk, judgment of 12/07/2005, final on 30/11/2005

The case concerns the violation of the applicants' property rights due to the Pension Fund's delays, in 1998, in paying old-age pensions and to the failure to safeguard their value because of the difference between the index-link applicable to pensions and the inflation rate ranging up to 37% at the material time (violation of Article 1 Protocol No.1).
Individual measures: The pecuniary and non-pecuniary prejudice suffered by the applicants was remedied by the European Court through the grant of just satisfaction.
• *Assessment*: *Thus, no individual measure would appear to be necessary*.
General measures: The judgment of the European Court was disseminated to all courts together with a circular letter of the Deputy President of the Supreme Court. It would appear that several reforms of the legislation on pensions took place since the events at issue. In this context, the Russian authorities were invited to take into account the measures taken in other countries to prevent similar violations (see, for example, Resolutions ResDH(2001)70 and ResDH(2001)71 in Aka and Akus v. Turkey concerning the Turkish reform aligning the statutory rate of default interest applicable to all State debts on the country's official inflation rate established by the Central Bank).
• *Information is thus expected*: *on whether the legislation currently in force provides for safeguards in order to prevent delays in payments of pensions and to ensure that the value of amounts due by the State be effectively safeguarded in case of delays in payment.*
• *Information is also awaited on publication and wide dissemination of the present judgment to all relevant authorities, in particular to the Ministry of labour, the Pension Fund Agency and all their local subordinates drawing their attention to the obligation under the Convention to prevent new similar violations.*

The Deputies decided to resume consideration of this item at their 1013th meeting (3-5 December 2007) (DH), in the light of information to be provided on general measures, namely the current rules governing the belated payment of pensions as well as publication and dissemination of the judgment of the European Court.

Case name :	**SMIRNOV v. Russia**	**Appl N° :**	**71362/01**
Judgment of :	07/06/2007		
Final on :	12/11/2007		
Violation :		Payment status :	No just satisfaction
Theme / Domain :			
Next exam :	1035-4.2(15/09/2008)		
Last exam :	1028-4.2(03/06/2008)		
First exam :	1020-2(04/03/2008)		

NOTES OF THE AGENDA

71362/01 Smirnov, judgment of 07/06/2007, final on 12/11/2007
The case concerns violations of the rights of the applicant, an advocate, committed in the context of a search of his home in March 2000 and the subsequent seizure of his computer by the investigating authorities in criminal proceedings against clients of his.
The European Court found that the search had been carried out without sufficient and relevant grounds or safeguards against interference with professional secrecy, the excessively broad terms of the warrant giving the police total freedom to determine what was seized. The authorities' interference with the applicant's right to respect for his private and family life was therefore not "necessary in a democratic society" (violation of Article 8).
The European Court also observed that the central unit of the applicant's computer is still retained by the Russian authorities, *i.e*; more than over six years after the events. It further noted that retaining the computer not only caused personal inconvenience to the applicant but also hindered his professional activities and even had repercussions for the administration of justice. The Court therefore found that Russian authorities failed to strike a "fair balance" between the demands of general interest and the requirement to protect the applicant's peaceful enjoyment of his possessions (violation of Article 1 of Protocol No. 1). The Court further found that the applicant did not have an effective remedy to challenge the retention of his possessions (violation of Article 13 taken together with Article 1 of Protocol No. 1).
Individual measures:
• *Information is awaited on measures taken or envisaged to provide redress to the applicant for the violations found.*
General measures:
The new Code of Criminal Procedure was adopted in 2001. However, it remains to be assessed to what extent the new provisions comply with the Convention's requirements as set out in this judgment.

• *Information is thus awaited:*
- *on the current rules governing searches (authority competent to issue search warrants, specific requirements it should comply with, possibility of judicial review, etc.) and seizure in lawyers' premises and in particular on the existence of any particular provisions (either contained in the Code of criminal procedure or other legislation) safeguarding privileged material protected by professional secrecy;*
- *as to whether decisions to retain seized property are now subject to judicial review;*
- *on the publication and wide dissemination of the European Court's judgment, in particular to all courts and prosecutors, with appropriate instructions from the Prosecutor General.*

The Deputies decided to resume consideration of this item at their 1035th meeting (16-18 September 2008) (DH), in the light of information to be provided on individual and general measures.

Case name :	**KOVALEV v. Russia**	**Appl N° :**	**78145/01**
Judgment of :	10/05/2007		
Final on :	12/11/2007		
Violation :		Payment status :	Paid in the time limit
Theme / Domain :			
Next exam :	1035-4.2(15/09/2008)		
Last exam :	1028-4.2(03/06/2008)		
First exam :	1020-2(04/03/2008)		

NOTES OF THE AGENDA

78145/01 Kovalev, judgment of 10/05/2007, final on 12/11/2007
The case concerns the authorities' failure to ensure a fair hearing of the applicant's civil claim, in proceedings brought by his wife on his behalf, concerning his alleged ill-treatment by the police. Despite the applicant's requests to appear, the domestic courts considered that his participation was unnecessary. The European Court found that, given that the applicant's claim was, by its nature, largely based on his personal experience, his statement would have been an important part of the plaintiff's representation of the case, and virtually the only way to ensure the adversarial nature of the proceedings (violation of Article 6§1).
Individual measures: The European Court awarded just satisfaction in respect of the non-pecuniary damage sustained.
General measures: The issue of actions brought in relation to allegations of ill-treatment in police custody is being examined in the context of the Mikheyev group of cases.
• At this stage, *information is awaited on the publication and dissemination of the European Court's judgment, in particular to all courts, together with a circular letter from the President of the Supreme Court drawing their attention to the particularities of this kind of cases (see in particular § 37 of the judgment).*

The Deputies decided to resume consideration of this item at their 1028th meeting (3-5 June 2008) (DH), in the light of information to be provided on the payment of the just satisfaction if necessary, and to join it, at the same meeting, with the Mikheyev group of cases, to supervise general measures.

Case name :	**MIKHEYEV v. Russia**	**Appl N° :**	**77617/01**
Judgment of :	26/01/2006		
Final on :	26/04/2006		
Violation :		Payment status :	Paid in the time limit
Theme / Domain :			
Next exam :	1035-4.2(15/09/2008)		
Last exam :	1028-4.2(03/06/2008)		
First exam :	970-2(04/07/2006)		

NOTES OF THE AGENDA

77617/01 Mikheyev, judgment of 26/01/2006, final on 26/04/2006
The case concerns torture inflicted on the applicant while in custody at the Leninskiy police station on 19/09/1998 by several police officers, with the aim of extracting a confession that he had committed the offences of which he was suspected and which proved to be nonexistent. As a result of severe physical and mental suffering sustained, the applicant attempted suicide resulting in a general and permanent physical disability (violation of Article 3).
The European Court found that the domestic investigation into the applicant's allegations of torture had been closed and then re-opened more than 15 times during 7 years and had very serious shortcomings, such as

omissions to question witnesses, delay in carrying out a number of important procedural steps (forensic examinations, confrontation of the police officers involved with the applicant, etc), lack of independence of the officials responsible for the investigation from those allegedly involved in the ill-treatment. On 30/11/2005 when the Leninskiy District Court of Nizhniy Novgorod found two police officers guilty of abuse of official powers associated with the use of violence and sentenced them to four years' imprisonment with a subsequent three years' prohibition on serving in law-enforcement agencies. However, the domestic court did not examine the abovementioned flaws in the investigation and no redress was provided to the applicant. Accordingly the European Court found that the investigation had not been adequate or sufficiently effective (procedural violation of Article 3) and that the applicant was deprived of an effective remedy, including a claim of compensation (violation of Article 13).

Individual measures:

• *Information provided by the Russian authorities (16/11/2006)*: The decision of the Leninskiy District Court of Nizhniy Novgorod was upheld by the Criminal Chamber of the Nizhniy Novgorod Regional Court on 30/11/2005 and became final on 27/01/2006. The subsequent appeals lodged by the two convicted police officers were rejected by the Supreme Court.

The Deputy Public prosecutor of the Nizhniy Novgorod Region, who was allegedly involved in the events at issue (§ 68 of the judgment), was discharged on 1/04/2002 and died on 20/04/2002.

• *Applicant's observations:* On 13/10/2006, the applicant's representative submitted his observations mostly concerning further pecuniary compensation because of the applicant's disability. These observations have been transmitted to the Russian authorities for comments.

• *Information is awaited on the existing possibilities for additional compensation under Russian law*.

General measures: It appears that the judgment requires important general measures to prevent new, similar violations. When adopting these measures, the Russian authorities may wish to take into account the comprehensive measures taken and/or envisaged in other countries to prevent similar violations by the security forces (see, in particular, Interim Resolutions DH(99)434, DH(2002)98 and ResDH(2005)43 concerning the action of the security forces in Turkey, Interim Resolution ResDH(2005)20 concerning the action of the security forces in Northern Ireland and Final Resolutions ResDH(94)34 in the case Tomasi against France and ResDH(2006)13 in the cases Egmez and Denizci against Cyprus).

In response to the questions raised in the Annotated agenda of the 976th meeting (October 2006), the Russian authorities provided extensive information which is being assessed by the Secretariat with a view to possibly preparing a memorandum. At the outset it appears that some further information and clarification would be necessary (see below).

1) Procedural safeguards in police custody: It appears that the violations were due to the lack of certain procedural safeguards in the Russian legislation at the material time. The new Code of Criminal Procedure (the "CCP") entered into force in July 2002.

a) Access to a lawyer:

According to Articles 46 §4 (3) ("Suspect"), 47 §4 (9) ("Accused"), 53 §1 (1) ("Powers of defence lawyer") and 92 §4 ("Procedure for apprehension of a suspect") of the CCP and Article 18 §1 of the Federal Law of 15/07/1995 "On Pre-Trial Detention of Persons Suspected of and Accused of Having Committed Criminal Offences", suspects and accused have access to a lawyer as from the moment of their actual apprehension. Meetings are to be in private and in confidence without limitation as to their number and duration, except in cases provided for by the CCP. This right is also provided by the Internal Regulations of IVS adopted by the Order of the Ministry of the Interior on 22/11/2005 and SIZO adopted by the Order of the Ministry of Justice on 14/10/2005.

• *Clarifications are awaited on cases in which, according to the CCP, access to a lawyer may be limited and on the extent of this limitation. Information is also necessary on the possibilities to have access to a lawyer for persons against whom criminal proceedings have not yet been opened and who are brought to the police station for other reasons, i.e. operative talk, administrative arrest, etc.*

b) Right to inform a person and his/her right to visit:

According to Article 46 §3 CCP, the investigating authority shall notify the relatives of the person apprehended only if this person is apprehended in the circumstances set out in Articles 91 and 92 CCP (i.e. when the person has been caught at the crime scene or clearly identified by witnesses). This notification must be made within 12 hours unless the secrecy of investigation requires its postponement and the person detained is over 18 (Article 96 CCP).

According to Article 18 §3 of the Federal Law "On Pre-Trial Detention of Persons Suspected of and Accused of Having Committed Criminal Offences", suspects and accused are entitled to no more than 2 visits a month by their relatives or other persons, by written permission of the investigating authority. These visits shall not exceed 3 hours each.

• *Information is awaited on whether the relatives of a person deprived of his/her liberty may request a medical examination in case of alleged ill-treatment.*
• *Information would also be useful on whether the same rules of notification of the relatives are applicable if a person is apprehended in circumstances other than those provided by Article 91 CCP.*

c) Medical examination:

The rules regarding medical examination of persons deprived of their liberty depend on whether they are detained in IVS or in SIZO. In addition, the Russian authorities provided a Regulation regarding detention of persons arrested for having committed administrative offences, which also contains rules on medical examination. This document will be examined more in detail in the Secretariat memorandum.

- *IVS*: A medical examination takes place when a person is brought to IVS, when he/she is released and when he/she is transferred somewhere else.

This examination is carried out by a doctor or by a police officer having appropriate training (§124 of the Internal regulation of 22/11/2005). In addition, if persons detained have health trouble or in case of injuries, they should be immediately examined by a member of medical staff of IVS or an outside doctor. The results are recorded according to an established procedure and made available to detainees and their lawyers (§ 125, *idem*). Each incidence of injuries gives rise to a verification with a view to establishing whether criminal proceedings should be opened or not (§ 128, *idem*).

• *Additional information is awaited in relation to this verification, i.e. the authorities responsible, public scrutiny, the possibility for the victim to challenge the decision not to open criminal proceedings, etc.*

- *SIZO*: A medical examination takes place within 3 days as from the transfer of a person by a doctor from the SIZO's medical unit (§ 16 and § 126 of the Internal Regulation of 14/10/2005). Its results are registered on the medical card of the person concerned. Cases of alleged ill-treatment are reflected in a special act and give rise to verification by an operational department of the SIZO and may be transferred to a prosecutor if there is room for criminal proceedings.

• *Information is awaited on the same points raised in relation to the IVS and on the detainees' right to ask for an independent medical examination by a doctor of his/her choice to be carried out at different stages of his/her deprivation of liberty.*

d) Video recording of questioning:

According to Article 189§4 ("General rules of interrogation") CCP, a person interrogated by an investigating judge may ask to have his/her interrogation video-taped.

• *Information is awaited on whether this rule is also applicable to questioning by other authorities, i.e. police, prosecutors, etc. In addition, clarification would be useful on the circumstances in which such video recordings might be available to the defence.*

e) Prosecutors' duties in respect of persons in custody:

According to the Russian authorities, public prosecutors must visit pre-trial detention facilities every day. These visits give rise to a special procedural act or record in a special register held in each facility. In case of complaints against police officers, the prosecutor must carry out a verification (Articles 144-145 CCP) and take a decision on the complaint within 3 days.

In addition, Order of the Prosecutor General of the Russian Federation No. 27 of 5/08/2003 ("On organisation of prosecutors' supervision of compliance with laws in pre-trial detention facilities") as amended by the Order of 4/02/2004, compels prosecutors to visit pre-trial detention facilities on a monthly basis and establish a special report.

• *Examples of these reports would be helpful.*

2) *The effectiveness of investigation*:

It results from the judgment that the shortcomings of the investigation pointed out by the Court were mostly due to the lack of independence of the investigating authorities from the officials allegedly involved in the ill-treatment.

- Initial supervision of lawfulness during the investigation:

According to Chapter 3 of the Federal Law "On the *Prokatura* of the Russian Federation", prosecutors, and in particular the Department of supervision of the compliance with laws by organs carrying out operational activities, inquest and preliminary investigation, supervise the lawfulness of actions of all competent authorities during the investigation process.

- Examination of complaints of alleged ill-treatment:

The authorities indicate that according to Article 151§1в) CPP, prosecutors have jurisdiction to investigate all cases of ill-treatment allegedly inflicted by police officers. Moreover, Article 22 of the Federal Law "On *Prokatura* of the Russian Federation" and Article 144 CCP provide that prosecutors consider all complaints lodged against investigating authorities with a view to determining whether criminal proceedings should be opened. Decisions not to open criminal proceedings may be challenged by the person concerned (Article 125 CCP).

• In view of the above, clarification would be useful on the territorial, institutional and practical independence of prosecutors in charge of examination of complaints regarding ill-treatment from those who ensure the initial supervision of the investigation.
It would appear that according to the Federal Law "On police", the police officer under investigation is not suspended. Confirmation in this respect would be useful.
More generally, it remains unclear what are the investigation powers of prosecutors vis-à-vis the police and what procedural and practical steps are taken during the verification carried out in cases of alleged ill-treatment. More information is expected in this respect.

3) Awareness raising and training:

- Police officers.

By letter of the Deputy Head of the Main Directorate of the Interior for the Region of Nizhniy Novgorod of 9/08/2006 to the heads of territorial units a new item "Prevention of cases of ill-treatment of persons in custody" including the compulsory study of the present judgment was added to the programme of in-service training of police officers. The letter also gave instruction to strengthen the supervision of compliance with the detainees' rights, to verify complaints of ill-treatment without delay and to open disciplinary proceedings against those responsible.

- Prosecutors:

The judgment has been included in the programme of in-service training of prosecutors.

• Additional details would be helpful as regards the scope and nature of the courses delivered, the time allocated to them and evaluation of their practical effectiveness. Since the letter mentioned above established a time-limit for implementation of these measures, i.e. 08/09/2006, information is awaited in this respect, in particular on

- concrete measures taken to strengthen supervision of compliance by police officers with detainees' rights, particularly on the authorities responsible;
- the procedure for verifying alleged cases of ill-treatment;
- disciplinary sanctions which were or might be taken and possible statistics in this respect.

4) Compensation of victims:

The government indicated before the European Court that Russian law provided for the strict liability of the state, i.e. notwithstanding the identification and/or conviction of the perpetrators, in relation to unlawful actions of investigating authorities, prosecutors and courts (Article 1070 of the Civil Code, CC).

In the meantime, the authorities indicated that compensation for damage on the basis of Article 1070 CC would be possible only once the unlawful character of actions of the state agents has been established in the framework of criminal or administrative proceedings. Another possibility to obtain compensation pending verification or proceedings regarding the ill-treatment is provided by Articles 1069 and 1070 CC.

• More details would be useful on the mechanism of Article 1069 CC with relevant examples of the case-law.

5) *Dissemination and publication of the judgment of the European Court*

By letter of 17/10/2006 of the Head of the Main Directorate of supervision of criminal and operational activities of the Prosecutor General's office, the judgment was disseminated to all regional prosecutors in charge for them to discuss the findings of the European Court with their subordinates.
The judgment has been published in a Russian edition of the *Bulletin of the European Court of Human Rights,* No. 6, 2006.

The Deputies decided to resume consideration of this item at the latest at their 1007th meeting (15-17 October 2007) (DH)
1. in the light of information to be provided by the Russian authorities as regards the existing possibilities for the applicant to obtain further compensation under Russian law on account of his permanent disability as a result of torture in police custody;
2. in the light of further information and clarification on general measures to be provided by the authorities and of a memorandum to be prepared by the Secretariat.

Case name :	**TATISHVILI v. Russia**	**Appl N° :**	**1509/02**
Judgment of :	22/02/2007		
Final on :	09/07/2007		
Violation :		Payment status :	Paid in the time limit
Theme / Domain :			
Next exam :	1035-4.2(15/09/2008)		
Last exam :	1020-4.2(04/03/2008)		
First exam :	1007-2(15/10/2007)		

NOTES OF THE AGENDA

1509/02 Tatishvili, judgment of 22/02/07, final on 09/07/07
The case concerns the unjustified interference with the right to liberty of movement of the applicant, a "former USSR national", as the Passports Department at Filevsky Park Police Station in Moscow unlawfully refused to process her application for registration of her place of residence (violation of Article 2 of Protocol No. 4).
The European Court also found that the manifestly deficient reasoning of the district court and its subsequent approval by the City court failed to fulfil the requirements of a fair trial (violation of Article 6 §1).
Individual measures: The European Court awarded to the applicant just satisfaction in respect of both pecuniary and non-pecuniary damage sustained. The European Court also considered that the applicant, being a "former USSR national", was lawfully present in Russia (§ 43 of the judgment).
However it appears from the European Court's judgment that the absence of residence registration prevented the applicant from exercising certain fundamental social rights, such as access to medical assistance, social security, old-age pension, the right to possess property, to marry, etc.(§ 44 of the judgment).
• *Information provided by the Russian authorities*: On 11/09/2007 the applicant was registered at her place of residence in Moscow. On an unspecified date she was also granted the citizenship of the Russian Federation on the basis of Article 13§1 of the Law of 28/11/1991 No. 1948-1 on the citizenship of the Russian Federation.
• *Assessment: no further individual measure thus appears necessary.*
General measures:
1) Violation of Article 2 of Protocol N°4: The European Court noted that the guidelines given by the Constitutional Court on implementing of the Regulations for registering residence, although binding, were disregarded by the authorities in this particular case (§ 53 of the judgment).
The Russian authorities indicated that the Law of 25/06/1993 on the right of Russian citizens to liberty of movement and freedom to choose the place of temporary and permanent residence within the Russian Federation and its implementing Regulations, adopted by the government on 17/07/1995, were currently subject to amendments. As a result of these modifications, Russian citizens will have the right to notify the registration organs of their place of residence by simple letter.
• *The text of the amending legislation is awaited so as to assess the extent to which they take account of the Constitutional Court's decision and the European Court's findings, as well as on progress with their adoption.*
In addition, the Russian authorities have indicated that, in order to improve the registration procedures, the Federal Migration Service issued on 20/09/2007 an Order No. 208 approving an administrative Regulation on the services of the Federal Migration Service concerning the registration of Russian citizens at their place of residence (Об утверждении Административного регламента по предоставлению Федеральной миграционной службой Российской Федерации государственной услуги по регистрационному учету граждан Российской Федерации по месту пребывания и по месту жительства в пределах Российской Федерации).
• *A copy of this document would be useful.*
• *Information is also awaited on the current legal framework governing the status of former USSR nationals.*
2) Violation of Article 6§1: On 9/10/2007, the judgment of the European Court was sent out to all judges by a circular letter from the Deputy of the President of the Supreme Court of the Russian Federation. It was also discussed during a working meeting with the judges of the Civil, Criminal and Military Chambers of the Supreme Court.
3) Publication and dissemination of the European Court judgment:
• *Information is awaited on publication and dissemination, including targeted dissemination with an explanatory note on the violation to all relevant authorities, including those involved in this case, namely the Passports Department at Filevsky Park Police Station in Moscow, the Dorogomilovsky District Court of Moscow and the Moscow City Court*.

The Deputies,
1. welcomed the individual measures taken in order to erase the negative consequences of the violations for the applicant;
2. took note with interest of the general measures in course of adoption by the Russian authorities in response to the judgment of the European Court;
2. decided to resume consideration of this item at the latest at their 1035th meeting (16-18 September 2008) (DH), in the light of further information to be provided by the authorities on general measures.

Case name :	**FEDOTOV v. Russia**	**Appl N° :**	**5140/02**
Judgment of :	25/10/2005		
Final on :	25/01/2006		
Violation :		Payment status :	Paid in the time limit
Theme / Domain :			
Next exam :	1035-4.2(15/09/2008)		
Last exam :	1020-4.2(04/03/2008)		
First exam :	966-2(06/06/2006)		

NOTES OF THE AGENDA

5140/02 Fedotov, judgment of 25/10/2005, final on 25/01/2006
CM/Inf/DH(2006)19 revised 3 and CM/Inf/DH(2006)45

The case concerns the unlawfulness of the applicant's arrest in June and July 2000 in Moscow, and his subsequent detention in the Izmaylovo Hotel and in Rostokino police station. The police arrested the applicant, whose name still appeared on a federal list of wanted persons even after charges against him had been dropped in the meantime (violation of Article 5§1).

The case also concerns the inhuman treatment suffered by the applicant during his detention on 6-7/072000 in Rostokino police station. The European Court noted in this context that the applicant had been detained overnight in a cell unfit for an overnight stay, without food or drink or unrestricted access to a toilet (substantive violation of Article 3). It also found that there had been no effective investigation into the applicant's complaints in this respect (procedural violation of Article 3).

Finally, the case concerns the violation of the applicant's right to compensation for his unlawful detention, his action for damages having been dismissed as unsubstantiated by domestic courts, despite abundant evidence to the contrary (violation of Article 5§5).

On 18/09/2001, the domestic court merely granted him damages in respect of the unlawfulness of the criminal proceedings, as the charges brought against him had been dropped. However this decision was still unenforced when the European Court delivered its judgment (violations of Article 6§1 and Article 1 of Protocol No. 1). The European Court held that the Russian authorities must ensure enforcement of this judgment within three months following the date upon which its own judgment became final.

Individual measures: The amounts due to the applicant as a compensation for his unlawful detention according to the domestic judgment of 18/09/2001, as supplemented by the judgment of 24/11/2004, were paid to him in June 2005.

General measures:

1) Violation of Article 3: The question of unsatisfactory conditions of detention at police stations has to be addressed by the authorities to prevent new, similar violations. The authorities' attention is drawn in particular to the CPT report on administrative-detention cells in Moscow (see CPT/Inf(2003)30) referred to by the Court in its judgment (§67). It should be recalled that significant progress has already been achieved regarding the improvement of detention conditions at pre-trial detention facilities, SIZO (see Interim Resolution ResDH(2002)123).

- Measures taken with regard to administrative cells:

• *Information provided by the Russian authorities:* On 3/12/2004, the Ministry of Internal Affairs of the Russian Federation adopted Order No. 804, point of which 11 prohibits the holding in administrative detention cells of suspects, accused persons or persons under trial.

• *Secretariat's assessment: In its report CPT/Inf(2003)30, the CPT reiterated its recommendation that material conditions in, and the use of, cells for administrative detention in district commands and local divisions of Internal Affairs be brought into conformity with the Ministry of Internal Affairs Order 170/1993 on the general conditions and regulations of detention in administrative detention cells. The CPT also recommended that:*

- cells which do not correspond to the requirements of that Order should be withdrawn from service and

- administrative detention cells should not be used for accommodating detainees for more than 3 hours.

• *Information is thus awaited on measures taken or planned to improve detention conditions in administrative cells since these recommendations were made.*

- Measures under way with regard to temporary holding facilities for criminal suspects (IVS):

• *Information provided by the Russian authorities:* In 2007, 500 million RUR were provided in the budget for the reconstruction of IVS. In 2008-2009, it is planned to allocate 1 billion RUR to this purpose. It is also planned to build or to reconstruct 79 IVS in 2008-2010. According to Order No. 1/7290 of the Ministry of Internal Affairs of 17/09/2007, a ministerial programme on construction and reconstruction of IVS for 2009-2010 is currently under preparation.

2) Violation of Article 5§1: The Court found that the absence of records of the applicant's arrests and the refusal of the officer in charge to record them as appropriate must be considered as a grave violation of Article 5 (§78).

- Measures taken to ensure a proper record of apprehensions:

• *Information provided by the Russian authorities:* On 26/02/2002, the Ministry of Internal Affairs adopted an Order No. 174 dsp on measures to improve the activities of district commands. This Order provides for the setting-up of a Register of persons brought to a district command. The details, such as information about an arrested person on the basis of his/her identity documents, the time of their arrest and of their release, should be noted in this Register.

A list of documents to be established at the moment of arrest is provided by:

- Article 28.2 of the Code of administrative offences;
- Article 92 of the Code of Criminal Procedure, according to which the arrest record should mention the date and hour of its drafting, the fact that the suspect has been notified of his or her rights, the results of his or her search and the other circumstances of the arrest; and
- Recommendations on the organisation of the activities of district commands of the Ministry of Internal Affairs of 26/02/2002 No174 dsp (point 45 of these recommendations provides that the fact of bringing a person at a district command shall be registered in the Register of arrested persons).

• *Secretariat's assessment*: *It is recalled that given the particular importance of properly recording apprehensions in combating ill-treatment in police custody, this issue is also examined more in depth in the Mikheyev case (Section 4.3).*

In its Report CPT/Inf(2003)31, the CPT pointed out that the maintenance of custody registers was not always followed (§41 of the report).

• *Information is awaited on measures taken to ensure that registers are properly maintained and on sanctions against those responsible for the failure to do so. In this respect, a copy of the aforementioned Recommendations would be particularly useful.*

- Remedies available for failure to comply with the rules on recording arrests

The Russian authorities have indicated that each citizen has the right to challenge the acts of police officers before their superiors, the prosecutor or courts. The arrested person has the right to be assisted by a lawyer as from his/her arrest. In accordance with Article 53 of the Code of Criminal Procedure, the lawyer may also complain about the acts of prosecutors or investigators and to use other means of defence.

• *More details in this respect would be useful, in particular on what is understood by "other means of defence". Information is also awaited on how the control over the compliance with the obligation to maintain custody registers is ensured (prosecutors' control, their powers in this respect, internal monitoring mechanisms, etc).*

- Measures taken to ensure the regular updating of the federal list of wanted persons:

• *Information provided by the Russian authorities:* On 13/04/2006 the Ministry of Internal Affairs issued a circular No. 1/2707 on the proper outcome of federally wanted persons. Once a federal search of a person ends, a special circular is sent by the main information analytical centre of the Ministry of Internal Affairs to other information centres, to the main department of Internal Affairs and to the local departments of the Interior. The automatic information database is updated every day. The work of all information centres is analysed quarterly and defects in their functioning are mentioned and analysed in the report.

***3) Violation of Article 5§5*:** On 14/03/2006, the Supreme Court of the Russian Federation, by letter No. 629/1 sent the judgment of the European Court out to all lower courts. On 13/04/2006, the Ministry of Internal Affairs of the Russian Federation, by letter No1/2707, organised a study of the judgment for its operational and investigating members.

The judgment was published in the *Bulletin of the European Court* (Russian edition), 2006, No3.

***4) Violations of Article 6§1 and Article 1 of Protocol No. 1*:** The case presents similarities to the Timofeyev group of cases (Section 4.3), in which the Committee is examining the adoption of general measures by the Russian authorities (see for more details in CM/Inf(2006)19 revised 2 and CM/Inf/DH(2006)45).

The Deputies decided to resume consideration of this item at the latest at their 1035th meeting (16-18 September 2008) (DH), in the light of information to be provided on general measures .

Case name :	**ROMANOV v. Russia**	**Appl N° :**	**63993/00**
Judgment of :	20/10/2005		
Final on :	20/01/2006		
Violation :		Payment status :	Paid in the time limit

Theme / Domain :

Next exam : 1035-4.2(15/09/2008)
Last exam : 1020-4.2(04/03/2008)
First exam : 960-2(28/03/2006)

NOTES OF THE AGENDA

63993/00 Romanov, judgment of 20/10/2005, final on 20/01/2006
The case concerns the poor conditions of the applicant's detention on remand in pre-trial detention facility IZ-48/2 “Butyrskiy”, also referred to as SIZO-2, in Moscow between 1999 and 2000. The European Court considered that these detention conditions amounted to degrading treatment, due in particular to severe prison overcrowding combined with the length of the period of detention under such conditions (violation of Article 3).
The case also concerns the excessive length of the applicant's detention on remand (1 year, 5 months). The Court found that the detention was based solely on the seriousness of the alleged offence, i.e. the acquisition of drugs for personal consumption and possession, and that as such it could not justify the continued detention (violation of Article 5§3).
Finally, the case concerns the violation of the applicant's right to a fair trial in that, despite the numerous requests made by the applicant, the District Court failed to take any step to secure his attendance at the hearings on the ground that the detention facility did not transport sick detainees to court and the testimony of a mentally disturbed person could not be accepted as evidence. The European Court considered that the applicant's presence at his counsel's side was essential to the fairness of the proceedings, since the District Court had to determine whether he had committed the offence he was charged with and assess his mental health at the relevant time. The applicant's participation to the hearings was particularly important in this case because the District Court was seised of two divergent expert opinions on the modalities of his medical care, which had an impact on his liberty (violation of Article 6§1 and §3c).
Individual measures: On 13/06/2006 the applicant requested the reopening of the proceedings pursuant to Article 413§4 of the Code of Criminal Procedure (newly discovered circumstances, i.e. the European Court's judgment). His application was rejected by the Supreme Court on the ground that, by a court decision of 4/09/2003, the criminal proceedings in the applicant's case had been discontinued pursuant to an Amnesty Act of 26/05/2000 and he was no longer subject to any measure of compulsory medical treatment. The Supreme Court also noted that the European Court did not criticise this latter decision. The European Court awarded the applicant just satisfaction in respect of the non-pecuniary damage sustained.
On 24/10/2006, 26/03/2007 and 23/05/2007, the applicant's representative submitted her observations with respect to possible individual measures which might be required to erase all consequences of the violations found by the European Court. These observations have been transmitted to the Russian authorities for comments. The Secretariat also wrote to the applicant’s representative inviting her to specify the consequences of the violations still suffered by the applicant.
• *Information is thus awaited on whether the applicant still bears any consequence following the criminal proceedings which were brought against him (e.g. criminal record*).
General measures:
1*) Violation of Article 3*: This issue presents similarities with the Kalashnikov group of cases in which comprehensive general measures taken by the Russian authorities are being examined (Section 4.2). In addition, the Russian authorities indicated that on 21/04/2006 the alternate Director of the Federal Service for execution of sentences had issued letter No. 10/1-1046 to all heads of its subdivisions inviting them to take measures to eliminate the shortcomings pointed out by the European Court in its judgment. Their attention was in particular drawn to the sanitary norms and other obligations provided by Article 23 of the Federal Law of 15/07/1995 “On detention of persons suspected or accused of having committed a criminal offence”.
The letter also instructs officials in charge of the protection of human rights within the Russian penitentiary system to inform the Federal Service for execution of sentences of the results of the measures taken through their annual reports.
• *Information would be useful on the measures taken as a result of this instruction possibly together with examples of relevant extracts from the aforementioned reports.*
• *Measures to improve material conditions of detention in psychiatric hospitals:* In 2007, 19 100 RUR were provided for the reconstruction of psychiatric hospital FGU IZ-77/2 in Moscow, which is currently under renovation. On 8/10/2007 244 persons were detained in the hospital, which has 275 places.
The Russian authorities indicated that, as a result of these measures, there are currently 5,54 sq. m per inmate in the Moscow psychiatric hospital FGU IZ-77/2 and its conditions of detention are closer to European standards. The level of medical care provided by the legislation is also guaranteed.

In order to improve the capacities of the medical institutions of the penitentiary system, a Special programme on prevention of and fight against socially important deceases for 2007-2011 was adopted by Government Regulation No. 280 of 10/05/2007. One of its sub-programmes is specifically dedicated to psychiatric deseases.
• *Measures to improve access to medical care:* The Russian authorities have indicated that medical care is provided to suspects, accused and convicted persons in accordance with the Order of the Ministry of Health and of the Ministry of Justice No640/190 of 17/10/2005.
• *A copy of this Order would be useful.*
The Russian authorities also indicate that persons with mental disorder may be transferred to psychiatric institutions which belong to the system of the Ministry of Health. During the third quarter of 2007, 69 persons were sent to psychiatric hospitals.
• *More details are awaited on the rules governing the transfer of detainees suffering mental disorder to civil* psychiatric *hospitals (e.g. which authority is competent to decide whether a person should be transferred to a civil psychiatric hospital, etc.).*
• *Secretariat's assessment: The measures taken and being taken so far by the Russian authorities are welcomed. However, to assess whether the current situation fully complies with the Convention's requirements, more details would be useful. It is therefore proposed to clarify all these issues through bilateral consultations with the relevant Russian authorities. The Secretariat will shortly make this proposal in writing to the Russan delegation*.

2) Violation of Article 5§3: See the Klyakhin group (Section 4.2).

3) Violation of Article 6§1 and §3c: The new Code of Criminal Procedure (CCP) entered into force in July 2002, after the events at issue. Its chapter 51 provides for particular rules specifying conditions in which measures of compulsory medical treatment may be decided by a judge. Article 441 only provides for the compulsory attendance of a lawyer (or the legal representative of the defendant, e.g. his or her parents, spouse, etc) at the hearing and offers the defendant the possibility to ask to appear in person but this latter issue is left to the court's discretion.
In this respect, the Russian authorities informed that there is an obligation upon courts to address this issue, in the light of the expert's conclusions, prior to the examination of the case notwithstanding the defendant's request. Thus, the authorities must ensure that the medical experts are asked, in the framework of their expertise, whether a defendant may attend the court hearing according to the guidelines of the Plenum of the Supreme Court of the Soviet Union of 26/04/1984 No. 4 "On the judicial practice regarding the application, the modification and the revocation of the measures of compulsory medical treatment".
The Russian authorities have also indicated that there is also an obligation upon judges to examine comprehensively all materials in relation to the defendant's request to participate personally to the hearing, without however specifying the relevant provision of the CCP.
It is also noted that Article 34 of the Law "On psychiatric help and guarantees of citizens' rights when undergoing psychiatric treatment" guarantees the fundamental right for the patient to take part personally in hearings concerning forcible hospitalisation. However, the Russian authorities indicated that this law did not apply in of criminal proceedings.
The attention of the Russian authorities was also drawn to the experience of other countries in solving similar issues (ex., Resolution ResDH(2004)74 adopted in the case of Pobornikoff v. Austria).
• *The Russian authorities' position*: The Russian authorities considered that the current legislation makes it possible to prevent new, similar violations and that no further measures are thus needed.
• *Secretariat's assessment*: *It would appear that the current practice of the Russian courts consists in examining these issues in the absence of the person concerned. Moreover, the issue of the presence of the defendant is rarely raised and examined at the beginning of a hearing (in this respect, see for example the overview of the judicial practice on the applicability of compulsory medical treatment measures by the courts of the Lipezk region for 2004). Thus, to assess whether or not further measures are necessary, more recent examples of judicial practice concerning this issue in respect of other regions are awaited*.

4) Publication and dissemination: By letter of 21/04/2006 No. 950-1/общ the Deputy President of the Supreme Court of the Russian Federation sent the European Court's judgment to all courts, drawing their attention to the Court's findings and stressing in particular their obligation to fully examine all material related to the defendant's request.
The European Court's judgment was also sent out by letter of the Deputy Prosecutor General of the Russian Federation of 16/12/2006 No. 12-11663-03 to all prosecutors, inviting them to take into account the Court's findings in their supervision of compliance with the rights of persons who might be subjected to compulsory medical treatment.

The Deputies decided to resume consideration of this item at the latest at their 1035th meeting (16-18 September 2008) (DH), in particular in the light of the outcome of bilateral consultations to be held between the competent Russian authorities and the Secretariat.

Case name :	**RADCHIKOV v. Russia**	**Appl N° :**	**65582/01**
Judgment of :	24/05/2007		
Final on :	12/11/2007		
Violation :		Payment status :	Paid in the time limit
Theme / Domain :			
Next exam :	1035-4.2(15/09/2008)		
Last exam :	1020-2(04/03/2008)		
First exam :	1020-2(04/03/2008)		

NOTES OF THE AGENDA

65582/01 Radchikov, judgment of 24/05/2007, final on 12/11/2007
The case concerns a violation of the applicant's right to a fair trial in that, in December 2000, the Supreme Court quashed his acquittal and remitted the case for a fresh investigation. This decision was delivered upon an application for supervisory review (*nadzor*) lodged by the Deputy Prosecutor General under the Code of Criminal Procedure in force at the material time. The European Court noted that in the absence of a fundamental judicial error, the use of the *nadzor* procedure by the prosecution authorities to obtain an additional investigation so as to correct shortcomings or failures of the previous investigation constituted an abuse of process. Accordingly the European Court found that the quashing of the applicant's acquittal had been used to obtain a rehearing and fresh determination of the case (violation of Article 6§1).
Individual measures: In April 2001 the prosecution discontinued the case against the applicant following his death. The European Court awarded just satisfaction in respect of non-pecuniary damage to the applicant's next-of-kin.
General measures:
1) Measures taken*:* The new Code of Criminal Procedure came into in force on 1/07/2002. Under the new Code, the appeal (Article 378 of the Code) and supervisory review courts (Article 410) have the power to remit cases to lower instance courts for fresh examination but no power to remit the case to the prosecutor for an additional investigation.
Besides, under Article 405 of the Code, the application of supervisory review was limited to those cases in which it would not involve changes detrimental to the convicted person. Acquittals and decisions to discontinue proceedings may not be subject to supervisory review.
• *Secretariat's assessment: It seems that at that time the risk of new similar violations of the Convention was prevented by the impossibility to change the defendant's situation to his detrimental*.
2) Further developments*:* By ruling No. 5-P of 11/05/2005 the Constitutional Court of the Russian Federation quashed Article 405 of the Code insofar as this provision limited the judicial review of decisions, including judgments which had become final, to cases not involving changes detrimental to the defendant and thus excluded the possibility of correcting fundamental defects in the previous proceedings, which could affect the outcome of the case. The court declared that the provision was in breach of both the Constitution of the Russian Federation, Article 6 of the Convention and Article 4 of Protocol No. 7, and struck it down.
3) Latest developments*:* It would appear that a draft law to amend Article 405 of the Code of Criminal Procedure has recently been submitted to Parliament. This draft is aims at extending the supervisory review procedure to cases potentially involving changes detrimental to the defendant.
• *Secretariat's assessment: It remains thus to be assessed to what extent the new provisions of Article 405 of the Code of criminal procedure are in compliance with the Convention requirements, as pointed out in the European Court's judgment.*
• *Information is thus awaited on the progress of this draft law. The official text would also be helpful.*

The Deputies decided to resume consideration of this item:
1 at their 1028th meeting (3-5 June 2008) (DH), in the light of information to be provided on the payment of the just satisfaction, if necessary;
2. at the latest at their 1035th meeting (16-18 September 2008) (DH), in the light of information to be provided on general measures.

Case name :	**Viktor KONOVALOV v. Russia**	**Appl N° :**	**43626/02**
Judgment of :	24/05/2007		

Final on :	24/08/2007		
Violation :		Payment status :	No just satisfaction
Theme / Domain :			
Next exam :	1035-4.2(15/09/2008)		
Last exam :	1013-2(03/12/2007)		
First exam :	1013-2(03/12/2007)		

NOTES OF THE AGENDA

43626/02 Viktor Konovalov, judgment of 24/05/07, final on 24/08/07
The case concerns the violation of the applicant's property rights on account of the unlawful sale of his car, retained as security for the payment of a fine by the Customs Office and bailiffs (violation of Article 1 of Protocol No.1). His car was sold while his appeal was still pending.
Individual measures:
• *Information is awaited on measures taken or envisaged to remedy the consequences of the violation found for the applicant.*
General measures: The new federal law on enforcement proceedings will enter into force on 1/02/2008.
• *Information is thus awaited on the new rules applicable in similar situations and on whether these rules are supplemented by any instructions concerning sale of goods retained by customs offices as security.*
• *Information would also be useful on other measures taken or envisaged to ensure the compliance by prosecutors and customs authorities competent for transport matters with their legal obligations.*
Publication of the European Court's judgments and dissemination to all relevant authorities, e.g. to the bailiffs together with a circular letter of the Chief Bailiff of the Russian Federation and to all customs authorities and transport prosecutors together with circular letters from their hierarchies seem appropriate.

The Deputies decided to resume consideration of this item at the latest at their 1035th meeting (16-18 September 2008) (DH), in the light of information to be provided concerning individual and general measures.

Case name :	**KRASULYA v. Russia**	**Appl N° :**	**12365/03**
Judgment of :	22/02/2007		
Final on :	22/05/2007		
Violation :		Payment status :	Paid in the time limit
Theme / Domain :			
Next exam :	1035-4.2(15/09/2008)		
Last exam :	1028-4.2(03/06/2008)		
First exam :	1007-2(15/10/2007)		

NOTES OF THE AGENDA

12365/03 Krasulya, judgment of 22/02/2007, final on 22/05/2007
The case concerns a violation of the applicant's freedom of expression due to his conviction in 2002 on the basis of Article 129 of the Russian Criminal code. The applicant was sentenced to a year's imprisonment suspended on account of his article on the Governor's role in the abolition of mayoral elections by the town legislature and the Governor's personality. The European Court considered that
- the article at issue contained value judgments not susceptible of proof,
- it contributed to an on-ongoing political debate of public interest
- the applicant did not go beyond the generally acceptable degree of exaggeration or provocation in a matter concerning a professional politician.
The European Court has consequently held that the interference was not adequately justified, was disproportionate and not necessary in a democratic society. Moreover the disproportionately severe sentence had a dissuasive effect on the applicant, undermining his ability to inform on matters of public interest (violation of Article 10).
The case also concerns the violation of the applicant's right to a faire trial, due to the appeal court's failure to address elements raised by the applicant, namely the illegality of the dismissal by the first-instance court of an expert report germane to the outcome of the proceedings (violation of Article 6§1).
Individual measures: The European court awarded just satisfaction in respect of non-pecuniary damage suffered by the applicant.
• *Information is awaited as to whether the applicant's conviction still appears in his criminal record*.
General measures:

1) Violation of Article 10: With regard to civil proceedings, measures have already been taken following the Grinberg case (Section 6.2). On 24/02/2005 The Supreme Court of the Russian Federation issued a Ruling providing guidelines on the application of Article 152 of the Civil Code regarding defamation in the light of Article 10 of the Convention. The Supreme Court insisted particularly on the necessity for judges to distinguish between statements of fact susceptible of proof and value judgments, opinions or convictions which to not fall within the scope of the Article.

• *Information is awaited on measures taken or envisaged with a view to ensuring compliance of domestic judicial practice under the Criminal Code with the Convention's requirements.*

2) Violation of Article 6§1

• *Information is awaited on measures taken or envisaged, in particular by the Supreme Court, to prevent new, similar violations. Information is also awaited on publication of the judgment of the European Court and its dissemination to the authorities concerned, in particular to courts, together with a circular letter of the Supreme Court.*

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

Case name :	**BOLAT v. Russia**	**Appl N° :**	**14139/03**
Judgment of :	05/10/2006		
Final on :	05/01/2007		
Violation :		Payment status :	Paid outside the time
limit			
Theme / Domain :			
Next exam :	1035-4.2(15/09/2008); 1035-3.Aint(16/09/2008)		
Last exam :	1028-3.Aint(03/06/2008)		
First exam :	992-2(03/04/2007)		

NOTES OF THE AGENDA

14139/03 Bolat, judgment of 05/10/2006, final on 05/01/2007

The case concerns two violations of the Convention relating to unlawful actions by executive authorities.

The first violation relates to the freedom of movement of the applicant, a Turkish national. At the material time he was living in the Russian Federation with a valid residence permit. The Police fined him in December 2002, in violation of domestic law, for not having respected the residence regulations in the Republic of Kabardino-Balkaria (he was accused of having resided with a friend and not at the address where he was registered and of failing to report this change to the police within the 3 days required) (violation of Article 2 of Protocol No. 4).

The second violation relates to the applicant's subsequent expulsion on 7/08/2003 by the police and the Federal Security Service. The expulsion took place pursuant to a decision taken by the Ministry of the Interior in May of that year, revoking the applicant's residence permit because of the fine mentioned above, and ordering the applicant to leave the territory. The European Court found that at the time of expulsion, the applicant was still lawfully residing in Russia, the expulsion having been stayed by a court order issued in the context of the proceedings challenging the lawfulness of the fine. No judicial decision ordering the applicant's expulsion was delivered. The applicant was thus expelled in violation of Russian law, which provides that any expulsion of a foreign national must be ordered by a valid judicial decision (violation of Article 1 of Protocol No. 7).

Individual measures: The European Court noted that the authorities had acknowledged the violation of the applicant's right to freedom of movement both under the Russian Law and the Convention but had failed to remedy the negative consequences stemming from this violation due to the ban subsequently imposed by the Federal Security Service, pursuant to the Law on the Procedure for Entering and Leaving the Russian Federation, on the applicant's re-entry in Russia. The Court found it probable that this ban was also based on the unlawful fine at issue.

At the 1007th meeting (October 2007), the Russian authorities stated, in response to the issue raised by the Secretariat, that the applicant is still forbidden to enter the Russian Federation due to the ban imposed by the Federal Security Service. This ban is still in force notwithstanding the decision of the Nalchik Town Court of 28/10/2003 which ordered the Passport and Visas Department to extend the applicant's residence permit for five years, starting from 4/08/2003. It would appear that this judgment is also still in force.

In this connection it is noted that in its judgment the European Court indicated that the Federal Security Service was examining the issue of annulment of the applicant's residence permit in accordance with

section 9 (1) of the Law on Legal Status of Foreign Nationals in the Russian Federation (§40 of the judgment).
• *Information is awaited on the outcome of any such proceedings, together with copies of the relevant decisions*.
General measures: At the 1007th meeting (October 2007), the Russian authorities provided extensive information in response to questions raised by the Secretariat. This information is currently being assessed by the Secretariat.

1) Sanctions for not reporting changes of residence to the police within 3 days

• *Information is awaited on measures envisaged to clarify the procedures applicable in case of alleged contraventions of the residence regulations. In this context, information on training and other awareness-raising measures would be welcome. Information on the responsibility of police or other officers violating existing procedures would also be useful. Even if the judgment does not directly refer to the requirement of 3 days' notice, it nevertheless seems to have been an important element of the violation committed and information would be helpful on any ongoing reflection to extend it*.

2) Entry bans imposed by the Russian Federal Security Service: It may be noted that the ban on the applicant's entry to the Russian Federation imposed in December 2002 by the Federal Security Service was disclosed neither to the domestic authorities and courts involved in the granting of the new residence permit nor to the applicant.
• *Information is therefore requested on the procedure applicable when rendering decisions revoking residence permits or banning entry under the new powers granted to authorities in charge, such as the Ministry of Foreign Affairs or the Federal Security Service in the Law on the Procedure for Entering and Leaving the Russian Federation so as to ensure that other authorities and courts are adequately informed Information is also requested on the procedure applicable under these new powers vis-à-vis the individual concerned, to ensure that his right to an effective remedy is safeguarded, in particular the existence of judicial and/or administrative remedies to claim revocation of allegedly unjustified decision*s.
In addition, information would be helpful on measures taken or envisaged to ensure that the power to impose such bans is exercised in line with the Russian Federation's obligations under the Convention. In particular, it would be helpful to envisage measures in respect of the members of the Russian Federal Security Service and other authorities concerned to ensure full respect for domestic constitutional principles and binding court orders. Such measures could include changes in the internal regulations of these authorities and the training of the personnel concerning the requirements at issue.

3) Respect for expulsion procedure established by Russian Law: Russian law requires administrative expulsion of a foreign national to be ordered by a judge (Article 3.10 and 23.1§3 of the Administrative Offences Code). However, in the present case the applicant was expelled without any judicial order (§§81 and 82 of the judgment). On the other hand, the Law on the Procedure for Entering and Leaving the Russian Federation as amended on 10/01/2003 provided certain executive authorities, such as the Ministry of Foreign Affairs or the Federal Security Service, with the power to decide that a foreign national's presence was undesirable although lawful on the territory of the Russian Federation (§ 49 of the judgment).
• *The authorities are therefore invited to provide clarification as to the interplay and possible conflict between the relevant provisions of the Administrative Offences Code and amended Law on the Procedure for Entering and Leaving the Russian Federation*. *Further clarification is awaited as to how Russian procedure has been organised to avoid situations in which a valid residence permit is issued to a foreign national subject to an expulsion order, as well as and situations where a foreigner is being deported, notwithstanding the existence of a binding court order staying execution of the deportation order.*
In addition to dissemination of the judgment (see below), other measures may be envisaged, such as changes in internal instructions within the competent authorities and stricter supervision of their compliance with the law, particularly by prosecutors, with appropriate sanctions in case of violation.
• *Information is awaited in this respect*.
In addition, it is noted that the prosecutor's office issued orders to discontinue criminal proceedings arising from the charges brought by applicant against the officials who had unlawfully expelled him by force in 2003 even though the expulsion proceedings had been stayed (§31 of the judgment).
• *Further information is thus required*, *in the light of these proceedings, on the scope of criminal and disciplinary responsibility of state agents acting in clear violation of judicial orders staying expulsion procedures or otherwise proceeding to expulsions without valid court orders. In this context, information is also awaited on the criminal proceedings and sanctions against the officials responsible for the applicant's unlawful deportation.*

4) Publication and dissemination of the European Court's judgment: Given the implications of this judgment on domestic practice at different levels, it appears necessary to publish it and sent it out to all authorities concerned (immigration authorities, police, prosecutors, courts and the Federal Security Service)

with an explanatory letter, drawing their attention in particular to their obligations to align their practice with the requirements of Russian Law and of the Convention as they arise from the judgment.

The Deputies decided to resume consideration of this item at their 1020th meeting (4-6 March 2008) (DH), in the light of information to be provided on payment of the just satisfaction, if necessary, and individual measures as well as further possible clarification concerning general measures.

Case name :	**TULESHOV AND OTHERS v. Russia**	**Appl N° :**	**32718/02**
Judgment of :	24/05/2007		
Final on :	12/11/2007		
Violation :		Payment status :	Paid in the time limit
Theme / Domain :			
Next exam :	1035-4.2(15/09/2008)		
Last exam :	1020-2(04/03/2008)		
First exam :	1020-2(04/03/2008)		

NOTES OF THE AGENDA

32718/02 Tuleshov and others, judgment of 24/05/2007, final on 12/11/2007
The case concerns the applicants' eviction in October 2003 from a house which had been purchased through a court-administered tender procedure which subsequently proved to be unlawful. Although the domestic courts recognised the applicants as *bona fide* buyers, the decision to evict them against compensation was taken for the benefit of the preceding legal owner. The amount of compensation was found inadequate by the European Court (violation of Article 1 of Protocol No. 1). In addition, the European Court considered that the applicants had suffered a violation of their right to a home, due to the uncertainty they had suffered with regard the possibility of receiving alternative housing and the limited possibilities for them to rent or buy due to the inadequacy compensation, which was paid only about a year after the eviction (violation of Article 8).
Individual measures: The European Court awarded just satisfaction in respect of all damages (pecuniary and non-pecuniary) sustained.
General measures:
1) Adequacy of compensation: it appears that the applicants' reasoning and calculations were rejected by the domestic courts without sufficient grounds (§ 45 of the judgment).
• *Information is thus awaited on the dissemination of the European Court's judgment to all courts, possibly with a circular letter from the President of the Supreme Court.*
2) Respect of the applicants' right to a home: The violation appears to have been due to the delay in enforcing the domestic court's decision granting compensation and in providing the applicants with alternative accommodation (§ 53 of the judgment).
• *Information is thus awaited*
- *on the provisions of Russian legislation (housing, enforcement proceedings, etc) governing situations similar to this one and in particular as to the existence of the safeguards in respect of the eviction of bona fide buyers;*
- *on the publication and dissemination of the European Court's judgment, in particular to the Bailifs' Service.*

The Deputies decided to resume consideration of this item:
1 at their 1028th meeting (3-5 June 2008) (DH), in the light of information to be provided on the payment of the just satisfaction, if necessary;
2. at the latest at their 1035th meeting (16-18 September 2008) (DH) in the light of information to be provided on general measures.

Case name :	**MAKHMUDOV v. Russia**	**Appl N° :**	**35082/04**
Judgment of :	26/07/2007		
Final on :	26/10/2007		
Violation :		Payment status :	Paid in the time limit
Theme / Domain :			
Next exam :	1035-4.2(15/09/2008)		
Last exam :	1020-2(04/03/2008)		

First exam : 1020-2(04/03/2008)

NOTES OF THE AGENDA

35082/04 Makhmudov, judgment of 26/07/2007, final on 26/10/2007
The case concerns the arbitrary cancellation by the Moscow administrative authorities of a meeting of local residents, organised by the applicant, to protest against the Moscow government's town-planning policy. The authorities based their action on a potential "terrorist threat" pursuant to the Suppression of Terrorism Act of 25/07/1998. This did not however prevent the holding of public festivities a few days later. In these circumstances and in the absence of any evidence supporting the theory of a "terrorist threat", the European Court found that there had been no justification for the interference with the applicant's right to freedom of assembly and association (violation of Article 11).
The case also concerns the administrative arrest of the applicant for allegedly disobeying a lawful order and his detention overnight. In the absence of any concrete information concerning the lawful order the applicant allegedly disobeyed, the European Court found that the applicant's arrest had not been based on a "reasonable suspicion" (violation of Article 5§1).
Finally, the European Court noted that the applicant had been subjected to an administrative arrest, which meant that the fact of finding the arrest illegal would not have been sufficient for the applicant to be entitled to compensation. He would also have to prove that the officials had been at fault. In these circumstances, the European Court found that the applicant did not have an enforceable right to compensation for his unlawful arrest and detention (violation of Article 5§5).
Individual measures: The European Court awarded just satisfaction in respect of all the damages sustained.
General measures:
1) Right to freedom of assembly and association: On 6/03/2006, the Suppression of Terrorism Act of 25/07/1998, in force at the material time was replaced by the new Law "on Suppression of Terrorism". It remains now to assess to what extent the current legal framework is in compliance with the requirements of the Convention as set out in the judgment of the European Court.
• *Information is thus awaited on the current rules governing cancellation of meetings or assemblies on the ground of a potential "terrorist threat".*
2) Administrative arrest: It results from the judgment that the domestic courts themselves found that the applicant's arrest was in breach of domestic standards (§ 22 of the judgment). However the only consequence of these findings was the discontinuation of the administrative proceedings brought against the applicant. No other consequence, e.g. compensation for unlawful arrest or disciplinary proceedings against the police officers responsible or any other sanction of the abuse, was drawn up.
• *Information is therefore awaited:*
- *on the measures taken or envisaged to ensure that police officers strictly comply with the safeguards provided by law and by the Convention, e.g. on whether there are particular instructions concerning administrative arrest, on how abuses of this power by police officers are punished;*
- *on the publication and dissemination of the judgment of the European Court to all police officers together with an appropriate instructions from the Minister of the Interior.*
- *as to whether appropriate training measures have been taken or are envisaged with a view to mainstreaming the Convention's requirements into curricula for police officers, in particular with regard to the concept of "reasonable suspicion".*
3) Compensation for unlawful administrative arrest: It would appear that unlike unlawful deprivation of liberty in criminal proceedings and administrative punishment, unlawful administrative arrest is excluded from the strict liability of the state.
• *Information is thus awaited on measures taken or envisaged (either change of judicial practice or legal reform) to comply with the findings of the European Court.*
It would also appear that in addition to this lacuna in the law, the European Court criticised the limited scope of the examination by domestic courts (§ 103 of the judgment).
• *Information is thus awaited on*
- *whether this issue has already been dealt with by the Supreme Court in its plenary decisions providing lower courts with guidelines on the application of provisions of the Code of administrative offences. Otherwise it would be useful to provide all courts with appropriate instructions in the light of the European Court's findings;*
- *the dissemination of the judgment to all courts together with a circular letter from the President of the Supreme Court.*

The Deputies decided to resume consideration of this item:

1 at their 1028th meeting (3-5 June 2008) (DH), in the light of information to be provided on the payment of the just satisfaction, if necessary;
2. at the latest at their 1035th meeting (16-18 September 2008) (DH), in the light of information to be provided on general measures.

Case name :	**MENESHEVA v. Russia**	**Appl N° :**	**59261/00**
Judgment of :	09/03/2006		
Final on :	09/06/2006		
Violation :		Payment status :	Paid in the time limit
Theme / Domain :			
Next exam :	1035-4.2(15/09/2008)		
Last exam :	1028-4.2(03/06/2008)		
First exam :	976-2(17/10/2006)		

NOTES OF THE AGENDA

59261/00 Menesheva, judgment of 09/03/2006; final on 09/06/2006
The case concerns the ill-treatment (found by the European Court to amount to torture) inflicted on the applicant following her apprehension in February 1999 while she was kept for 20 hours at the Zheleznodorozhnyy District police station (violation of Article 3).
The applicant was regarded as a witness in the criminal proceedings initiated against her companion, but refused to let the police search her apartment without a warrant. She was accordingly arrested and taken to the police station for the administrative offence of violent resistance against the police.
The case also concerns the absence of any effective investigation into the applicant's allegations of torture. In this respect the European Court noted that the internal investigation was only opened nearly four years after the events and after the applicant had seised the European Court. After three years, the investigation had still failed to establish the material circumstances of the applicant's injuries (procedural violation of Article 3), depriving her of an effective remedy, including any claim for compensation (violation of Article 13).
The case furthermore concerns the unlawfulness of the applicant's apprehension for having allegedly resisted the police. The European Court noted in this respect that the true reason for her arrest and overnight detention was to force her to give information about her companion and surrender the keys to her flat (§ 82 of the judgment). The Court further found that there had been no record of information about the apprehension, such as the date, time and location of detention, her name, the reasons for her arrest and the name of the arresting officer (violation of Article 5§1).
Finally, the European Court found that the five days' administrative detention imposed on the applicant to be unlawful as the judge at exercised his authority in manifest disregard of the procedural guarantees provided by the Convention (violation of Article 5§1), that there had been no adversarial proceedings as such and that even the appearances of a trial had been neglected (violation of Article 6§1).
Individual measures:
• *Information is awaited on the outcome of the investigation into the events at issue. According to the order of the Prosecutor General of 3/03/2004, the Prosecutor's office of the Zheleznodorozhnyy District was given 30 days to complete the investigation under the supervision of the Prosecutor General (§ 42 of the judgment). However no information in this respect was available when the European Court delivered its judgment.*
General measures: Certain issues have already been raised under other similar cases in which the Russian authorities were invited to present an action plan addressing:
- that of ineffective investigations into allegations of torture against police officers and lack of an effective remedy in this respect (letter of 6/07/06 sent in the Mikheyev case),
- that of absence of arrest records (letter of 12/06/06 sent in the Fedotov case).
The case also raises a number of new issues since the applicant's apprehension and detention were subject to the Code on Administrative Offences replaced by the new Code on 01/07/2002.

1) Violations of Articles 3 (substantial) and 5§1 in relation with the administrative apprehension (*zaderganie*)
The new Code provides that the maximum period of administrative arrest is 3 hours, which may be extended to 48 hours (after expiry of which the arrested person shall be brought before a judge) and a possibility of being assisted by a lawyer upon apprehension.
• *Clarifications awaited: the following clarifications are requested:*
- whether an apprehended person is subject to a compulsory medical examination at the time of his apprehension;

- whether and, if so, at what stage the prosecutor is notified of the apprehension so as to allow him to exercise his powers under Article 22§3 of the Law "On Prokuratura" (to release an unlawfully arrested person);
- whether the decision taken by the state officials designated in Article 27.5 to prolong the period of apprehension above 3 hours is subject to immediate review by any other authority, for example, a prosecutor;
- what are the additional safeguards in case of extension of apprehension over 3 hours, e.g. compulsory medical examination, meeting with a lawyer, etc.

2) Violations of Articles 5§1 and 6§1 in relation with the applicant's administrative detention (*arrest*)
The new Code on Administrative Offences seems to be in line with the Convention's requirements since it provides a number of procedural guarantees for those facing administrative detention, e.g. clear time-limits for bringing the case to court, defendants' procedural rights and possibility of appealing decisions ordering such measure. *It would however be useful to know whether any disciplinary or other proceedings may be brought against a judge who disregarded these procedural requirements, for instance the judge who ordered the applicant's administrative detention.*

3) Dissemination and publication of the judgment: Publication and wide dissemination of the judgment to all competent authorities are required together with circular letters and detailed instructions to be issued by higher hierarchical authorities, in particular by the Ministry of Interior and by the Prosecutor General, to explain to all subordinates the obligations flowing from the judgment and their effects on the day-to-day practice. An explanatory note from the Supreme Court to all lower courts would also be useful.

Decision: The Deputies
1. agreed to resume consideration of this item at their 982nd meeting (5-6 December 2006) (DH), on the basis of further information to be provided by the authorities of the respondent state concerning payment of the just satisfaction awarded in this case if necessary;
2. agreed to resume, at their 987th meeting (13-14 February 2007) (DH), consideration of the general measures to prevent new similar violations as well as the individual measures to be taken in order to put an end to the violations and erase, as far as possible, their consequences for the applicant, in the light of the action plan to be provided by the authorities.

Case name :	**KALASHNIKOV v. Russia**	**Appl N° :**	**47095/99**
Judgment of :	15/07/2002		
Final on :	15/10/2002		
Violation :		Payment status :	Paid in the time limit
Theme / Domain :	**Detention conditions**		
Next exam :	1035-4.2(15/09/2008)		
Last exam :	1020-4.2(04/03/2008)		
First exam :	841-4.2(03/06/2003)		

NOTES OF THE AGENDA

47095/99 Kalashnikov, judgment of 15/07/02, final 15/10/02, Interim Resolution ResDH(2003)123
106/02 Benediktov, judgment of 10/05/2007, final on 24/09/2007
205/02 Frolov Andrey, judgment of 29/03/2007, final on 24/09/2007
62208/00 Labzov, judgment of 16/06/05, final on 16/09/05
63378/00 Mayzit, judgment of 20/01/05, final on 06/07/05
66460/01 Novoselov, judgment of 02/06/05, final on 02/09/05

These cases concern the poor conditions of the applicants' pre-trial detention between 1995 and 2001 which was found by the European Court to amount to degrading treatment, due in particular to severe prison overcrowding and an unsanitary environment. The Court notably took into account their detrimental effect on the applicants' health and well-being, combined with the length of the period during which the applicants were detained in these conditions (violation of Article 3).
The Kalashnikov case also concerns the excessive length of this detention, which lasted 4 years, 1 month and 23 days, of which 1 year, 2 months fell within the Court's jurisdiction (violation of Article 5§3) and the excessive length of criminal proceedings brought against the applicant, which lasted 5 years, 1 month and 23 days, of which 1 year, 10 months fell within the Court's jurisdiction (violation of Article 6§1).
The Mayzit case also concerns the excessive length of examination of the applicant's request for release from pre-trial detention (4 months and 15 days) in breach of the Convention's requirements, as well as those of domestic law, which provide that such a request shall be examined "speedily", within 5 days under Russian domestic law (violation of Article 5§4).

Individual measures: No individual measure is required in any of these cases as the applicants have been released and the damage they sustained in relation to the violations found was compensated by the European Court through just satisfaction.

General measures:

1) Violation of Article 3

Measures taken so far: See Interim Resolution ResDH(2003)123 and the Annotated Agenda of the 976th meeting (October 2006).

Latest developments:

a) Lack of places in pre-trial detention centres

• *Information provided by the Russian authorities on the measures taken:* the Federal Programme for reforming the Ministry of Justice's penitentiary system for 2002-2006 resulted in the creation of 13 100 places in SIZOs). In addition to the Programme, 20 700 more places have been created during the same period at the expense of other sources of funding. In 2006 alone, 14 500 places in SIZOs were created.
In the regions of Primorsk, Perm, Vologda, Irkutsk, Moscow, Sverdlovsk and Chita, 7 new detention facilities have been opened offering 2 226 places.
According to Article 10 of the Federal Law “On Remand of Persons Suspected or Accused of Having Committed a Criminal Offence”, 8 000 persons are detained in 160 premises operating under a regime of pre-trial detention centre. These premises were created inside prisons or on the territory of other facilities for execution of sentences (PFRSI). 9 600 places have been created in these premises during the last 5 years.
As a result of the measures taken, the average in-cell space in SIZOs and PFRSIs was increased by 78% during the last 5 years and is now of 3,97m² as against 4m² as provided by law.
Kransoyarsk region: 6 pre-trial detention centres with a capacity of 4 989 places and 6 PFRSI with a capacity of 1 502 places are functioning in the region. On 1/03/2007, 4 777 persons were detained in pre-trial detention centres, i.e. an occupation rate of 95,8%.
As from 2001, 2 272 places have been created, out of which 1 266 in pre-trial detention centres, in particular thanks to the creation of SIZO-6, i.e. 240 places, on the territory of the colony IK-34. As a result of these measures the average in-cell space increased from 2,1m² in 2001 to 4,2m².
Magadan region: 1 pre-trial detention centre is functioning in the region with a capacity of 365 places. On 1/03/2007, 307 persons were detained in this centre, i.e. an occupation rate of 84,1%. According to the authorities, all detainees are provided with a sleeping place, bedding and items for personal hygiene. Cells are painted in light tones and are provided with hot water. A new admission unit (including sanitary checks) has been created. The average in-cell space has been increased from 2,3m² in 2001 to 4,8m².
Chelyabinsk region: 4 pre-trial detention centres with a capacity of 4 913 places are operating in the region. On 1/03/2007, 4 856 persons were detained in this centre, i.e. an occupation rate of 98,8%. As from 2001, 857 places were created. In addition, in 2003, the prison in Zlatoust was converted into a pre-trial detention centre with up to 1 125 places. As a result of these measures, the average in-cell space was increased from 1,4m² in 2001 to 4m².

• *Information provided by the Russian authorities on the measures under way:* A similar programme for 2007-2016, which provides for the construction of 26 new detention facilities and for the modernisation of 97 existing ones, has been recently adopted.
Creation of new facilities: According to this Programme, 33 800 places are to be created. During 2007-2009 7 new pre-trial detention facilities are to be completed and 7 904 places are to become operative.
As from 2010, in 24 regions of the Russian Federation, pre-trial detention centres of the new type, i.e. offering 7m² per detainee, are to be built.
Renovation of old facilities: 441.2 million roubles were provided in the federal budget in 2005 to this end. In 2006, this sum was increased to 503.5 million roubles. In the framework of this renovation double-glazed windows and flood-proof floors were put into place, mechanical ventilation was set up, the walls were painted in bright colours and toilets were refurbished. The measures were taken in order to provide every detainee with a sleeping place, bedding and utensils. Conditions necessary for providing medical care has also been ensured.
Measures have also been taken to guarantee the application of minimal standards of food provision approved by the Government Decree of 11/04/2005 No. 205.

• *Latest developments:* the Russian authorities indicated that on 01/01/2007, 150 000 persons were detained. On 01/10/2007, 142 900 persons were detained, which shows a positive trend of decrease of prison population by 5%.

• *Russian authorities' position:* Given the measures taken and the general improvement of the situation in pre-trial detention centres, the Russian authorities propose to close the examination of the Kalashnikov case and to pursue under other cases already pending before the Committee of Ministers the examination of the adoption of further general measures.

• *Other information available:* It would appear that the average occupation rate in the Russian Federation is currently 100,5%. In 4 regions (Yamalo-Nenetskiy, Kalmiuki, Kamchatka and Lipetsk) the average in-cell space per person is 8m². In 38 regions, such in-cell space is more than 4m². However, in some other regions, not least in Astrakhan, Sverdlovsk, Novosibirsk and Yakuti, the average in-cell space per person remains 2,7m². These regions are targeted as a priority by the Federal Programme (source: publication in Russian newspaper, official Russian magazine, of 11/08/2007).
Secretariat's assessment: The efforts undertaken so far by the Russian authorities are to be welcomed. However the recent measures, their implementation and practical effects raise very complex and specific issues assessment of which requires particular expertise. In the absence of available rapports providing the Committee of Ministers with a full picture of the efficacy of these measures (as the CPT's reports are not yet public), the Secretariat would no doubt need more time and additional official detailed statistics to proceed with the assessment of the information provided by the Russian Federation and the other information available.
• *Information in these respects is awaited.*

b) Remedies:

Court remedies: According to the law of 15/07/1995 No. 103-FZ "On Remand of Persons Suspected or Accused of Having Committed a Criminal Offence", suspects and accused enjoy a number of rights, not least the right to submit proposals, applications and complaints to heads of the detention centres, to courts, prosecutors, ombudsmen, etc. Article 17§7 particularly provides the right to complain to a court of violations of detainees' legal rights and interests.
• *Clarification would be useful on whether detainees may complain of their conditions of detention and obtain compensation, in particular on the basis of the Convention which has a direct effect in Russian law according to the Constitution.*
Other remedies: According to the Law on procedure for consideration of requests by Russian citizens No. 59-FZ of 5/05/2007, detainees may complain to state organs and officials about their conditions of detention. To ensure efficient control over the consideration of detainees' complaints within the Federal Service for execution of sentences, an Administrative Regulation was adopted on 26/12/2006.

c) Public control over the penitentiary institutions and notably SIZO:

The Public Regulatory Committee for the Federal Service for execution of sentences: According to the Presidential Decree of 4/08/2006 on the setting up of public committees for ministries and agencies, a Public Regulatory Committee for the Federal Service for execution of sentences was created. This is a kind of public monitoring body functioning on the basis of a Statute which provides its powers (including co-operation with state agencies on the improvement of the legal framework governing conditions of detention) and its composition (representatives of international and Russian NGOs). The members of the Committee may also assist the FSIN in ensuring compliance with detainees' rights.
Public control over compliance with detainees' rights in penitentiary institutions: It would appear that a draft law aiming at the better involvement of NGOs in control over the Russian penitentiary institutions has been submitted to Parliament. Such control is to be carried out by the Regional public commissions composed of representatives of the registered NGOs exercising their activities for at least 5 years and appointed by the Federal Ombudsmen. The members of these commissions would have the right to visit the places of detention without special authorisation and without prior notice to the penitentiary administration provided that the general plan of visits has previously been approved by the Regional prosecutor.
However it seems that during the second reading of the draft law by the Parliament, an amendment allowing the agencies of the Federal Service for execution of sentences to determine themselves the plan of visits by the members of these commissions has been introduced.
• *Latest information provided by the Russian authorities:* The second reading of this draft law was scheduled in October-November 2007.
• *Information is therefore awaited on the progress of the draft law before the Parliament and in particular on the final rules governing the organisation of these visits.*

2) Violations of Articles 5§3 and 6§1 found in the Kalashnikov case and the violation of Article 5§4 found in the Mayzit case:

As regards the failure by judges and prosecutors to comply with the requirements of the new Code of Criminal Procedure regarding permissible grounds for ordering or extending detention, these issues are dealt with in the Klyakhin group (see for more detail CM/Inf/DH(2007)4) which will be examined at the 1028th DH meeting (June 2008). However the Russian authorities submitted the following information in the framework of the examination of this group of cases.

a) Reform introducing an obligation for the remand judge to take into account the occupation rate of the pre-trial detention centre: On 11/09/2006 the Russian authorities submitted a draft law amending the Criminal Code, the Code of Criminal procedure and the law "On Remand of Persons Suspected or Accused of Having Committed a Criminal Offence" and aiming at reducing the prison population, notably through

reform of existing conditions in which detention may be ordered. The expert opinion on this draft law prepared by the Secretariat was sent to the authorities on 21/12/2006.
• *Information on its progress is awaited*.

b) Other measures taken within the Federal Service for execution of sentences with a view to ensuring that persons are not detained without a judicial decision: In addition, the Russian authorities stated in this respect that, in order to comply with the requirements of Article 5§1, 511 persons in 2004 , 674 in 2005 and 880 in 2006 were released from detention by the heads of detention facilities themselves on the basis of Article 50 of the Law "On Remand of Persons Suspected or Accused of Having Committed a Criminal Offence", i.e. after the expiry of the judicially established time-limit.
• *Information provided by the Russian authorities*: During the period from the beginning of 2007 until 01/10/2007, 413 persons were released by the head of detention facilities.
•*Information awaited: the authorities are invited to provide the Committee with such statistics on a regular basis.*

3) Publication and dissemination: By letter of the Russian Government Agent the Benediktov and Andrei Frolov judgments were sent out to
- the Supreme Court of the Russian Federation;
- the Constitutional Court of the Russian Federation;
- the Prosecutor General; and
- President's Representative in Central federal district.

By letters of 20/11/2007 and 22/11/2007, the Head of the Federal Service for execution of sentences has sent the same judgments to all its territorial departments.
The judges of the Criminal chamber of the Supreme Court have discussed the Benediktov judgment during a seminar.

The Deputies decided to resume consideration of these items:
1 at their 1028th meeting (3-5 June 2008) (DH), in the light of information to be provided on the payment of the just satisfaction, if necessary;
2. at the latest at their 1035th meeting (16-18 September 2008) (DH), in the light of information to be provided on general measures.

Case name :	**POPOV v. Russia**	**Appl N° :**	**26853/04**
Judgment of :	13/07/2006		
Final on :	11/12/2006		
Violation :		Payment status :	Paid in the time limit
Theme / Domain :	**Detention conditions**		
Next exam :	1035-4.2(15/09/2008)		
Last exam :	1020-4.2(04/03/2008)		
First exam :	987-2(13/02/2007)		

NOTES OF THE AGENDA

26853/04 Popov, judgment of 13/07/2006, final on 11/12/2006
The case concerns the domestic courts' refusal to examine defence witnesses in the proceedings which resulted in the applicant's conviction and sentencing to ten years' imprisonment. The European Court found that such refusal constituted a limitation of defence rights incompatible with the guarantees of a fair trial since his conviction was based on conflicting evidence (violation of Article 6§3 (d) in conjunction with Article 6§1).
The case also concerns the poor conditions of the applicant's detention on remand in pre-trial detention facility SIZO 77/1 in Moscow between 2002 and 2004.
The European Court further considered that the applicant's detention in overpopulated cells (0.9 to 2.34 m² per inmate), combined with the length of the detention in such conditions, amounted to inhuman and degrading treatment. This situation was exacerbated by the lack of medical assistance required by the risk of a relapse of the applicant's cancer (violation of Article 3).
The European Court also found that the conditions of detention in the disciplinary cells of the YaCh-91/5 prison in Sarapul, combined with the time he spent therein, his physical condition and the lack of adequate medical care, amounted to inhuman and degrading treatment. Moreover, despite the need for regular medical examination indicated in the applicant's medical file, the prison authorities failed to carry out such examination for 1½ years, i.e. until the European Court ordered them to do so (violation of Article 3).
Finally, the European Court found that the interrogation of the applicant by the prison administration in relation to the allegations he made before the European Court constituted undue interference with his right of

individual petition in the absence of any transcripts of the meetings between the applicants and the state officials and outside of any investigation into his allegations (violation of Article 34).
Individual measures: The European Court awarded the applicant just satisfaction in respect of non-pecuniary damage sustained as a result of the poor conditions under which he had been detained both in remand centres and in prison disciplinary cells.

1) Re-opening of proceedings: Given the procedural violation found, the European Court considered that the most appropriate form of redress would be the reopening of proceedings. This possibility is provided by Article 413 of the Code of Criminal Procedure (§ 263 of the judgment).
The applicant's representative has lodged numerous submissions requesting the reopening and subsequent annulment of the applicant's conviction. They were transmitted for comments to the Russian authorities.
• *Proceedings initiated by the applicant's lawyer*: He stated that on 22/01/2007 he lodged a supervisory-review application in respect of the applicant's conviction before the Supreme Court of the Russian Federation (Article 408 §1 2) of the Russian Code of Criminal Procedure). He requested the annulment of his client's conviction on the ground that the charges against him were trumped up by the police with a view to concealing the identity of those who actually committed the offence.
It would appear that following the decision to re-open the proceedings in the applicant's case taken by the Supreme Court on its President's request, there was no longer any point to the supervisory-review application lodged by the applicant's lawyer, which was accordingly returned to him.
• *Proceedings re-opened at the authorities' request*: In the meantime, on 29/08/2007, the Supreme Court, at the request of its President, granted reopening of proceedings in the applicant's case on the basis of newly discovered circumstances, i.e. the judgment of the European Court (Article 413 of the Russian Code of Criminal Procedure) and referred the case back to the first-instance court.
However the applicant's representative expressed doubts as to the effectiveness or advisability of this fresh examination of the case by the first-instance court, considering that it would be useless and cause further suffering to his client.
According to the applicant's representative, as a result of the new trial the applicant was convicted anew and sentenced to the term almost already served, i.e. which expired on 14/01/2008.
• *Confirmation is awaited of the results of the new trial and of the applicant's subsequent release. More details are also awaited on the course of the new trial together with copies of all relevant decisions.*
• *Applicant's detention after the re-opening of proceedings*. By its decision of 29/08/2007, the Supreme Court quashed all judgments previously delivered in the applicant's case, re-opened the proceedings and confirmed the applicant's detention pending the new trial without however giving any reason. On 24/09/2007 the Preobragenskiy district court extended the applicant's detention until 24/12/2007 on the ground of the gravity of charges, i.e. he is suspected of having committed an offence punishable by more then 2 years' imprisonment.
On 28/09/2007 the applicant's lawyer lodged a cassation application challenging the aforementioned decision confirming the applicant's detention.
On 22/10/2007, the Criminal Chamber of the Moscow City Court, ruling on points of law only, upheld the decision of the Preobragenskiy district court and rejected the applicant's request to be released from detention pending the new trial. In challenging the detention order of the first-instance court, the applicant and his lawyer relied on the European Court's case-law and on the guidelines of the Constitutional Court of the Russian Federation (for more details, see the Memorandum CM/Inf/DH(2007)4). However, while rejecting the applicant's request, the Moscow Court simply stated that there was no reason in the case-file not to agree with the decision of the first-instance court, without any further detail. As to the new arguments raised in the applicant's appeal (length of his detention, absence of any risk of his absconding), the Moscow Court did not answer them.

2) The applicant's access to the requisite medical assistance: The European Court noted in its judgment that the applicant's condition required regular examinations by an uro-oncologist and cytoscopy at least once a year (§211 of the judgment). It results from the judgment that on 16/09/2005 the applicant was examined at the oncological dispensary in Izhevsk by an uro-oncologist and underwent a cytoscopy. As a result of this examination, he was recommended dispensary supervision and a cystoscopy once a year (§233 of the judgment).
• *Information provided by the Russian authorities*. The applicant repeatedly refused to undergo a medical examination and hospitalisation. The authorities provided the Secretariat with the relevant documents signed by the applicant.
On 15/09/2007 the applicant was transferred to the pre-trial detention facility IZ-77/1 in Moscow. After his transfer the applicant was subject to medical examination; he did not complain of his state of health, which was considered as satisfactory.

On 4/10/2007 the applicant was taken for a required medical examination to the therapeutics department of the hospital of IZ-77/1. He will see the oncologist from the dispensary no 3 in Moscow, by whom he was followed before his arrest, and later undergo a cystoscopy provided he agrees to do so.
• *The examination of this issue is subject to the confirmation by the Russian authorities of the applicant's release.*

General measures:

1) Refusal to examine witnesses for the defence: On 28/11/2007, the judgment of the European Court was disseminated to all courts by a circular letter of the Supreme Court of the Russian Federation.

2) Violation of Article 3 in relation to the applicant's detention on remand

- *Poor conditions of detention on remand*: The case presents similarities to that of Kalashnikov (1007th meeting, October 2007, Section 4.2, Interim Resolution ResDH(2002)123).
- *Lack of requisite medical care:* It results from the judgment that the applicant, who was seriously ill, did not receive the medical care he needed from the medical unit of the pre-trial detention centre (§§ 211-212 of the judgment). The general standards in this area are reflected in the Committee of Ministers' Recommendation Rec(2006)13 on detention on remand, including the conditions of its use and the establishment of guarantees against abuse - in particular § 37 concerning continuing medical treatment.

Information submitted by the Russian authorities: According to Article 29 of the Fundamental principles of the health legislation of the Russian Federation, persons detained on remand or serving their sentences have the right to medical assistance, if need be, in state or municipal health institutions.
The Rules on providing medical assistance to these persons are established by the joint Order of the Ministry of Health and of the Ministry of Justice of 17/10/2005 No. 640/190. According to these Rules, detainees may be placed in state or municipal health institutions or consult outside specialists if necessary. The Russian authorities also indicate that they are currently focusing their efforts on ensuring the implementation of these Rules.
• *Further information provided by the Russian authorities is being assessed by the Secretariat.*

3) Violation of Article 3 in relation to the applicant's imprisonment

- *Poor conditions of detention in prison punishment cells*
- *Lack of adequate medical care in prison*: The question of lack of requisite medical care in prisons has to be addressed by the authorities to prevent new, similar violations. In this respect, the authorities' attention is drawn in particular to Committee of Ministers' Recommendation Rec(2006)2 on the European Prison Rules, especially part III concerning health.

• *Further information provided by the Russian authorities is being assessed by the Secretariat.*

4) Interference with the right of individual petition*:* The case presents similarities to that of Poleshuk in which a number of important measures (instructions, circular letters, etc…) have been taken to prevent similar violations on account of detention centres. The authorities are invited to adopt the similar measures in respect of the prisons.
• *Information provided by the Russian authorities:* On 28/11/2007, the Head of the Federal Service for execution of sentences sent the judgment of the European Court out to all heads of its territorial departments together with a circular letter. This letter drew their attention in particular to the findings of the European Court under Article 34 of the Convention. In this letter, emphasis was placed on the obligation of all penitentiary authorities to ensure the unhindered and unlimited correspondence of detainees with the European Court. All complaints in this respect shall now give rise to an internal inquiry, as a result of which disciplinary sanctions may be imposed on those responsible.
• *Clarification is awaited as to the authority in charge of such inquiry, in particular as to its independence as compared to the personnel of the penitentiary institution concerned. Information is also awaited as to whether other measures are envisaged to ensure full compliance by all penitentiary authorities with these instructions. The results of the internal monitoring introduced would also be useful.*

5) Publication: The judgment was published in the law journal *Human Rights. Case-law of the European Court of Human Rights* Nos. 1 and 2, 2007 and extracts were published in the *Bulletin of the European Court* (Russian version) No. 2, 2007.

The Deputies
1. recalled that, following the European Court's judgment, the proceedings at issue had been reopened by the decision of the Supreme Court of 29 September 2007 and that the case had been transferred to the district court of Preobragenskiy in Moscow;
2. took note of the fact that, on 27 December 2007, this court, as a result of the new trial, had found the applicant guilty while considerably reducing the sentence previously imposed on him, and that accordingly the applicant was released on 11 January 2008;

3 decided to continue, within the framework of general measures, the examination of issues related to access to medical care in detention and, in this purpose, to join this case to the Kalashnikov group of cases, in which similar problems are raised;
4. recalled in this respect that the Russian authorities have already provided information on general measures being assessed by the Secretariat and took note of further information provided by the Russian authorities at the meeting;
5. decided to resume consideration of this item at the latest at their 1035th meeting (16-18 September 2008) (DH), in the light of other information on general measures which may be necessary following the assessment of the Secretariat in the Kalashnikov group of cases.

Case name :	**KHUDOYOROV v. Russia**	**Appl N° :**	**6847/02**
Judgment of :	08/11/2005		
Final on :	12/04/2006		
Violation :		Payment status :	Paid in the time limit
Theme / Domain :	**Unlawful detention**		
Next exam :	1035-4.2(15/09/2008)		
Last exam :	1028-4.2(03/06/2008)		
First exam :	970-2(04/07/2006)		

NOTES OF THE AGENDA

6847/02 Khudoyorov, judgment of 08/11/2005, final on 12/04/2006
CM/Inf/DH(2007)4
The case concerns a number of violations in connection with the applicant's detention at the facility N°OD-1/T-2 in Vladimir in 1999-2002.
The European Court considered that the poor conditions of the applicant's detention went beyond the threshold tolerated by Article 3, due in particular to the lack of space, poor sanitary conditions, combined with the length of his detention in such conditions (violation of Article 3). The Court also found that the conditions of the applicant's transport between the facility and the courthouse, a 20-hour trip undertaken 200 times in 4 years, amounted to treatment incompatible with Article 3. In this respect, the European Court noted that while the individual compartments in the prison van would not appear to be in breach of the CPT's standards, they were used by the authorities in an inappropriate way, e.g. two men for one seat. Moreover, on those days the applicant received no food and missed outdoor exercise (violation of Article 3).
The Court further considered that the applicant's detention from 8/08/2001 to 9/01/2002 and from 13/03/2002 to 4/12/2002 was unlawful due to the shortcomings of the judicial decisions ordering the detention. It found among other things:
- a failure to indicate any legal grounds and any time-limit in the decision quashing the initial detention order and confirming the applicant's detention;
- a lack of sufficient protection from arbitrariness since the detention orders were delivered with retrospective effect and beyond the time-limits provided for detention “pending investigation” by domestic law;
- finally, no sufficiently clear basis in the Russian legislation for detention during the period when the investigation was already over and the trial had not yet begun (violations of Article 5§1).
The Court noted that the fact that the new Russian Code of Criminal Procedure limits such detention to 14 days maximum would not have prevented the Court from finding a violation.
The Court further considered that by failing to address concrete facts or consider alternative “preventive measures” and by relying essentially on the gravity of the charges, the authorities prolonged the applicant's detention on grounds which cannot be regarded as “relevant and sufficient”. Moreover, the authorities failed to display “special diligence” in the conduct of the proceedings (violation of Article 5§3).
The case also concerns the violation of the applicant's right to a speedy judicial review of the lawfulness of his detention and the insufficient scope of its examination (violation of Article 5§4).
Finally, the Court found that the length of the proceedings, which lasted 6 years and 2 months, did not satisfy the “reasonable-time” requirement (violation of Article 6§1).
Individual measures: None.
General measures:
1) Conditions of detention:
This issue presents similarities with the Kalashnikov group of cases, in which comprehensive general measures being taken by the Russian authorities are being examined (Section 4.2). In addition, the Russian authorities have indicated that on 03/07/2006 the Director of the Federal Service for execution of sentences issued letter No. 10/1-1773 to all heads of its subdivisions inviting them to take measures to eliminate the

shortcomings pointed out by the European Court in its judgment. Their attention was drawn in particular to the need to ensure that the sanitary norms are met, to provide individuals with sleeping places and also to comply with rules of the transportation of detainees.
• *Information is awaited on the follow-up given to this letter.*

2) Conditions of transport to court:
At the outset, the Russian authorities specified that responsibility for the issue of transportation of detainees lay with the Ministry of the Interior, although the Federal Service for execution of sentences is also trying to take necessary measures in this respect.
On 15/09/2006, the authorities submitted information on how food is provided to transported detainees during court days.
On 21/11/2006 the Russian authorities indicated that the transport of detainees was governed by the Standards of the Branch OCT 78.01.0002-99 "Operations – Official Vehicles for transporting convicts, suspects and those accused of criminal offences" authorised by the First Deputy Minister of the Interior of the Russian Federation on 01/06/1999. This document contains detailed requirements as regards the transportation of detainees. The Russian authorities have drawn attention to in particular § 4.6 of the Standards which provides that vehicles for transporting suspects and accused "are only intended for transporting seated persons".
This information is currently being assessed by the Secretariat.
Finally, the Russian authorities indicated that the Ministry of the Interior was currently preparing a ministerial regulation which would in addition specify the duties of officers in charge of the transportation of detainees.
• *Information is awaited on the content and progress of this initiative, and particularly on the extent to which it takes into account the CPT standards referred to by the Court in its judgment (§ 117).*

3) Violation of Article 5§1, 3 and 4 and Article 6§1:
In addition to the measures being taken in the Klyakhin group of cases, described in memorandum CM/Inf/DH(2007)4, the following information has been provided in the framework of the examination of this case:
Prosecutors' duties: The Russian authorities indicate that the prosecutor's duty to release an unlawfully detained person is provided by Article 33§2 (and not by Article 32) of the Federal Law "On the Prokuratura" and Article 10§2 (and not Article 37) of the Code of Criminal Procedure. Unconditional compliance with this duty is moreover required by §1.5 of the Prosecutor General' Order No. 141 of 13/11/2000, "On the strengthening of prosecutors' control over compliance with citizens' constitutional rights in criminal proceedings" and part 2 of §1.4 of the Prosecutor General's Order No. 27 of 5/08/2003, "On establishing prosecutors' control over compliance with the law in pre-trial detention facilities".
• *Information would useful as to whether the procedures provided by these Orders will be modified following the entry in force of the Federal Law "On changes to the Code of Criminal Procedure" and the Law "On the Prokuratura" setting up an Investigating Committee.*
Judges' liability: According to Article 3 of Law No. 3132-I of 26/06/1992 "On the status of judges in the Russian Federation", a judge must strictly follow the Constitution of the Russian Federation and its laws. According to Article 12.1 of the same law, in case of a violation of the law in force a judge might be subject to disciplinary liability in the form of a warning or an early termination of his/her judicial powers.
It is recalled that disciplinary proceedings were one of the measures envisaged by the Decision of the Presidium of the Supreme Court of the Russian Federation of 27/09/2006 to ensure judges' compliance with the requirements of Article 5 when ordering detention (for more details see the memorandum **CM/Inf/DH(2007)4**, §§ 18-20).
• *Information would be useful on the follow-up of this Decision, in particular examples of disciplinary proceedings brought against judges who ordered detention in breach of the Convention requirements.*

4) Publication and dissemination of the judgment of the European Court
Prosecutors: On 21/07/2006 by letter No. 12/7123-01 the Deputy Prosecutor General sent the judgment out to all prosecutors, compelling them to take into account the findings of the European Court when requesting remand in custody or the extension of such custody.
Courts: On 13/07/2006 by letter No. 1953-1/общ the Deputy President of the Supreme Court of the Russian Federation sent the judgment out to all Presidents of regional courts inviting them to discuss the European Court's findings with judges. Their particular attention was drawn to §§ 136, 142, 178, 181, 182, 185 and 186 of the judgment.
The judgment was also included in the educational thematic plan of the Academy of Justice of the Russian Federation.
Ministry of the Interior: The authorities informed the Secretariat that the findings of the European Court in this case were subject to a working meeting organised on 6/06/2006 at the Department of the Ministry of the Interior in the Vladimir region.

The Deputies decided to resume consideration of this item at their 1013th meeting (3-5 December 2007) (DH), in the light of the information to be provided concerning general measures, in particular on the progress of a ministerial regulation with regard to the transport of detainees and the results of monitoring of judicial practice organised by the Decision of the Presidium of the Supreme Court of the Russian Federation of 27/09/2006.

Case name :	**KLYAKHIN v. Russia**	**Appl N° :**	**46082/99**
Judgment of :	30/11/2004		
Final on :	06/06/2005		
Violation :		Payment status :	Paid in the time limit
Theme / Domain :	**Unlawful detention**		
Next exam :	1035-4.2(15/09/2008)		
Last exam :	1028-4.2(03/06/2008)		
First exam :	940-2(11/10/2005)		

NOTES OF THE AGENDA

46082/99	Klyakhin, judgment of 30/11/05, final on 06/06/05
21153/02	Bednov, judgment of 01/06/2006, final on 01/09/2006
11886/05	Dolgova, judgment of 02/03/2006, final on 03/07/2006
31008/02	Fedorov and Fedorova, judgment of 13/10/2005, final on 13/01/2006
70276/01	Gusinskiy, judgment of 19/05/2004, final on 10/11/2004
6847/02	Khudoyorov, judgment of 08/11/2005, final on 12/04/2006
75039/01	Korchuganova, judgment of 08/06/2006, final on 08/09/2006
7064/05	Mamedova, judgment of 01/06/2006, final on 23/10/2006
55669/00	Nakhmanovitch, judgment of 02/03/2006, final on 02/06/2006
45100/98	Panchenko, judgment of 08/02/2005, final on 08/05/2005
54071/00	Rokhlina, judgment of 07/04/2005, final on 12/10/2005
46133/99+	Smirnova, judgment of 24/07/2003, final on 24/10/2003

CM/Inf/DH(2007)4

The violations in these cases are summarised in the tables below.

a. Unlawful detentions (violations of Article 5§1)

Application	Case	Period of detention
Before the new Code of Criminal Procedure		
70276/01	Gusinskiy	June 2000
75039/01	Korchuganova	13/11/2000 - 08/07/2002
55669/00	Nakhmanovich	04/03/1999 - 04/02/2000
After the new Code of Criminal Procedure		
6847/02	Khudoyorov	8/08/2001 - 9/01/2002 and 13/03/2002 - 4/12/2002

The Gusinskiy case concerns the applicant's detention in custody for 3 days in June 2000 pursuant to the legal provisions then in force, which allowed deprivation of the suspect's liberty before bringing charges in "exceptional circumstances" (Articles 90 of the former Code of Criminal Procedure). The European Court found that the meaning of this provision was not sufficiently accessible and precise to meet the "quality of law" requirement enshrined in the Convention.

In all other cases, the unlawful character of the applicants' detention on remand was due to:

- the extension of detention “pending investigation” beyond the time-limit provided by domestic law and with retrospective effect;
- the practice of keeping accused persons in detention on the sole ground that a bill of indictment has been lodged with the trial court;
- a failure to indicate any legal ground and any time-limit in the subsequent court decision remitting the case for additional investigation and remanding the applicant in custody.

b. Insufficient grounds for extending detention on remand: justified solely by the gravity of the accusations without consideration of the facts (violations of Article 5§3)

Application	Case	Period of detention	Length of detention
Before the new Code of Criminal Procedure			
46082/99	Klyakhin	26/08/97 - 16/08/99 and 02/12/99 - 09/02/01	3 years, 2 months

75039/01	Korchuganova	13/11/2000 - 08/07/2002	5 years, 1 month and 26 days
55669/00	Nakhmanovich	04/03/1999 - 04/02/2000	2 years, 4 months and 24 days
45100/98	Panchenko	31/08/95 - 17/07/98 and 03/06/99 - 29/02/00	3 years, 7 months, 8 days
54071/00	Rokhlina	07/98 - 12/99	1 year, 6 months
46133/99+	Smirnova	4 times for each applicant between 1995 and 2002	4 years, 4 months and 1 year, 6 months respectively
After the new Code of Criminal Procedure			
6847/02	Khudoyorov	22/01/99 - 28/05/04	5 years, 4 months, 6 days
11886/05	Dolgova	14/12/2004 - 08/12/2005	almost 12 months
7064/05	Mamedova	23/07/2004 – 4/08/2005	More than a year

The following failures on the part of the authorities were identified by the European Court in the Korchuganova case (before the entry into force of the new Code of Criminal procedure) and in the Khudoyorov case (some detention orders were taken after the entry into force of the new CCP):
- the failure to give other grounds than the persistence of reasonable suspicion to justify the applicant's continuing detention;
- the failure to indicate any concrete fact warranting the applicants' detention;
- the failure to consider alternative “preventive measures” to ensure applicants' presence at trial notwithstanding the express requirement of the new Code of Criminal Procedure; and
- an established practice of issuing collective extension orders, thereby ignoring the personal circumstances of individual detainees.
It results from the Dolgova case that in 2004-2005 the domestic courts continued to use the same summary formula and stereotyped wording based on the gravity of charges without proper regard to personal circumstances of detainees, and failed to consider alternative preventive measures.

c. Limited scope and excessive length of judicial review of the lawfulness of detention (violations of Article 5§4)

Application	Case	Court involved	Length of the examination of the applicants' appeal
21153/02	Bednov	Voronezh Regional Court	none of the six applications lodged between 25/07 and 30/10/2001 was examined by a domestic court
46082/99	Klyakhin	Armavir Town and Regional Courts	
6847/02	Khudoyorov	Vladimir Regional Court and Supreme Court	1 year and 8 months, 125 days and 134 days
7064/05	Mamedova	Vladimir Regional Court	36, 26, 36 and 29 days respectively
55669/00	Nakhmanovich	Preobrazhenskiy District Court (Moscow)	never been examined by a domestic court
45100/98	Panchenko	Smolninskiy District and City Courts of St. Petersburg	98 days

The European Court found that the violations were in particular due to:
- the limited scope of judicial review by the domestic courts, not least by the Supreme Court itself, which failed to address the applicant's relevant arguments challenging the lawfulness of his detention, (Klyakhin and Khudoyorov cases);
- the excessive length of the examination of the applicants' applications for release (see table above) which were moreover in breach of the time-limits provided by domestic law:
- the denial by the court of the applicants' right to a judicial decision concerning the lawfulness of his detention pending trial (Nakmanovich and Bednov cases).

d. Excessive length of criminal proceedings (violations of Article 6§1) and lack of effective domestic remedy in this respect in the Klyakhin case (violation of Article 13)

Application	Case	Length of proceedings	State of proceedings
46082/99	Klyakhin	3 years and 4 months	Closed

6847/02	Khudoyorov	6 years and 2 months	Discontinued
31008/02	Fedorov and Fedorova	8 years, 6 months and 29 days and 6 years and 2 months respectively	Discontinued for the 1st applicant; 2nd applicant acquitted
55669/00	Nakhmanovich	5 years and 11 months	discontinued
45100/98	Panchenko	8 years and 5 months	Closed
54071/00	Rokhlina	7 years	Pending
46133/99+	Smirnova	3 years and 4 months and 2 years and 6 months respectively	Closed

The Klyakhin case also concerns the opening and censoring of the applicant's correspondence with the European Court (violation of Article 8) and the hindrance of the applicant's right to individual petition as his letters to the Court were either not sent, or posted months later, without their enclosures, and letters he received from the Court were mostly not given to him or given without enclosures (violation of Article 34).

Individual measures:

• *In the Rokhlina case, information is required on the outcome of the proceedings before the Naro-Fominsk Town Court of the Moscow Region, which were still pending at the time of the Court's judgment.*

General measures already taken:

1) Violations of Article 5: The measures taken so far by the Russian authorities and the outstanding issues are summarised in the memorandum to be issued by the Secretariat in time for the 987th meeting.

• *The most important measures taken:*

- A Decree of the Plenum of the Supreme Court of the Russian Federation of 27/09/2006 which drew lower courts' attention to the important shortcomings of judicial decisions regarding pre-trial detention and announced a number of measures with a view of remedying them, e.g. monitoring of judicial practice, etc.
- An expert opinion prepared by DG II in co-operation with DG I on a draft law submitted by the Russian authorities amending the Criminal Code, the Code of Criminal procedure and the law “On custody” with a view to reducing the prison population, in particular through reform of existing conditions in which detention may be ordered.

• *The most important outstanding issues:*

- improvement of in-service training of judges, prosecutors and heads of detention centres (see the Committee's Recommendation (2004)4 of 12 May 2004 on the ECHR and professional training);
- strengthening of their disciplinary and professional responsibility.

2) Violations of Article 6§1:

In the letter requesting an action plan, the authorities were also invited to introduce an effective domestic remedy allowing acceleration of proceedings and/or compensation for delays (a similar issue is raised with regard to civil proceedings in the Kormacheva group of cases (997th meeting, June 2007)).

3) Violations of Articles 8 and 34*:* As regards the opening and hindrance of the applicant's correspondence while in jail, the Klyakhin case present similarities to that of Poleshchuk (Section 6.2) in which general measures to prevent new similar violations have already been taken.

At their 987th meeting (February 2007), the Deputies decided to resume consideration of these items at their 1007th meeting (October 2007) in the light of further information to be provided on general measures.

The Deputies decided to declassify the Memorandum CM/Inf/DH(2007)4.

Case name :	**KORMACHEVA v. Russia**	**Appl N° :**	**53084/99**
Judgment of :	29/01/2004		
Final on :	14/06/2004		
Violation :		Payment status :	Paid in the time limit
Theme / Domain :	**Length of civil proceedings**		
Next exam :	1035-4.2(15/09/2008)		
Last exam :	1020-4.2(04/03/2008)		
First exam :	897-2(28/09/2004)		

NOTES OF THE AGENDA

- Cases of length of civil proceedings and of lack of an effective remedy

53084/99	Kormacheva, judgment of 29/01/2004, final on 14/06/2004, rectified on 29/04/2004
30395/04	Avakova, judgment of 22/06/2006, final on 22/09/2006
55520/00	Baburin, judgment of 24/03/05, final on 24/06/05
22892/03	Bakiyevets, judgment of 15/06/2006, final on 15/09/2006
4171/03	Chevkin, judgment of 15/06/2006, final on 15/09/2006
10929/03	Glazkov, judgment of 12/10/2006, final on 12/01/2007
76964/01	Kirsanova, judgment of 22/06/2006, final on 22/09/2006
76835/01	Kolomiyets, judgment of 22/02/2007, final on 22/05/2007
44374/04	Kudinova, judgment of 02/11/2006, final on 02/02/2007
12049/02	Kutsenko, judgment of 1/06/2006, final on 1/09/2006
22118/02	Kuzin, judgment of 09/06/05, final on 09/09/05
63527/00	Levshiny, judgment of 09/11/2004, final on 30/03/2005
29510/04	Marchenko, judgment of 05/10/2006, final on 05/01/2007
15969/02	Nikitin Vladimir, judgment of 02/11/2006, final on 02/02/2007
77089/01	Olshannikova, judgment of 29/06/2006, final on 29/09/2006
14949/02	Plaksin, judgment of 29/04/2004, final on 10/11/2004
28954/02	Rash, judgment of 13/01/2005, final on 13/04/2005
19457/02	Romanenko and Romanenko, judgment of 19/10/2006, final on 19/01/2007
14983/04	Rybakov, judgment of 22/12/05, final on 22/03/06
38015/03	Salamatina, judgment of 01/03/2007, final on 01/06/2007
28639/03	Savenko, judgment of 14/06/2007, final on 14/09/2007
36219/02	Shelomkov, judgment of 05/10/2006, final on 12/02/2007
36045/02	Shneyderman, judgment of 11/01/2007, final on 11/04/2007
33914/02	Skorobogatova, judgment of 01/12/2005, final on 01/03/2006
3734/02	Sokolov, judgment of 22/09/2005, final on 22/12/2005
20496/04	Tusashvili, judgment of 15/12/05, final on 15/03/06
3852/02	Uglanova, judgment of 21/09/2006, final on 21/12/2006
75475/01	Vasyagin, judgment of 22/09/2005, final on 22/12/2005
26384/02	Vokhmina, judgment of 09/06/05, final on 09/09/05
10374/02	Volovich, judgment of 05/10/2006, final on 12/02/2007
42138/02	Yaroslavtsev, judgment of 02/12/2004, final on 02/03/2005
60408/00	Yemanakova, judgment of 23/09/2004, final on 02/02/2005
70190/01	Zimenko, judgment of 23/06/2005, final on 23/09/2005

All these cases concern the excessive length of civil proceedings regarding employment, property and housing disputes (violations of Article 6§1). Some of the cases also concern the lack of an effective remedy to expedite the proceedings or provide the applicants with adequate redress for delays incurred (violations of Article 13).

The excessive length of proceedings was *inter alia* due to:

- understaffing and the work overload of courts,
- lack of automatic time-limits,
- repeated procedural omissions,
- poor technical conditions of court buildings,
- numerous adjournments of hearings, due in particular to the failure to notify the claimants about the hearings in due time.

Individual measures:

• *Information provided by the Russian authorities*:

Baburin case: proceedings were closed by the decision of the Kuybyshevskiy District Court of 27/05/2005 delivered in the applicant's favour. This decision was confirmed by the Saint Petersbourg City Court on 10/08/2005 and became final.

Chevkin case: the proceedings pending since April 1998 have been ended by a new judgment of the Tula Regional Court of 21/03/2006 delivered in the applicant's favour and enforced in full on 20/12/2006.

Plaksin case: the proceedings were closed by the decision of the Stavropol Regional Court of 7/04/2004 delivered in the applicant's favour.

Sokolov case: the judgment delivered in the applicant's favour was enforced on 9/04/2004 with regard to the payment of the sums granted and on 11/01/2005 with regard to the reinstatement of the applicant in his previous position.

Olshannikova case: proceedings were ended and the writ of execution issued on 27/12/2007.

Kutsenko case: the judgment of 1/02/2005 upheld on 13/04/2005 became final on 13/04/2005 and was fully enforced.

Savenko case: the authorities indicated that the applicant requested reopening of proceedings on the ground

of newly discovered circumstances, i.e. the judgment of the European Court. However, the arbitration courts rejected her request on the ground that she had failed to submit an official certified translation of the European Court's judgment. The courts indicated to the applicant that she may re-submit her claim once she has the official Russian translation of the judgment.
• *Information is awaited on the steps taken by the Russian authorities to provide the applicant with the necessary translation.*
• *Information is still expected in the following cases:*
- Avakova case: confirmation is expected as to whether the judgment of 27/05/2005 upheld on 10/08/2005 has been executed.
- Kolomiyets case: information is awaited as to whether the proceedings are still pending.
General measures: The Russian authorities have taken and are taking a number of comprehensive measures to ensure the reasonable length of judicial proceedings:

1) Measures to improve the material conditions for the functioning of Russian courts:

The implementation of the Federal Programme on the development of the judicial system of the Russian Federation for 2002-2006 has already contributed to the improvement of material conditions for the functioning of Russian courts. The same Federal programme for 2007-2011 provides for 48 billion Roubles. It is also to be noted that, according to Article 31§1 of the Federal Constitutional Law on the Judicial System of the Russian Federation, all issues related to the functioning of courts of general jurisdiction depend on the Judicial Department of the Supreme Court of the Russian Federation.

a) Measures being taken in the framework of these Programmes:

The Russian authorities provided extensive information, of which the main points may be summarised as follows:
- New judges are being recruited and trained and computer systems for the judiciary are being developed. The number of judges and their assistants was also significantly increased (in 2002-2006 more than 3 000 judges and 6 000 assistants) as well as their salaries. Also, a new post of judges' aide was created and 13 775 persons were accordingly recruited.
- The reintroduction in the Russian judicial system of the justice of the peace contributed to reducing the workload of federal judges. Justices of the peace are now dealing with 39,4% of criminal cases and 73,1% of civil cases.
- As from 2001, 45 billion Roubles were provided in the framework of this programme, which resulted in the construction of 300 new court buildings and the renovation of 900 old buildings.
- On 27/12/2007, the Plenum of the Supreme Court adopted Ruling No. 52 on deadlines for the examination by courts of the Russian Federation of criminal, civil and administrative cases, drawing lower courts' attention to important shortcomings of judicial decisions regarding the procedural time-limits for examining cases and announcing a number of measures to remedy them, e.g. the monitoring of judicial practice, etc.
- The rules of territorial jurisdiction of courts are about to be changed, so that proceedings are more geographically spread instead of being concentrated in some areas.
- The authorities are planning to introduce special divisions within courts composed of professional lawyers who would deliver preliminary consultations to citizens and to advise them on the course of action.
- Statistics*:* In 2004, 12,8% of cases were dealt with by district courts outside the procedural time-limits. In 2005, the number of such cases amounted to 10,9% and, in 2006, to 8,9%. Consequently, in 2006 the workload of a district judge diminished as compared to 2001 from 8 to 3,9 criminal cases and from 24,4 to 10,7 civil cases.
• *Additional information awaited: The Russian authorities are invited to keep the Secretariat regularly informed of progress in adopting these measures and to provide updated comparative statistical data on the practical impact of all the aforementioned reforms on the length of judicial proceedings. More details would also be useful on the training and awareness raising of judges and on the role of the Academy of Justice in this respect.*

b) Other measures taken:

Defendants' failure to attend hearings: In the Rybakov case, the length of proceedings was mostly due to the defendants' failure to attend the hearings. As the defendants were the Governor of St Petersburg and St. Petersburg Committee for Housing Policy, the Government of St. Petersburg issued on 04/07/2006 a special Decree "On measures to improve the legal support of the executive organs' activities in St. Petersburg" aiming in particular to ensure the proper and timely representation of the Governor and executive organs of St. Petersburg in courts.

2) Remedies available or envisaged before domestic courts in case of excessive length of judicial proceedings

a) Disciplinary liability of judges:

• *Information provided by the Russian authorities:* Each case of excessive length of proceedings gives rise to a disciplinary inquiry by the President of the court concerned and by the High qualification commission of

judges of the Russian Federation. If it is established that the judge's attitude contributed to the delays, disciplinary sanctions shall be pronounced.
• *Assessment: Although these measures are welcomed as a part of a general monitoring mechanism, it is recalled that, in the Kormacheva judgment, the European Court considered that the disciplinary action against the judge responsible for delays before the higher judicial or other authorities could not constitute an effective remedy for the purposes of Article 13 (see § 61-62 idem).*

b) State civil liability:
Article 1070§2 of the Civil Code provides that damages inflicted in the course of the administration of justice shall be compensated provided that the fault of the judge has been established by a final judgment delivered by a criminal court.
On 25/01/2001, the Constitutional Court extended the possibility of establishing the fault of judges, under this Article, to civil courts. However it limited judges' responsibility under this provision to the fault committed when taking procedural decisions, e.g. decisions adjourning or scheduling hearings. The damages thus caused shall be compensated by the Treasury on the basis of Article 1069 of the Civil Code.
The Constitutional Court invited the Parliament to adopt special legislation providing courts competent to deal with these claims and a compensation procedure.

c) Draft law on setting up an effective remedy before domestic courts in case of excessive length of proceedings
The Supreme Court of the Russian Federation is also preparing a draft constitutional law setting up a domestic remedy allowing victims to obtain compensation before domestic courts and/or acceleration of the pending proceedings. Following the authorities' request, the Secretariat of the Council of Europe delivered its comments on the preliminary version of this draft law, which have been positively received by the competent Russian authorities. These comments are based on the experience of other countries in resolving similar problems and on the European Court's case-law. It would appear that the draft law is still being finalised by the Supreme Court and has not yet been submitted to Parliament.
• *Information is awaited on the progress of this draft law.*

3) Experience of other countries: The Russian authorities may wish to consider the experience of other countries which took comprehensive general measures to solve the problem of excessive length of civil proceedings (e.g. Interim Resolutions ResDH(2005)114 and ResDH(2004)72 concerning certain judgments against Italy and Resolution ResDH(2005)60 concerning the judgment in Horvat against Croatia). The authorities' attention was also drawn to the need to ensure the availability of effective domestic remedies (preventive and/or compensatory) at the national level, as emphasised in Recommendation Rec(2004)6 of the Committee of Ministers on the improvement of domestic remedies.

4) Publication and dissemination: Several of these judgments have been translated and published in the *Bulletin of the European Court* and sent out to all courts with a circular letter by the Deputy President of the Supreme Court of the Russian Federation.

The Deputies decided to resume consideration of these items:
1 at their 1028th meeting (3-5 June 2008) (DH), in the light of information to be provided on the payment of the just satisfaction, if necessary;
2. at the latest at their 1035th meeting (16-18 September 2008) (DH), in the light of information to be provided on individual and general measures.

Case name :	**LEVIN v. Russia**	**Appl N° :**	**33264/02**
Judgment of :	02/02/2006		
Final on :	02/05/2006		
Violation :		Payment status :	Paid in the time limit
Theme / Domain :	**Failure or substantial delay by the administration or state companies in abiding by final domestic judgments**		
Next exam :	1035-4.2(15/09/2008)		
Last exam :	1020-4.2(04/03/2008)		
First exam :	970-2(04/07/2006)		

NOTES OF THE AGENDA

- Cases concerning the failure or substantial delay by the administration to enforce judgments relating to the social benefits of former Chernobyl workers
Resolution ResDH(2004)85
33264/02 Levin, judgment of 02/02/05, final on 02/05/06

37930/02	Bazhenov, judgment of 20/10/05, final on 20/01/06
24620/02	Belyayev, judgment of 25/01/2007, final on 25/04/2007
72558/01	Blagovestnyy, judgment of 04/07/2006, final on 04/10/2006
1719/02	Butsev, judgment of 22/09/05, final on 15/02/06
40642/02	Denisenkov, judgment of 22/09/05, final on 15/02/06
38719/03	Glushakova, judgment of 12/04/2007, final on 12/07/2007
38305/02	Gorokhov and Rusyayev, judgment of 17/03/05, final on 12/10/05
63995/00	Kukalo, judgment of 03/11/2005, final on 03/02/2006
21074/03	Makarov, judgment of 25/01/2007, final on 25/04/2007
43282/02	Naydenkov, judgment of 07/06/2007, final on 24/09/2007
37927/02	Nikolayev, judgment of 02/03/06, final on 02/06/06
19589/02	Parkhomov, judgment of 20/10/05, final on 20/01/06
38720/03	Popov Aleksandr, judgment of 05/04/2007, final on 05/07/2007
32786/03	Silchenko, judgment of 28/09/2006, final on 28/12/2006

These cases concern violations of the applicants' right to a court due to the Russian social authorities' failure over several years to enforce final judicial decisions ordering them to pay certain compensation and allowances (with subsequent indexation) for health damage sustained by the applicants during emergency and rescue operations at the Chernobyl nuclear plant and damages for their delayed enforcement.
Notwithstanding the measures adopted by the Russian authorities to solve this structural problem (for more details see Resolution ResDH(2004)85 adopted by the Committee of Ministers to close the Burdov case), the European Court found that the applicants had not been provided at the domestic level with adequate redress for the delays in the enforcement of the court decisions in their favour (violations of Article 6§1 and of Article 1 of Protocol No. 1). I
n the Belyayev judgment, the European Court also found that there was no remedy which could have provided the applicant with adequate redress for the continued non-enforcement of the judgments in his favour (violation of Article 13).

Individual measures: The European Court has awarded just satisfaction in respect of the damage suffered by the applicants as a result of delays in the enforcement of the court decisions in their favour.

• *Information provided by the Russian authorities*: In the Denisenkov case, all judicial decisions in the applicant's favour mentioned in the judgment of the European Court have been enforced. In the Levin case, the Russian authorities have provided regular reports by the Federal Social Service of the Kaluga Region regarding payments made to the applicant pursuant to the judicial decisions in his favour.

• *Information is awaited on the enforcement of the domestic judgment of 2/03/1999 delivered in the Makarov case.*

General measures: The measures taken by the Russian authorities in the Burdov case to prevent new similar violations allowed the European Court to strike out other similar applications pending before it at the time since the Government acknowledged the violations and offered the applicants additional compensation for non-pecuniary damage resulting from the delayed enforcement of domestic judicial decisions (Aleksentseva and 28 others against the Russian Federation, decision of 4/09/2003). However, these 29 applications have recently been restored to the Court's list (decision of admissibility of 23/03/2006) as the applicants have received no redress for non-pecuniary damage in respect of the violation acknowledged by the government and as the original judgments in the applicants' favour remained unexecuted in respect of the part relating to the indexation of the monthly payments they received.
It should be noted in addition that no measure allowing adequate redress for the delays in the enforcement was adopted at the domestic level within the Burdov case.

• *Information provided by the Russian authorities:* The Russian authorities indicated that the main grounds for the applications lodged before the European Court in these cases were:

- shortcomings in the legislative mechanism providing for the indexation of this category of persons;
- lack of consistency between the judicial practice and the executive bodies regarding the manner in which this indexation should have been done;
- lack of a centralised payment procedure for different compensations and allowances (these payments were to be taken from the federal budget but made by different social bodies at the level of the subdivisions of the Russian Federation); or
- delays in awarding the relevant funds from the federal budget for the execution of this kind of judgments.

The authorities have taken and are currently taking a number of measures, legislative and other, with a view to ensuring consistency between legislation and practice and to simplifying the payment procedures. In particular,

- a number of measures have been taken to codify the existing legislation, taking into account the judicial practice of the Supreme Court of the Russian Federation and of the Constitutional Court;

- funds were allocated in the state federal budget for timely compliance with judgments regarding the payment of compensation;
- the issue of whether it is possible to concentrate in the hands of one financial body all payments due to this category of persons is currently being examined, as well as the possibility of setting up an appropriate control mechanism for the proper execution of these payment obligations.

The Russian authorities provided the Secretariat with relevant statutes and regulations.

• *Assessment: These measures are welcomed. The Russian authorities are invited to keep the Committee informed of the progress in their adoption*.

• *Information is in particular awaited on the measures taken to concentrate all payments in the hands of one financial body and to set up a specific control mechanism. Information is also expected on how the delays in enforcing these judgments are being compensated. Finally, information is awaited on measures taken or envisaged with a view to introducing an effective remedy to compel the state to repay a judgment debt and to provide redress for delays in enforcement.*

The Deputies decided to resume consideration of these items:

1 at their 1028th meeting (3-5 June 2008) (DH), in the light of information to be provided on the payment of the just satisfaction, if necessary;

2. at the latest at their 1035th meeting (16-18 September 2008) (DH), in the light of information to be provided on individual measures, in the Makarov case, and on general measures.

Case name :	**FADEYEVA v. Russia**	**Appl N° :**	**55723/00**
Judgment of :	09/06/2005		
Final on :	30/11/2005		
Violation :		Payment status :	Paid in the time limit
Theme / Domain :			
Next exam :	1035-4.3(16/09/2008)		
Last exam :	1028-4.3(03/06/2008)		
First exam :	955-2(07/02/2006)		

NOTES OF THE AGENDA

- Cases concerning violations of the right to home due to industrial pollution
CM/Inf/DH(2007)7

55723/00 Fadeyeva, judgment of 09/06/2005, final on 30/11/2005
53157/99+ Ledyayeva, Dobrokhotova, Zolotareva and Romashina, judgment of 26/10/2006, final on 26/03/2007

These cases concern the Russian authorities' failure in their obligation to protect the applicants' private and home life against environmental hazards arising from a steelworks. The applicants lived in flats situated in the sanitary zone established around the Severstal Steel Works in Cherepovets, where the pollution level is much higher than the "maximum permitted limit" set forth by Russian law. Mrs Romashina obtained a flat outside the zone in 2000. As for the other applicants, the authorities failed to resettle them or provide compensation for eventual resettlement costs. Neither have the authorities taken effective measures to reduce the industrial pollution to an acceptable level and to ensure the compliance of the steel plant with domestic environmental standards. Consequently, the state had failed to strike a fair balance between the interests of the community and the applicants' effective enjoyment of their right to respect for home and private life (violation of Article 8).

Individual measures: The European Court has established the government's obligation to take appropriate measures to remedy the applicants' individual situation. The Court noted at the same time that the resettlement of the applicants in an ecologically safe area would be only one of many possible solutions. The Court also pointed out that the individual measures in the present case may be closely connected to the general measures (see below) as the state has at its disposal a number of other tools capable of preventing or minimising pollution.

According to the Russian authorities, the applicants no longer live within a sanitary zone, i.e. since June 2004 when the new zone of 1 kilometre from the sources of pollution was established.

According to the applicants, the level of air pollution at their residences exceeds the maximum permissible limits provided by law.

• *Clarifications requested in this respect in Memorandum CM/Inf/DH(2007)7 are awaited.*

General measures: All information provided by authorities so far, as well as the outstanding issues are summarised in the Memorandum CM/Inf/DH(2007)7. The Memorandum is being updated on the basis of the information provided by the applicants.

• *Information is still awaited on the outstanding issues as pointed out in the Memorandum CM/Inf/DH(2007)7.*

The Deputies,
1. took note of the information provided during the meeting by the Russian authorities on the general legal and regulatory framework of the protection from industrial pollution, as well as on the environmental situation around the Severstal steel plant;
2. considered that this detailed information is yet to be assessed;
3. encouraged the Russian authorities to speed up the adoption of the Environmental Code and invited them to provide the Secretariat with the draft;
4. invited the Russian authorities to envisage holding consultations, possibly in Cherepovets, with the participation of competent authorities, experts and the Secretariat, on the issue of general measures adopted or yet to be taken to comply with the Court's judgments;
5. decided to resume consideration of these cases at their 1035th meeting (16-18 September 2008) (DH), in particular in the light of an up-dated version of the Memorandum to be prepared by the Secretariat and information to be provided on the payment of the just satisfaction, if necessary.

Case name :	**KHASHIYEV v. Russia**	**Appl N° :**	**57942/00**
Judgment of :	24/02/2005		
Final on :	06/07/2005		
Violation :		Payment status :	Paid in the time limit
Theme / Domain :	**Ill-treatment by members of security forces**		
Next exam :	1035-4.3(16/09/2008)		
Last exam :	1020-4.3(04/03/2008)		
First exam :	940-2(11/10/2005)		

NOTES OF THE AGENDA

- Cases concerning security forces in the Chechen Republic

57942/00+	Khashiyev and Akayeva, judgment of 24/02/2005, final on 06/07/2005, rectified on 01/09/2005
74237/01	Baysayeva, judgment of 05/04/2007, final on 24/09/2007
69481/01	Bazorkina, judgment of 27/07/2006, final on 11/12/2006
59334/00	Chitayev and Chitayev, judgment of 18/01/2007, final on 18/04/2007
60272/00	Estamirov and others, judgment of 12/10/2006, final on 12/01/2007
7615/02	Imakayeva, judgment of 09/11/2006, final on 09/02/2007
69480/01	Luluyev and others, judgment of 09/11/2006, final on 09/02/2007
57950/00	Isayeva, judgment of 24/02/2005, final on 06/07/2005
57947/00+	Isayeva, Yusupova and Bazayeva, judgment of 24/02/2005, final on 06/07/2005

CM/Inf/DH(2006)32 revised 2

These cases concern the death of applicants' relatives during Russian military operations in Chechnya in 1999 and 2002. The violations found by the European Court are the following:
- the failure to present any justification for the use of lethal force by the state agents in respect of the applicants' relatives and one of the applicant's sons (violation of Article 2);
- the failure to prepare and execute anti-terrorist operations involving the use of heavy combat weapons with the requisite care for the lives of civilians (violations of Article 2);
- the failure to carry out an effective criminal investigation into the circumstances surrounding the deaths of the applicants' relatives or allegations of torture and lack of an effective remedy in these respects (violations of Articles 2, 3 and 13);
- the state's responsibility for the unacknowledged detention of the applicant's relatives and their subsequent disappearances and the authorities' failure to provide the applicants with any plausible explanation in this respect (violations of Articles 3 and 5);
- unlawful interference with the applicants' right to private life on account of the search and seizure measures implemented by members of the security forces without any authorisation or safeguards (violation of Article 8);
- unjustified destruction by the security forces of the property of one of the applicants in the course of a anti-terrorist operation (violation of Article 1 of Protocol No. 1);
- the violation of the obligation to furnish all necessary facilities to the Court in the establishment of the facts on account of the authorities' failure to submit copies of the investigation files opened into the disappearances of the applicants' relatives (violation of Article 38§1(a)).

Individual measures:

• *Applicants' submissions*: On 04/10/2005, the applicants in the Isayeva, Khashyev and Akayeva and Isayeva, Yusupova and Bazaeva provided the Secretariat, through their representatives, with detailed submissions claiming a number of individual measures to be adopted by the authorities. On 4/06/2007 the applicants in the Bazorkina and Estamirov cases lodged similar observations. The applicants' submissions were transmitted for comments to the Russian authorities.
For an extensive description of the situation in each case, see document **CM/Inf/DH(2006)32 revised 2** containing background information. In summary, the current situation in each of these cases is as follows:

1) Cases of Isayeva, Yusupova and Bazaeva and Issayeva: On 14/11/2005, pursuant to Articles 214 and 413 of the Code of Criminal Procedure and considering Article 46 of the Convention, together with the Recommendation of the Committee of Ministers to member states Rec(2000)2 of 19/01/2000 on the re-examination or re-opening of certain cases at domestic level, the Chief Military Prosecutor's office ordered the Military Prosecutor of the Unified Army Group to conduct new investigations under his close supervision. The Military Prosecutor has taken the following procedural steps:
- conducting operational tactical expert examinations~~)~~ no least to check the proportionality of the lethal force used during the military operation near the villages of Shaami-Yurt and Katyr-Yurt and to determine whether measures had been taken to ensure the safety of civilians;
- questioning of 200 witnesses;
- additional examination of the crime scenes, forensics medical examination of the victims and re-enactments of the events.
In addition, 27 persons affected by the events at issue were granted victim status in the present investigation.
The investigation into the circumstances of the use of the lethal force by the federal forces was closed by the investigating department of the Military Prosecutor's office on 14/06/2007 on the basis of Article 24§2 2) for absence in the acts of servicemen of *corpus delicti*.

***2) Cases of Khashiev and Akayeva*:** On 25/01/2006, the investigations in these cases were also reopened and assigned to the Prosecutor's office of the Staryprомylovsky District of the City of Grozny (Chechen Republic), under the supervision of General Prosecutor's office. In the framework of this investigation, 84 other persons affected by the events at issue were granted victim status in this investigation. M. Khashiev was granted victim status on 15/06/2000 and Mrs Akayeva on 6/07/2004. The authorities have already taken a number of additional steps, such as questioning of 300 witnesses, ballistic examinations of the cartridges provided by M. Khashiev although without a positive result, gathering of all materials on the conducting of these operations and on the federal forces involved, etc.
However the authorities point out that it is impossible to establish the exact cause of death of the victims of these events since the place of burial of the applicants' relatives is unknown and the relatives of other people who died during the events refuse to grant their permission to exhumation. The authorities continue to explore other ways to determine the exact role of members of the security forces in the events.
• <u>*Latest developments*</u>: On 17/05/2006, the investigation was adjourned on the basis of Article 208§1 1), of the Code of Criminal procedure.

3) Bazorkina case: The Russian authorities indicated that the investigation into the disappearance of the applicant's son after his arrest by the federal forces was adjourned on 16/06/2007 by the investigative department of the Military Prosecutor's office on the basis of Article 208 §1 1) due to a failure to identify the culprits.

4) Imakayeva case:
• *Investigation into the applicant's husband's abduction*: The new investigation No. 36125 was initiated on 16/11/2004 by the Prosecutor's office of Shalinskiy district. On 16/02/2005, the investigation was adjourned on the basis of Article 208, par. 1 1), of the Code of Criminal Procedure. On 12/10/2007, this decision was quashed, the investigation was resumed and entrusted to the senior investigator of the Shalinskiy MSO SU SK at the prosecutor's office of the Chechen Republic.
It results from the judgment that in July 2004, the applicant's victim status was withdrawn, thus depriving her of the possibility of access to the case file.
• *Investigation into the applicant's son's abduction:* no information provided in this respect.

5) Estamirov case: On 21/01/2005, the investigation was adjourned on the basis of Article 208, par. 1 1), of the Code of Criminal procedure.

6) Luluyev case: On 09/05/2007, the investigation was adjourned on the basis of Article 208, par. 1 1), of the Code of Criminal procedure.

7) Case of Chitayev and Chitayev: No information has been provided on the state in this case of the investigation since the European Court delivered its judgment.
• <u>*General remarks:*</u> The lawfulness of all procedural decisions mentioned above is now subject to control by the Investigating Committee of the prosecutor's office and of the military prosecutor's office of the Chechen

Republic. The investigations which have been resumed are now under the control of the Investigating Committee of the prosecutor's office of the Russian Federation.
• *Information is awaited on the progress of the investigations which are under way.*
More details are awaited on the steps taken in the framework of the investigations carried out in all cases, with particular regard to information provided by the applicants in the proceedings before the European Court. In this respect, the results of the verification currently carried out by the Investigating Committee would be very helpful.
General measures: At the 1007th meeting (October 2007), the Russian authorities provided extensive information in response to the issues raised by the Secretariat in the **Memorandum CM/Inf/DH(2006)32 revised 2.** This information particularly concerns
regulatory framework for the action of the security forces, in particular in the context of a counter-terrorist operation and training measures taken at different levels and within different Ministries in order to mainstream the European Court's case-law into initial and professional curricula.
In view of the volume of the information provided, the Secretariat is now preparing, in co-operation with the Russian authorities, a list of more specific issues raised by the European Court's judgments. Such list will be used as a basis for an updated version of the Memorandum, which will summarise the progress achieved so far and the outstanding issues. This document will be issued to all Delegations for one of the forthcoming Human Rights meetings.

The Deputies,
1. took note of the information provided by the Russian authorities with regard to the domestic investigations required by the judgments of the European Court and of the fact that these investigations come now within the jurisdiction of the Investigating Committee recently established with the *Prokuratura* of the Russian Federation;
2. recalled in this respect that to comply with the requirements of the Convention, such investigations should be effective and should be conducted with reasonable speed and adequate public scrutiny;
3. encouraged the Russian authorities to organise bilateral consultations between the Secretariat and the competent Russian authorities with view to ensuring that these investigations fully comply with the above requirements;
4. recalled that the Russian authorities had previously provided extensive information on general measures taken or envisaged to prevent new, similar violations, in particular with regard to the issues raised in Memorandum CM/Inf/DH(2006)32 revised 2;
5. decided to resume consideration of these cases at their 1035th meeting (16-18 September 2008) (DH), in the light of further information, if need be, to be provided by the Russian authorities on the progress of the internal investigations and on the basis of an up-dated version of the Memorandum to be prepared by the Secretariat.

Case name :	**RAKEVICH v. Russia**	**Appl N° :**	**58973/00**
Judgment of :	28/10/2003		
Final on :	24/03/2004		
Violation :		Payment status :	Paid in the time limit
Theme / Domain :			
Next exam :	1035-5.1(16/09/2008)		
Last exam :	1028-5.1(03/06/2008)		
First exam :	885-2(01/06/2004)		

NOTES OF THE AGENDA

58973/00 Rakevich, judgment of 28/10/2003, final on 24/03/2004
The case concerns the unlawfulness of the applicant's enforced internment in a psychiatric hospital because the domestic procedure was not respected. The local court, which was seised by the hospital, did not order the applicant's internment until 39 days after she had been interned, in comparison with the 5 days provided by law (violation of Article 5§1). The case also concerns the fact that the applicant could not contest the lawfulness of her internment before a court (violation of Article 5§4).
The applicant was released from the hospital on 12/11/1999.
Individual measures: No individual measure is required: the applicant was released from the hospital on 12/11/1999 and the European Court has awarded just satisfaction in respect of the non-pecuniary damage she sustained.
General measures:

1) Legislative reform in progress: Amendments to the Code of Civil Procedure and the Federal Law on Psychiatric Treatment and Associated Civil Rights Guarantees have been submitted for opinion to the competent authorities (Ministry of the Interior, General Prosecutor's Office and Ministry of Finance). These amendments provide the right of a person of unsound mind who is compulsorily confined in a psychiatric institution to appeal directly to a court to challenge the lawfulness of detention under a procedure respecting Article 5§4 of the Convention.
On 29/10/2004 the Secretariat sent its observations on the draft law based on the case-law of the European Court and the experience of other countries confronted with the same problem in the past. On 19/06/2006 the government mandated the state agencies involved in the development of the draft law to take note of relevant practice in other countries. On 27/07/2007, the Secretariat sent the authorities the requested expert comments on the notion of "prompt" proceedings in Article 5§4 of the Convention.
• *The authorities are invited* to keep the Committee informed about the progress of the legislative reform, in particular on the time-table for the adoption of the law.

2) Other measures under way:
The government is examining the possibility of setting up a special service, independent of medical care bodies, for the protection of patients placed in mental hospitals.
• *Further information is awaited in this respect.*

3) Dissemination and publication of the Court's judgment: The Vice-Chairman of the Supreme Court addressed a circular letter of 31/08/2004 to the lower courts, drawing their attention to the Convention's requirements as set out in the present judgment, and in particular to the obligation of stricter compliance with the legal time-limits for judicial review of the lawfulness of compulsory psychiatric confinement. The Russian translation of the judgment of the European Court was published in the official Russian daily *Rossijskaia Gazeta* (4/11/2003), which publishes all laws and regulations of the Russian Federation, and the *Bulletin of the European Court's judgments* (No. 2, 2004).

The Deputies decided to resume consideration of this item at their 1035th meeting (16-18 September 2008) (DH), in the light of the information to be provided on general measures, namely the progress of the legislative measures and other measures that have been announced.

Case name :	**BARTIK v. Russia**	**Appl N° :**	**55565/00**
Judgment of :	21/12/2006		
Final on :	21/03/2007		
Violation :		Payment status :	Paid outside time limit,
interest paid			
Theme / Domain :			
Next exam :	1043-4.2(02/12/2008)		
Last exam :	1028-4.2(03/06/2008)		
First exam :	997-2(05/06/2007)		

NOTES OF THE AGENDA

55565/00 Bartik, judgment of 21/12/2006, final on 21/03/2007
The case concerns the restriction of the applicant's liberty of movement due to the authorities' refusal to authorise him to travel abroad for private purposes for a total of twenty years on the sole ground that he had access to classified information ("state secrets") during his professional career.
The European Court found that an unqualified restriction on the applicant's right to travel abroad imposed by the Act on the Procedure for Entering and Leaving the Russian Federation for a considerable period of time was disproportionate and not necessary in a democratic society (violation of Article 2 of Protocol No. 4).
Individual measures: None. The restriction on the applicant's right to leave the country expired on 14/08/2001. The applicant now resides in the United States of America. The European Court awarded the applicant just satisfaction in respect of the non-pecuniary damage he sustained. The applicant informed the Secretariat that he had paid tax in the United States on the sums awarded for just satisfaction and for costs and expenses. This information has been transmitted to the authorities.
General measures: The European Court pointed out that the Russian Federation, when it acceded to the Council of Europe, undertook to abolish the restriction on international travel for private purposes (§50 of the judgment).
• *Information is therefore awaited on the measures taken or planned with a view to modifying the provisions impugned by the judgment*.

The Deputies decided to resume consideration of this item:
1. if necessary at their 1035th meeting (DH), in the light of information to be provided on the payment of just satisfaction, namely the reimbursement of tax payable on the amount of just satisfaction as provided in the judgment;
2. at the latest at their 1043rd meeting (DH), in the light of information to be provided concerning general measures.

Case name :	**KONOVALOV v. Russia**	**Appl N° :**	**63501/00**
Judgment of :	23/03/2006		
Final on :	13/09/2006		
Violation :		Payment status :	Paid in the time limit
Theme / Domain :			
Next exam :	1043-4.2(02/12/2008)		
Last exam :	1020-4.2(04/03/2008)		
First exam :	982-2(05/12/2006)		

NOTES OF THE AGENDA

- Cases concerning the failure or substantial delay by the administration or state companies in abiding by final domestic judgments
Housing disputes (former military)
63501/00 Konovalov, judgment of 23/03/2006, final on 13/09/2006
14656/03 Ponomarenko, judgment of 15/02/2007, final on 15/05/2007
41307/02 Shpakovskiy, judgment of 07/07/2005, final on 07/10/2005
These cases concern violations of the applicants' right to a court due to the Russian authorities' failure over several years to enforce final judicial decisions ordering them to provide the applicants with flats for which they were eligible as former servicemen (violations of Article 6§1 and of Article 1 of Protocol No. 1).
Individual measures: The European Court awarded just satisfaction in respect of non-pecuniary damage suffered by the applicants as a result of delays in the enforcement of the court decisions in their favour.
General measures:
1) Measures under way to ensure proper implementation of a substantial right
• *Information provided by the Russian authorities*: Article 15 (point 6) of the Law No4338-1 of 22/01/1993 on the Status of Servicemen provides in particular that former members of the armed forces shall be provided with housing within 3 months as from the date they were put on the housing waiting-list. However, the legislator did not specify the sources of the funding for the construction or purchase of such housing.
On 27/05/1998, a new Federal Law No76-FZ on the Status of Servicemen was adopted. Servicemen's housing rights are now governed by Article 15 of this Law.
- *Current legislative framework*: It would appear that, according to the legislation in force, servicemen and former servicemen may be granted either accommodation through the conclusion of a social tenancy contract or by a state housing certificate which represents state housing aid from the federal budget for the purchase of a flat.
The implementation of these rights is subject to the sub-programme "Execution of the state's obligations to provide housing for different categories of persons determined by federal legislation" of the federal housing programme for 2002-2010. On 21/03/2006, the government approved Rules on issue and payment of state housing certificates for the purposes of implementing this programme. On the proposal of the Ministry of Defence, in 2007, the average amount of state housing aid provided through state housing certificates was increased by more than 50%.
• *Information is awaited on the current amounts paid according to these certificates*.
- *Current statistics*: In 2006 and 2007, the number of persons waiting for the provision of housing decreased by 27 500. Also, according to the statistics of the Federal Agency for construction and housing, during 1998-2007, 44 500 families of former servicemen improved their accommodation thanks to the state housing certificates. In addition, a construction plan for servicemen's housing in 2008-2011 has been approved by the government. According to the forecasts of the Ministry of Defence, this plan will contribute to providing 167 000 families of servicemen with housing.
- *The particular problem of servicemen dismissed from the armed forces before 01/01/2005*: This problem arose with regard to servicemen who were dismissed from the armed forces and put on the waiting list before 1/01/2005. According to federal law No 122-FZ of 22/08/2004, these people were only entitled to state housing certificates. This Law removed the possibility previously granted to local administrations to provide them directly with accommodation.

The Law of 22/08/2004 was quashed by the Decision No. 5-P of 5/04/2007 of the Constitutional Court due to the limitation of the right of the persons dismissed before 1/01/2005 to receive only state housing certificates as compared to those of persons dismissed after 1/01/2005, who are also entitled to accommodation on the basis of social tenancy agreements.
Following the decision of the Constitutional Court, the Ministry of Defence prepared the relevant amendments which are expected to be submitted to Parliament during the second and third quarters of 2008.
• *Information is awaited on their progress.*

2) Interim measures taken pending the adoption of the aforementioned measures: To reinforce the social protection of members of the armed forces, the Ministry of Defence has prepared proposals to increase the amounts of compensation paid to these persons so that they can rent houses while waiting for the provision of housing.
• *Information is awaited as to whether these proposals were accepted and on the current amount of such compensation.*

The Deputies decided to resume consideration of these items:
1 at their 1028th meeting (3-5 June 2008) (DH), in the light of information to be provided on the payment of the just satisfaction, if necessary;
2. at the latest at their 1043rd meeting (2-4 December 2008) (DH), in the light of information to be provided on general measures.

Case name :	**FEDOTOVA v. Russia**	**Appl N° :**	**73225/01**
Judgment of :	13/04/2006		
Final on :	13/09/2006		
Violation :		Payment status :	Paid in the time limit
Theme / Domain :			
Next exam :	1043-4.2(02/12/2008)		
Last exam :	1028-4.2(03/06/2008)		
First exam :	982-2(05/12/2006)		

NOTES OF THE AGENDA

73225/01 Fedotova, judgment of 13/04/06, final on 13/09/06
5433/02 Shabanov and Tren, judgment of 14/12/2006, final on 14/03/2007
These cases concern unlawful composition of the Russian courts in 2000 due to the authorities' failure to observe the provisions of the Lay Judges Act. This law requires local elected authorities to establish a list of lay judges from which judges are selected at random to sit for a maximum term of two weeks. Accordingly the European Court considered that the courts which tried the applicants' cases were not “established by law” (violations of Article 6§1).
The Fedotova case also concerns a violation of the applicant's right of individual petition since investigations into the tax affairs of the applicant's lawyer and translator were initiated and that the regional police, rather than the competent tax authorities questioned them in particular about their relationship with the applicant. The European Court found an interference with the exercise of the applicant's right of individual petition, as this investigation was initiated after the applicant had submitted to the European Court her claim for just satisfaction and in relation to the documents she submitted in this respect (violation of Article 34).
Individual measures: According to the russian authorities, the applicants in the Shabanov and Tren cases have lodged no appeal following the European Court's judgments.
• *Information is awaited on the current situation of the applicant in the Fedotova case.*
General measures:

1) Violation of Article 6§1: This case presents similarities to that of Posokhov (closed by the Final Resolution ResDH(2004)46) in which the same issue was raised in relation to criminal proceedings. As far as civil proceedings are concerned, it appears that the institution of lay judges no longer exists, i.e. since the entry into force of the new Code of Civil Procedure on 1/02/2003. Moreover, on 18/06/2004 the Constitutional Court rejected an application aiming at the restoration of lay judges in civil proceedings. According to the Russian authorities, Federal Law of 02/01/2000 No. 37-FZ on lay judges of federal courts of general jurisdiction, as modified on 14/11/2002, lapsed as from 1/02/2003 with regard to civil proceedings following the entry into force of the Code of Civil Procedure. According to Article 14 of this Code, civil cases are examined at first instance by a single judge or by a three professional judges if specifically provided by law.

2) Violation of Article 34:

• *Information is awaited on the rules currently governing the conduct of enquires into individuals' tax declarations, i.e. the circumstances in which such an inquiry may be initiated, the authorities in charge, the safeguards against arbitrariness, possible sanctions, etc.*
• *Information is also awaited on the measures taken or envisaged to prevent new similar violations of the Convention.*

3) Publication and dissemination: By a letter of the Russian Government Agent the Fedotova judgment was disseminated to the Supreme Court of the Russian Federation and to the Ministry of the Interior. On 21/12/2006, the Fedotova judgment was sent out to all courts by a circular letter of the Deputy of the President of the Supreme Court of the Russian Federation.
The judgment was published in the *Bulletin of the European Court* (Russian edition), 2007, No. 2.

The Deputies decided to resume consideration of these items at the latest at their 1043rd meeting (2-4 December 2008) (DH), in the light of information to be provided on individual and general measures.

Case name :	**PRAVEDNAYA v. Russia**	**Appl N° :**	**69529/01**
Judgment of :	18/11/2004		
Final on :	30/03/2005		
Violation :		Payment status :	No just satisfaction
Theme / Domain :			
Next exam :	1043-4.2(02/12/2008)		
Last exam :	1028-4.2(03/06/2008)		
First exam :	928-2(06/06/2005)		

NOTES OF THE AGENDA

69529/01 Pravednaya, judgment of 18/11/2004, final on 30/03/2005
69524/01 Bulgakova, judgment of 18/01/2007, final on 18/04/2007
67579/01 Kuznetsova, judgment of 07/06/2007, final on 12/11/2007
These cases concern the quashing under Article 333 of the Code of Civil Procedure of final court decisions in the applicants' favour in proceedings against the local pensions fund agencies, on the ground that a new element, namely the discovery of an instruction by the Ministry of Labour and Social Development establishing a lower rate for the calculation of individual pensions than that provided by law.
The European Court noted that the pensions agencies were aware of this instruction at the time of the appeal, but it was not possible to establish that they had evoked it at appeal. Thus the review proceedings, introduced after the appeal judgments had become final, amounted in fact to a disguised appeal.
Accordingly, the Court found that the quashing of the final court decision had violated the principle of legal certainty and thus the applicants' right of access to a court (violations of Article 6§1).
The Court further considered that the review of the final decisions had resulted in the applicants being deprived of their right to receive a retirement pension at a rate set by a final court decision (violations of Article 1 of Protocol No. 1).
Individual measures:

1) Pravednaya case: the European Court awarded no just satisfaction since the applicant submitted no claim within the time-limit. According to the Russian authorities, the applicant's pension entitlements have changed since the facts of the present case. The authorities have been invited to provide clarifications concerning her current situation so as to determine whether any specific individual measure is necessary.
On 3/03/2006 the applicant informed the Secretariat that the Russian authorities had taken no step to implement the judgment of the European Court thus compelling her to lodge, on 18/02/2005, new proceedings before the Zaeltsevskiy Federal Court with a view to restoring her rights. It seems that the applicant is asking for non-pecuniary damage as well as for a recalculation of her pension. According to the applicant, these proceedings are being delayed by the government's failure to respond to her claim before the court. The applicant's letter was transmitted to the authorities on 23/03/2006.
On 21/04/2006 the Zaeltsevskiy Federal Court ordered the authorities to pay the applicant the indexation, the pension arrears and the court fees. On 13/07/2006 this judgment was confirmed by the Novosibirsk Regional Court on appeal. The judgment was fully executed on 14/08/2006.
• *Information is awaited on whether the applicant was also granted the non pecuniary damage and the default interest.*

2) Bulgakova case: The question of just satisfaction is pending before the European Court.

3) Kuznetsova case: the European Court awarded just satisfaction in respect of pecuniary and non-pecuniary damage.
• *The necessity of further individual measures is being assessed by the Secretariat.*
General measures: The European Court stated that the procedure for review of final judgments on the ground of newly discovered circumstances (Article 333 of the Code of Civil Procedure) does not in itself contradict the principle of legal certainty insofar as it is used to correct miscarriages of justice. Interpretation of this provision by the Russian courts however needs to be adapted to the Convention requirements, as set out in the present judgment, so as to prevent new, similar violations. It would therefore appear appropriate to draw the attention of domestic courts (e.g. through a circular of the Supreme Court) to their obligation to respect the requirement of legal certainty when interpreting the relevant legal provisions.
• *Information in this respect is awaited*.
The Pravednaya judgment was published in the *Bulletin of the European Court* (Russian version) Nos.5 and 11, 2005 and the Kuznetsova judgment in the *Konsultant* + electronic database. Both judgments were sent out to the Ministry of Health and Social Development, the Pension Fund Agency and Federal Bailiffs Service. The Kuznetsova judgment was also sent to the Supreme and Constitutional Courts, as well as to the Prosecutor General's Office. The Supreme Court sent out the Kuznetsova judgment to all regional courts. The Russian authorities also provided clarification in respect of the "individual pensioner coefficient". They also indicated that the legislation governing the calculation of individual pensions was changed by the Federal Law of 17/12/2001 No. 173-FZ, which has been in force since 01/01/2002.
• *This information is being assessed by the Secretariat.*

The Deputies decided to resume consideration of these items at the latest at their 1043rd meeting (2-4 December 2008) (DH), in the light of information to be provided on individual and general measures as well as on an assessment of the information already provided.

Case name :	**MOSCOW BRANCH OF THE SALVATION ARMY v. Russia 72881/01**		**Appl N° :**
Judgment of :	05/10/2006		
Final on :	05/01/2007		
Violation :		Payment status :	Paid in the time limit
Theme / Domain :			
Next exam :	1043-4.2(02/12/2008)		
Last exam :	1028-4.2(03/06/2008)		
First exam :	992-2(03/04/2007)		

NOTES OF THE AGENDA

72881/01 Moscow Branch of the Salvation Army, judgment of 05/10/2006, final on 05/01/2007
18147/02 Church of Scientology Moscow, judgment of 05/04/2007, final on 24/09/2007
The cases concern the refusal to re-register the applicant associations, resulting in the loss of legal status (violation of Article 11 read in the light of Article 9). The Religious Act which entered into force in 1997 required all religious associations that had been previously granted legal-entity status to amend their articles of association in conformity with the new Act so as to be "re-registered" before the end of 2000.
Moscow Branch of the Salvation Army: The European Court observed that the grounds for refusing re-registration of the applicant branch were not consistent throughout the domestic proceedings. As to the first reason adduced for refusing the applicant's re-registration request, namely the applicant's "foreign origin", the Court found that this was neither "relevant and sufficient", nor "prescribed by law". As to the second reason, namely the applicant's omission to set out its religious affiliation and practices in a precise manner, the Court observed that the Religions Act did not lay down any guidelines as to the manner in which the religious affiliation or denomination of an organisation should be described in its founding documents. Regarding the arguments that the applicant should be denied registration as a "paramilitary organisation" because of the use of the word "army" in its name and the fact that its members wore uniform, the Court found that there was no evidence to suggest that the applicant advocated violence, contravened any Russian law or pursued objectives other than those listed in its articles of associations.
Church of Scientology Moscow: The European Court noted that the Justice Department had refused to process four applications for re-registration on account of the applicant's alleged failure to submit a complete set of documents. The Department, however, had not specified the missing information or documents, claiming that it had not been competent to do so. Thus, the applicant association was prevented from

amending and re-submitting its application. Furthermore, as domestic law required any refusal to be justified, the Court considered that the refusal had not been "in accordance with the law". The Court also stated that the domestic court had not explained why the book submitted by the applicant had not contained sufficient information on the basic creed, tenets and practices of Scientology, and therefore had failed in its task to clarify the applicable legal requirements and give the applicant clear instruction on how to prepare a complete and adequate application. As regards the applicant's failure to secure re-registration within the established time-limit, the Court found this to be a direct consequence of arbitrary rejection of its earlier applications. The Court also found unlawful the latest requirement to produce the document showing the applicant's fifteen-year presence in Moscow.

Individual measures:

1) Moscow Branch of the Salvation Army: According to the information provided by the authorities, the Federal Registration Service of the Russian Federation invited the representatives of the religious organisation "Moscow Branch of the Salvation Army" to submit, in accordance with the procedure provided by law, the documents required to registrar the modifications in its statute. No document has been presented by the representatives of this organisation.

2) Church of Scientology Moscow: In its judgment the European Court established the government's obligation to take appropriate measures to remedy the applicant's individual situation. It further noted that it falls to the respondent state to decide whether such measures involve granting re-registration of the applicant, removing the requirement to obtain re-registration from the Religious Act, re-opening of the domestic proceedings or a combination of these and other measures.

According to information provided by the applicant on 29/04/2008, the application for re-opening of the case was refused by the Nikulinsky District Court on 11/03/2008. The district court stated that there was no provision in domestic law allowing re-opening of a civil case on the basis of a finding of a violation of the Convention by the European Court. The applicant's submissions have been transmitted to the government. Their comments are awaited.

General measures:

Publication and dissemination: The Representative of the Russian Federation at the European Court has informed the Federal Registration Service and the Supreme Court of the Russian Federation of the European court's judgment in the case of Moscow Branch of Salvation Army so that they may adopt individual and general measures and take the findings of the European Court into account in their daily practice.

The Federal Registration Service has summarised the implementation practice of its territorial departments with regard to the refusal of documents submitted by the religious organisations. This information was notified to all territorial departments for use in their daily practice, with a view to preventing new, similar violations.

These issues, including the judgment of the European Court in the case of Moscow Branch of Salvation Army, were also discussed at a seminar of all heads of territorial departments on 27-28 September 2007.

• *Information is awaited on publication and dissemination of the judgment in the case of Church of Scientology Moscow. More details would be useful on concrete measures (instructions, circular letters, etc) taken as a result of the judgments and in particular as to whether the judgments have been sent out to all domestic courts with a circular letter of the Supreme Court..*

The Deputies decided to resume consideration of these items at the latest at their 1043rd meeting (2-4 December 2008) (DH), in the light of information to be provided concerning individual and general measures.

Case name :	**GARTUKAYEV v. Russia**	**Appl N° :**	**71933/01**
Judgment of :	13/12/2005		
Final on :	13/03/2006		
Violation :		Payment status :	Paid in the time limit
Theme / Domain :			
Next exam :	1043-4.2(02/12/2008)		
Last exam :	1028-4.2(03/06/2008)		
First exam :	966-2(06/06/2006)		

NOTES OF THE AGENDA

71933/01 Gartukayev, judgment of 13/12/2005, final on 13/03/2006
55762/00+ Timishev, judgment of 13/12/2005, final on 13/03/2006
These cases concern the restriction of the applicants' right to liberty of movement in that on 27/01/2000 and on 19/06/1999 respectively they had not been permitted to enter Kabardino-Balkaria from the Chechen

Republic because of their Chechen ethnic origin. In the Gartukayev case, the restriction was imposed by an Instruction issued by the Ministry of the Interior of Kabardino-Balkaria in breach of domestic law, namely the Liberty of Movement Law (No. 52-42-I of 25/06/93). In the Timishev case, the restriction, while based on the Police Act (Section 11(22)) which allows the police to limit the liberty of movement in the public interest, resulted from an oral instruction of the Deputy Head of the Public Safety Police. The European Court considered in both cases that these restrictions were not in accordance with the law (violations of Article 2 of Protocol No. 4).
In the Timishev case, the European Court also considered that the impugned restriction was solely based on the applicant's Chechen origin and thus could not be objectively justified in democratic society (violation of Article 14 taken in conjunction with Article 2 of Protocol 4).
Finally, the Timishev case concerns the authorities' refusal to admit the applicant's children to school on the ground that the applicant was no longer a resident in the town of Nalchik, since he had to surrender his migrant's card, a local document confirming his residence in Nalchik, in exchange for compensation for the property he lost in the Chechen Republic. The European court recalled the absolute nature of the right to education and noted that Russian law admitted no residence qualification in this respect (violation of Article 2 of Protocol No. 1).
Individual measures: Both applicants were able to cross the border on the days they were stopped, by going through different check-points.
Regarding the Timishev case, The Russian authorities have indicated that the applicant's children have been admitted to Municipal School No. 28 in Nalchik. As regards registration as a resident in Nalchik, no request in this respect has been made by the applicant, either to the local department of the Federal migration service or to the Ministry of the Interior.
General measures:
1) Violations of Article 2 of Protocol 4 and Article 14: In response to a question raised by the Secretariat, the Russian authorities have provided extensive information regarding the current state of Russian legislation and the measures taken, in particular to improve in-service training, to prevent new, similar violations. This information is currently being assessed by the Secretariat.
2) Violation of Article 2 of Protocol 1: The government declared before the Court that the Russian Education Act guaranteed the right to education irrespective of the place of residence (§62 of the judgment).
3) Publication and dissemination: The judgment of the European Court was sent out to all authorities concerned, in particular
- all prosecutors, by letter from the Deputy Prosecutor General of the Russian Federation;
- all regional and municipal departments of the Ministry of Education and Science and education institutions, by letter from the Federal service for supervision in the field of education and science of 24/07/2006 No. 01-678/07-01 drawing their attention to the illegality of including in the list of documents to be presented by parents to the school authorities of the registration certificate delivered by the organs of the Ministry of the Interior. This letter is also available on the Federal service web site www.obrnadzor.gov.ru <http://www.obrnadzor.gov.ru>;
- all Heads of territorial departments of the Federal migration service by letter from the Head of the Directorate of migrants and refugees of 24/07/2006 No. MD-3/13605;
- the Ministry of the Interior of the Kabardino-Balkaria Republic by letter from the Director of the Department for Road Safety of the Ministry of the Interior of the Russian Federation, instructing him to make the European Court's judgments a part of in-service training.
The Timishev judgment was published in the Bulletin of the European Court (Russian version) in 2006, No. 10.

The Deputies decided to resume consideration of these items at the latest at the 1043rd meeting (2-4 December 2008) (DH), in the light of the assessment to be made by the Secretariat on the measures adopted.

Case name :	**MOKRUSHINA v. Russia**	**Appl N° :**	**23377/02**
Judgment of :	05/10/2006		
Final on :	12/02/2007		
Violation :		Payment status :	Paid in the time limit
Theme / Domain :			
Next exam :	1043-4.2(02/12/2008)		
Last exam :	1028-4.2(03/06/2008)		
First exam :	997-2(05/06/2007)		

NOTES OF THE AGENDA

- Cases concerning violation of the right of access to a court or to fair trial due to the belated notification of a procedural act in civil proceedings

23377/02 Mokrushina, judgment of 05/10/2006, final on 12/02/2007
70142/01 Dunayev, judgment of 24/05/2007, final on 24/08/2007
3354/02 Gorbachev, judgment of 15/02/2007, final on 15/05/2007
74286/01 Larin and Larina, judgment of 07/06/2007, final on 07/09/2007
8630/03 Prokopenko, judgment of 03/05/2007, final on 03/08/2007

These cases concern the violation of the applicants' right to a fair trial due to the belated issue of a summons, in breach of domestic law, denying her the possibility of being present. The European Court noted that the domestic courts had failed to examine whether the applicants had been duly summonsed with a view to adjourning the case if appropriate (violations of Article 6§1).

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

As regards the Mokrushina case, the supervisory review proceedings initiated by the applicant following the European Court's judgment are currently pending before the Moscow City Court.

• *Information is awaited on the outcome of these proceedings.*

• *Information is awaited as to whether the other applicants requested reopening following the European Court's judgments.*

General measures: These cases present similarities, for example, to those of Groshev and Yakovlev closed following diffusion measures and the issue of circular letters drawing court's attention to these cases (see Resolution CM/ResDH(2008)17). A similar issue concerning criminal proceedings is examined in the Metelitsa case (Section 2).

The European Court found that the relevant provisions of domestic law were not, in themselves, incompatible with the fair trial guarantees set out in Article 6§1, but that the courts had not applied them properly in these cases. In view of the constantly increasing number of similar cases, additional measures appear to be necessary.

The Mokrushina judgment was sent out to all courts by a letter of a Deputy President of the Supreme Court of the Russian Federation. A general discussion on the issues raised by this judgment was planned on 11/10/2007 within the Supreme Court.

• *Information is awaited on practical arrangements made to ensure that parties to proceedings are summonsed in due time and on how the traceability of summonses is ensured.*

• *Information is also awaited on whether judges are under any obligation to examine the reasons for parties' failure to appear and the procedural steps to be taken in such cases.*

The Deputies decided to resume consideration of these items at the latest at their 1043rd meeting (2-4 December 2008) (DH), in the light of information to be provided concerning individual and general measures.

Case name :	**KUZNETSOV AND OTHERS v. Russia**	**Appl N° :**	**184/02**
Judgment of :	11/01/2007		
Final on :	11/04/2007		
Violation :		Payment status :	Paid outside time limit,
interest paid			
Theme / Domain :			
Next exam :	1043-4.2(02/12/2008)		
Last exam :	1028-4.2(03/06/2008)		
First exam :	997-2(05/06/2007)		

NOTES OF THE AGENDA

184/02 Kuznetsov and others, judgment of 11/01/2007, final on 11/04/2007
10519/03 Barankevich, judgment of 26/07/2007, final on 26/10/2007

The cases concern interference with a religious event organised by members of the Chelyabinsk community of Jehovah's Witnesses (Kuznetsov case) found by the Court not to be prescribed by law (violation of Article 9) and the ban imposed on a service of worship planned by the “Christ’s Grace” Church of Evangelical Christians in a town park (Barankevich) (violation of Article 11 interpreted in the light of Article 9).

In the Kuznetsov case the Court also found that the domestic courts, in dismissing the applicants’ civil complaints, failed in their duty to state the reasons on which their decisions were based and to demonstrate that the parties had been heard in a fair and equitable manner (violation of Article 6).

Individual measures:

1) Barankevich case: The European Court awarded the applicant just satisfaction in respect of non-pecuniary damage. According to the information provided by the authorities, no further application for permission to hold a service in public has been received from the applicant.
• *Assessment: no further measure appears necessary.*

2) Case of Kuznetsov and others: The applicants informed the Secretariat on 04/05/2007 that the premises of the Jehovah's Witnesses were raided by the police in April 2006 in Moscow and in April 2007 in Satka (Chelyabinsk region). They also submitted that the judgment of the European Court had been disregarded by the domestic courts in Moscow seised by members of Jehovah's Witnesses.
The Russian authorities have indicated that following the applicants' submission to the Committee of Ministers the local department of the Ministry of the Interior in Satka carried out an internal inquiry into the facts which took place on 2/04/2007 in Satka (Chelyabinsk region). As a result of this inquiry, disciplinary sanctions were imposed on the First Deputy to the Head of the Local Department, the Chief of the Criminal Police Tsivilev, and the District Police Officer Spiridonov.
On 16/11/2007, the applicants' representative informed the Committee of Ministers of the Russian courts' failure to comply with the Kuznetsov judgment in other similar cases pending before them, in particular in Moscow.
On 6/12/2007, this submission was forwarded to the Russian authorities.
• *Their comments are still awaited.*

General measures:

1) Legislative amendments: At the material time, domestic law provided that a person wishing to hold an assembly or a service of worship in a public place should obtain prior authorisation from the authorities. In 2004 a new law on assemblies, meetings, demonstrations, marches and picketing entered into force and the requirement of authorisation was replaced by simple notification.

2) Publication and dissemination: The Kuznetsov judgment has been sent to all domestic courts by letter of the Deputy President of the Supreme Court of the Russian Federation.
• *Information is awaited on dissemination of the Barankevich judgment and publication of both judgments.*

3) Other measures: Following the adoption of the Kuznetsov judgment, the Ministry of the Interior has taken measures to reinforce its control over the activities of its officers and to prevent new, similar violations: in particular, additional training was organised with the officers of the Satka local department, during which they studied material concerning freedom of thought and of religion as well as the legislation governing demonstrations and meetings.
Moreover, the Ministry of the Interior has notified all local departments of their obligation to comply unconditionally with the judgment of the European Court.
• *The need for further measures is being assessed by the Secretariat*.

The Deputies decided to resume consideration of these items at the latest at their 1043d meeting (2-4 December 2008) (DH), in the light of information to be provided on individual and general measures.

Case name :	**MALINOVSKIY v. Russia**	**Appl N° :**	**41302/02**
Judgment of :	07/07/2005		
Final on :	07/10/2005		
Violation :		Payment status :	Paid in the time limit
Theme / Domain :			
Next exam :	1043-4.2(02/12/2008)		
Last exam :	1020-4.2(04/03/2008)		
First exam :	948-2(29/11/2005)		

NOTES OF THE AGENDA

- Cases concerning the failure or substantial delay by the administration or state companies in abiding by final domestic judgments
Housing disputes (Tchernobyl)
41302/02 Malinovskiy, judgment of 07/07/2005, final on 07/10/2005
7363/04 Mikryukov, judgment of 08/12/2005, final on 08/03/2006
These cases concern violations of the applicants' right to a court due to the Russian authorities' failure over several years to enforce final judicial decisions ordering them to provide the applicants with flats for which they were eligible as former Chernobyl workers (violations of Article 6§1 and of Article 1 of Protocol No. 1).
Individual measures: The European Court awarded just satisfaction in respect of non-pecuniary damage suffered by the applicants as a result of delays in the enforcement of the court decisions in their favour. No

further individual measure is required in the Malinovskiy case as the applicant was provided with a flat before the European Court delivered its judgment.
In the Mikryukov case, the domestic judgment delivered in the applicant's favour was enforced on 26/12/2005. He was provided with a flat of total surface of 96,3 square metres.
General measures: A similar sub-programme based on state housing certificates for the Chernobyl workers was adopted for 2002-2010 (for more details see the Konovalov group of cases, Section 4.2).

The Deputies decided to resume consideration of these cases at the latest at their 1043rd meeting (2-4 December 2008) (DH) in the light of information to be provided on general measures.

Case name :	**TARARIYEVA v. Russia**	**Appl N° :**	**4353/03**
Judgment of :	14/12/2006		
Final on :	14/03/2007		
Violation :		Payment status :	Paid in the time limit
Theme / Domain :			
Next exam :	1043-4.2(02/12/2008)		
Last exam :	1028-4.2(03/06/2008)		
First exam :	997-2(05/06/2007)		

NOTES OF THE AGENDA

4353/03 Tarariyeva, judgment of 14/12/2006, final on 14/03/2007
The case concerns the authorities' failure to protect the life of the applicant's son who died in the Khadyzhensk colony due to the lack of adequate medical follow up of his disease and post-operative care and defective medical assistance administered to him at the public hospital (violation of Article 2).
The European Court further found that the investigation into the death of the applicant's son was slow and its scope too restricted, leaving out many crucial aspects of the events. The applicant's right to effective participation in the investigation was not secured. Finally, after the acquittal of the suspect due to the poorly prepared evidentiary basis, the applicant was deprived of an accessible and effective civil-law remedy, either because a civil claim was barred by operation of law or because it had no chances of success in the light of the existing judicial practice (procedural violation of Article 2).
The case further concerns inhuman treatment inflicted on the applicant's son as a result of his handcuffing at the civilian hospital and the conditions of his transport in a prison van, which contributed to his suffering (violation of Article 3).
Individual measures: It results from the judgment that only the head of the surgery department of the public hospital was referred to a trial court in this case. For unspecified reasons the report of medical experts of 19/06/2003 which concluded to the defendant's guilt was rejected by the trial court and the defendant was consequently acquitted. The criminal proceedings against other doctors of the prison hospital and of the public hospital were discontinued by prosecutors on the ground that an alleged offence had not been committed.
• *Information provided by the applicant*: The applicant stated that she had lodged several applications with a number of competent authorities, in particular with a Prosecutor General of the Russian Federation, but without success.
She indicated that on 25/05/2007 the Civil Chamber of the Supreme Court of the Adyugeya Republic quashed the first-instance court's approval of the prosecutor' refusal to open criminal proceedings in respect of the doctors of the prison hospital and referred the case back to the first-instance court for a new examination. It would however appear that these proceedings were already pending when the European Court delivered its judgment.
• *Information provided by the Russian authorities (1007th meeting)*: The Russian authorities indicated that on 15/06/2007 the first-instance court quashed the prosecutor's refusal to open criminal proceedings and invited the senior assistant to Prosecutor of the Adyugeya Republic to rectify the violations found. These violations were rectified by a decision of the Deputy Prosecutor of the Adyugeya Republic of 6/07/2007. By the same decision the Deputy Prosecutor refused to open criminal proceedings against the doctors of the prison hospital on the ground that the alleged offence had not been committed.
• *Secretariat' assessment: This information is currently being assessed by the Secretariat which will shortly contact the Russian authorities.*
General measures: On an unspecified date the judgment of the European Court was sent out to the Supreme Court, the General Prosecutor's office and the Ministry of health and social development by the Representative of the Russian Federation at the European Court so that they might take measures within their competence and use it in their daily practice.

1) Violation of Article 2 in relation to the lack of requisite medical care*:* see the Popov case (Section 4.2)

2) Procedural violation of Article 2 in relation to the civil claim for compensation: see the Khashiyev and other cases (1007th meeting, October 2007, Section 4.3; CM/Inf/DH(2006)32 revised 2, CM/Inf/DH(2007)42 and Addendum).

3) Violation of Article 3 in relation to handcuffing of the applicant's son at the civilian hospital
The Russian authorities have indicated that there were no specific rules governing the situation of convicts in civil hospitals. The convicts and the penitentiary staff ensuring their protection are subject to the Criminal Code of Execution of Sentences, the Federal Law of 21/10/2005 on institutions and organs responsible for the execution of sentences involving deprivation of liberty as well as other departmental regulations, such as the joint Order of the Ministry of Health and of Ministry of Justice of 17/10/2005 N°640/190 on the organisation of medical care for persons serving their sentences and being detained on remand;
Order of the Ministry of justice of 15/02/2006 N°21-дсп, approving the "Instruction on security in penitentiary institutions".
This information is currently being assessed by the Secretariat.
• *In this respect, the texts of the documents mentioned above would be particularly helpful.*

4) Violation of Article 3 in relation to transport of the applicant's son: It would appear that in this particular case the transport of the applicant's son was ensured by the penitentiary institution.
• *Information is therefore awaited on the rules and standards governing the transport of ill detainees to public hospitals.*
• *Information is also awaited on publication of the European Court's judgment in general and specialised law journals and dissemination of the judgment, together with appropriate instructions to be issued by the Federal Service for Execution of Sentences and by the Ministry of Health, to all authorities concerned.*

The Deputies decided to resume consideration of this item at the latest at their 1043rd meeting (2-4 December 2008) (DH), in the light of information on individual and general measures.

Case name :	**TETERINY v. Russia**	**Appl N° :**	**11931/03**
Judgment of :	30/06/2005		
Final on :	30/09/2005		
Violation :		Payment status :	Paid in the time limit
Theme / Domain :			
Next exam :	1043-4.2(02/12/2008)		
Last exam :	1020-4.2(04/03/2008)		
First exam :	948-2(29/11/2005)		

NOTES OF THE AGENDA

- Case concerning the failure or substantial delay by the administration or state companies in abiding by final domestic judgments
Housing disputes (judges)
11931/03 Teteriny, judgment of 30/06/2005, final on 30/09/2005
The case concerns violations of the applicants' right of access to a court due to the Russian authorities' failure over several years to enforce final judicial decisions ordering them to provide the applicants with a flat for which they were eligible as judges according to Article 19, paragraph 3, of the Law On the Status of Judges of 26/06/1992 (violations of Article 6§1 and of Article 1 of Protocol No. 1).
Individual measures: The European Court awarded just satisfaction in respect of non-pecuniary damage suffered by the applicants as a result of delays in the enforcement of the court decisions in their favour.
As regards the execution of the judgment of 26/09/1994 of the Ezhvinskiy District Court ordering the Yemva Town Council to provide the applicants with the flat measuring no less than 65 m², the Russian authorities provided the following information: On 16/12/2005, the Ezhvinskiy District Court approved the settlement agreement signed between the Town Administration and the applicants' representative. According to the terms of this agreement, the Town Council was to provide the applicants with a flat measuring 83,1 m², of which 57,6 m² of living surface, with subsequent transfer of property to the applicants. The difference of 7 m² of living surface was to be compensated by the sum of 500 000 RUR. On 22/12/2005, this sum was transferred to the applicant as well as the property on the apartment. The enforcement proceedings were accordingly discontinued.
General measures: The Federal Law of 22/08/2004 No 122-FZ, in force since 1/01/2005, modified Article 19, paragraph 3, of the aforementioned Law On the Status of Judges by relieving local administrations of the duty to provide judges with housing. According to these amendments, judges are now to be provided with

housing at the expense of funds allocated to courts by the federal budget and according to the procedure approved by the government.
Pending the setting up of this procedure, in 2005 the government established a provisional procedure for providing judges, prosecutors and investigators with housing (government decree of 6/12/2005 No. 737). This procedure was extended in 2006 and in 2007 by government decrees No. 440 of 17/07/2006 and No. 126 of 23/02/2007. It was proposed to extend this procedure in 2008.
As from 2007, the aforementioned funds from the federal budget are allocated within the Federal Programme On the improvement of the Russian judicial system (for more details on this programme, see the Kormacheva group of cases, Section 4.2).
• *Latest developments*: According to the government decree No.737 mentioned above, the Ministry of Regional development, the Ministry of Finance, the Ministry of Economic Development and Trade, the Ministry of Justice and the Judicial Department of the Supreme Court of the Russian Federation prepared drafts of appropriate legislative acts. According to governmental order No. 320-p of 22/03/2007, a draft Federal Law modifying Article 19 of the Federal Law On Status of Judges was submitted to the Parliament. It is due to be examined in the second quarter of 2008.
• *Information is awaited on the progress of this draft law.*

The Deputies decided to resume consideration of this item at the latest at their 1043rd meeting (2-4 December 2008) (DH), in the light of further information to be provided on general measures.

Case name :	**METELITSA v. Russia**	**Appl N° :**	**33132/02**
Judgment of :	22/06/2006		
Final on :	23/10/2006		
Violation :		Payment status :	No information
Theme / Domain :			
Next exam :	1035-3.B(16/09/2008); 1043-4.2(02/12/2008)		
Last exam :	1028-4.2(03/06/2008)		
First exam :	987-2(13/02/2007)		

NOTES OF THE AGENDA

33132/02 Metelitsa, judgment of 22/06/06, final on 23/10/06
The case concerns the unfairness of certain appeal proceedings brought by the applicant before the Krasnoyarsk Regional Court in January 2002 due to the fact that the applicant only received the summons to the hearing 1½ years after his appeal had been determined and his lawyer never received it.
The European Court found that the domestic authorities had failed in their obligation to ensure at least the lawyer's presence at the hearing, particularly in view of the participation of the prosecutor (violation of Article 6§3 (c) in conjunction with Article 6§1).
Individual measures: The appeal court upheld the 6-year prison sentence imposed on the applicant but, at the hearing at which the applicant and his lawyer were not present, reduced the sentences for both of his co-accused and attributed a different legal characterisation to the offence committed by one of them. In this respect, it has to be noted that the Russian Code of criminal procedure (Article 413) provides that criminal proceedings may be reopened following a judgment of the European Court finding a violation of the Convention.
• *Information provided by the Russian authorities:* On 19/12/2001, the applicant was convicted by a decision of the Nazarovskiy City Court of the Krasnodar Region. He was released on parole on 5/10/2005, that is 1 year, 11 months and 11 days before the term of his sentence.
No further claim has been lodged by the applicant.
General measures: This case presents similarities to the Mokrushina case (Section 4.2) in which the same issue is raised in respect of civil proceedings. The relevant provisions of the Russian Code of Criminal procedure seem to be in accordance with the Convention's requirements, since they provide that the absence of the accused or his lawyer is an obstacle to considering the case. However, it appears that in this particular case the authorities were unable to demonstrate that the summons had been effectively sent to the applicant and his lawyer.
• *Information would therefore be useful on the current rules governing the sending of summonses (registered letter with acknowledgment of receipt, etc…) and, where appropriate, on the measures taken to ensure the traceability of summonses sent.*
The judgment was disseminated to all courts in the Krasnodar region by a letter of the Krasnodar Regional court. This letter was also published in 2007 in the regional law magazine, *Letter of the Law*. The judgment itself was published in the *Bulletin of the European Court* (Russian edition), 2006, No 12).

According to the Russian authorities, the Supreme Court of the Russian Federation continues to draw courts' attention to the need to ensure compliance with the requirements of Chapter 33 of the Code of Criminal Procedure.

The Deputies decided to resume consideration of this item:
1 at their 1035th meeting (16-18 September 2008) (DH), in the light of information to be provided on the payment of the just satisfaction, if necessary;
2. at the latest at their 1043rd meeting (2-4 December 2008) (DH), in the light of information to be provided on general measures, in particular with regard to the rules on the sending of summonses

Case name :	**GARABAYEV v. Russia**	**Appl N° :**	**38411/02**
Judgment of :	07/06/2007		
Final on :	30/01/2008		
Violation :		Payment status :	No information
Theme / Domain :	**Detention on remand**		
Next exam :	1035-3.A(16/09/2008); 1043-4.2(02/12/2008)		
Last exam :	1028-2(03/06/2008)		
First exam :	1028-2(03/06/2008)		

NOTES OF THE AGENDA

38411/02 Garabayev, judgment of 07/06/2007, final on 30/01/2008
656/06 Nasrulloyev, judgment of 11/10/2007, final on 11/01/2008
These cases concern the illegality and arbitrariness of the detention of the applicants pending extradition (violations of Article 5§1).
In the Garabayev case the European Court found that the applicant was arrested in September 2002 in breach of domestic law, as he was detained in Russia pursuant to a detention order issued by a prosecutor in Turkmenistan and the detention was not confirmed by a Russian court, contrary to the provisions of Article 466 of the Code of Criminal Procedure (CCP). Moreover, Russian law excludes, in unambiguous terms, the extradition of Russian nationals and the applicant's nationality was known at the time of his arrest.
In the Nasrulloyev case the European court noted that the applicant's placement in custody was ordered by a Russian court in August 2003 with no time-limit set for the detention. It concluded that the domestic authorities, when examining the applicant's request for the determination of the lawfulness of his detention, had adopted inconsistent and mutually exclusive positions on the issue of the procedural provisions applicable to detainees awaiting extradition and that these provisions were neither precise nor predictable.
The cases further concern the absence of judicial review of the applicants' detention pending extradition (violation of Article 5§4). In the Nasrulloyev case the European Court observed that no appeal was available to the applicant given that he was neither a suspect nor a defendant in criminal proceedings brought in the Russian Federation and the Russian authorities had declined to treat him as a party to criminal proceedings. In the Garabayev case, the Court noted that the appeal brought by the applicant in this respect had been dismissed for reasons of competence.
The Garabayev case also concerns the authorities' failure to carry out any proper assessment of the risk of ill-treatment prior to the applicant's extradition to Turkmenistan (violation of Article 3). The European Court in particular noted that no assurance regarding the applicant's safety had been sought and no medical reports or visits by independent observers had been requested. The applicant had had no effective means of appeal in this respect (violation of Article 13). In this regard, the applicant was only informed of the decision to extradite him on the day of his transfer and had not been allowed to challenge it or to contact his lawyer.
The Garabayev case further concerns the lack of effective remedy in respect of his complaint that extradition would expose him to a risk of ill-treatment (violation of Article 13 in conjunction with Article 3). It also concerns a violation of the applicant's right to be brought promptly before a judge (violation of Article 5§3), as it took the Russian authorities a month and 19 days to bring the applicant before a judge in the context of his detention on criminal charges in Russia on his return from Turkmenistan.
Individual measures:
1) Garabayev case: In February 2003 the applicant was returned to Moscow. The Russian government gave assurances to the Court that, in view of his undisputed Russian nationality, the applicant would not be extradited to Turkmenistan. In March 2004 he was released following criminal proceedings brought against him after his return from Turkmenistan. The European Court awarded to the applicant just satisfaction in respect of non-pecuniary damage sustained.
• *Assessment: No further individual measure appears necessary.*
2) Nasrulloyev case: In April 2006 a domestic court quashed the decision to extradite the applicant to Tajikistan and ordered the applicant's release. The European Court awarded the applicant just satisfaction in respect of non-pecuniary damage.

• *Assessment: No further individual measure appears necessary.*

General measures:

1) Unlawfulness of detention pending extradition and absence of judicial review: In its decision of 4/04/2006 in the case of Mr Nasrulloyev the Constitutional Court of Russia took the view that the provisions of Chapter 13 of the CCP ("Measures of restraint") by virtue of their general character and position in Part I of the Code ("General Provisions") applied to all stages and forms of criminal proceedings, including proceedings for examination of extradition requests. It appears that in spite of this ruling, the relevant authorities do not comply with its case-law. Hence the need would appear to amend the provisions of the Code of Criminal Procedure in order to ensure the "quality of law" requirements and compliance with the Convention's standards. Moreover, the provisions of the Code of Criminal Procedure do not seem to put at the disposal of a person detained with a view to extradition any procedure through which this person could initiate judicial review of the lawfulness of detention.

• *Information is therefore awaited on legislative initiatives envisaged to prevent new, similar violations.*

2) Extradition in circumstances in which the authorities must have been aware that the applicant faced a real risk of ill-treatment

• *Information is awaited on any measures envisaged to ensure compliance by all relevant authorities, including domestic courts, with the requirements of Articles 3 and 13 in the framework of extradition procedures. In this respect, the authorities' attention is drawn to Resolution ResDH(2001)119 in the case of Chahal against the United Kingdom and Resolution ResDH(2002)99 in the case of Ahmed against Austria.*

3) Extradition of Russian nationals contrary to the provisions of domestic law

• *Clarification is awaited as to how domestic legislation and procedures avoid situations where a person is being extradited despite the existence of proof of his/her Russian nationality.*

4) Failure to comply with the right of arrested persons to be brought promptly before a judge: In the Garabayev case the European Court found that the possibility of a court issuing an arrest warrant *in absentia* does not conflict with the provisions of the Convention. The European Court, however, noted that once the applicant was arrested, he should have been promptly brought before a judge.

• *Information is therefore awaited on the current practice regarding arrests based on warrants issued in absentia and any measures envisaged to avoid similar violations.*

5) Publication and dissemination of the European court's judgments

• *Given the implications of these judgments on domestic practice at different levels, it would appear necessary to publish and disseminate them to the authorities concerned (prosecutors and courts) with an explanatory letter drawing their attention in particular to their obligation to align their practice with the requirements of the Russian law and of the Convention as they arise from the judgments.*

The Deputies decided to resume consideration of these items:

1 at their 1035th meeting (16-18 September 2008) (DH), in the light of information to be provided on the payment of the just satisfaction, if necessary;

2. at the latest at their 1043rd meeting (2-4 December 2008) (DH), in the light of information to be provided on general measures.

Case name :	**DZHAVADOV v. Russia**	**Appl N° :**	**30160/04**
Judgment of :	27/09/2007		
Final on :	27/12/2007		
Violation :		Payment status :	Paid in the time limit
Theme / Domain :	**Freedom of expression**		
Next exam :	1043-4.2(02/12/2008)		
Last exam :	1028-2(03/06/2008)		
First exam :	1028-2(03/06/2008)		

NOTES OF THE AGENDA

30160/04 Dzhavadov, judgment of 27/09/2007, final on 27/12/2007

The case concerns an interference with the applicant's freedom of expression due to the refusal in 2003 by the Russian Ministry for the Press, Television and Radio Broadcasting and Mass Communications to register the applicant's periodical, on the ground that it was considered that its title might give rise to confusion. The refusal was based on the provisions of section 13(1)(2) of the Mass Media Act of 27/12/1991 which provides dismissal of an application for dismissal if it contains information which does not correspond to "real state of affairs".

The European Court found that these provisions did not meet the "quality of law" standard under the Convention, as were not reasonably foreseeable for the applicant and allowed extensive interpretation by the authorities (violation of Article 10).
Individual measures: The European Court awarded just satisfaction in respect of the damage sustained.
• *Information is awaited as to whether it is open to the applicant to resubmit an application for registration of his newspaper*.
General measures: Section 13(1)(2) of the Mass Media Act appears still to be in force. In view of the European Court's findings an amendment of this Act seems necessary.
• *Information is awaited on measures, in particular legislative measured, envisaged to prevent similar violations. Publication and dissemination of the European Court's judgment to competent administrative authorities and courts is also necessary, to draw attention to the requirements of the Convention in this respect.*

The Deputies decided to resume consideration of this item at the latest at their 1043rd meeting (2-4 December 2008) (DH), in the light of information to be provided on individual and general measures.

Case name :	**RYABYKH v. Russia**	**Appl N° :**	**52854/99**
Judgment of :	24/07/2003		
Final on :	03/12/2003		
Violation :		Payment status :	No just satisfaction
Theme / Domain :			
Next exam :	1043-4.3(02/12/2008)		
Last exam :	1028-4.3(03/06/2008)		
First exam :	871-2(10/02/2004)		

NOTES OF THE AGENDA

- Cases concerning the quashing of final judicial decisions following a supervisory review
CM/Inf/DH(2005)20

52854/99	Ryabykh, judgment of 24/07/03, final on 03/12/03
2993/03	Akalinskiy, judgment of 07/06/2007, final on 07/09/2007
63973/00	Androsov, judgment of 06/10/05, final on 15/02/06
14853/03	Borshchevskiy, judgment of 21/09/2006, final on 12/02/2007
62866/00	Boychenko and Gershkovich, judgment of 28/06/2007, final on 28/09/2007
23795/02	Chebotarev, judgment of 22/06/2006, final on 22/09/2006
30714/03	Chekushkin, judgment of 15/02/2007, final on 15/05/2007
5964/02	Chernitsyn, judgment of 06/04/2006, final on 13/09/2006
30686/03	Danilchenko, judgment of 15/02/2007, final on 15/05/2007
2999/03	Dovguchits, judgment of 07/06/2007, final on 07/09/2007
1752/02	Fedotova Irina, judgment of 19/10/2006, final on 19/01/2007
30674/03	Gavrilenko, judgment of 15/02/2007, final on 15/05/2007
30777/03	Grebenchenko, judgment of 15/02/2007, final on 15/05/2007
11785/02	Klimenko, judgment of 18/01/2007, final on 18/04/2007
30685/03	Knyazhichenko, judgment of 15/02/2007, final on 15/05/2007
75473/01	Kondrashova, judgment of 16/11/2006, final on 16/02/2007
20887/03	Kot, judgment of 18/01/2007, final on 18/04/2007
14502/04	Nelyubin, judgment of 02/11/2006, final on 26/03/2007
1861/05	Petrov Sergey, judgment of 10/05/2007, final on 10/08/2007
7061/02	Petrov, judgment of 21/12/2006, final on 21/03/2007
4874/03	Pitelin and others, judgment of 14/06/2007, final on 14/09/2007
24247/04	Prisyazhnikova and Dolgopolov, judgment of 28/09/2006, final on 28/12/2006
69341/01	Romanov Yuriy, judgment of 25/10/05, final on 15/02/06
60974/00	Roseltrans, judgment of 21/07/2005, final on 21/10/2005
30731/03	Septa, judgment of 15/02/2007, final on 15/05/2007
12793/00	Seregina, judgment of 30/11/2006, final on 28/02/2007
55531/00	Sitkov, judgment of 18/01/2007, final on 18/04/2007
73203/01	Smarygin, judgment of 01/12/05, final on 01/03/06
30672/03+	Sobelin and others, judgment of 03/05/2007, final on 03/08/2007
878/03	Stetsenko and Stetsenko, judgment of 05/10/2006, final on 05/01/2007

30671/03 Vasilyev Boris, judgment of 15/02/2007, final on 15/05/2007
66543/01 Vasilyev, judgment of 13/10/2005, final on 12/04/06
8564/02 Volkov Stanislas, judgment of 15/03/2007, final on 15/06/2007
48758/99 Volkova, judgment of 05/04/2005, final on 05/07/2005
67051/01 Zasurtsev, judgment of 27/04/2006, final on 27/07/2006
25448/06 Zvezdin, judgment of 14/06/2007, final on 14/09/2007

These cases concern violations of the applicants' right to a court in that, in 1998-2002, the Presidia of various Regional Courts quashed final judicial decisions in the applicants' favour, following application for supervisory review (*nadzor*) lodged by state officials, under Articles 319 and 320 of the Code of Civil Procedure RSFSR then in force. These provisions gave different state's officials discretionary powers to challenge final court decisions at any moment. The European Court found that the use of supervisory review infringed the principle of legal certainty and thus the applicants' right to a court (violation of Article 6§1).
The European Court found the same violations under the new Code of Civil Procedure of the Russian Federation in force since 1/02/2003 due to:
- the right of Presidents of different courts to overrule decisions of other judges refusing institution of supervisory-review proceedings without being circumscribed in any way. In this respect, a one-year time-limit for lodging a supervisory-review application would not seem to be a sufficient guarantee because this time-limit starts running anew each time an interim decision refusing institution of supervisory review is issued;
- the fact that the parties to proceedings are not required previously to exhaust an ordinary appeal before lodging an application for supervisory review. The European Court noted in this respect that in the Russian legal system the grounds for appeal largely overlap with those for supervisory review and thus it remained unclear why the defect could not have been rectified in the appeal proceedings.
In a number of these cases, the European Court considered that the quashing of final decisions of pecuniary nature in the applicants' nature constituted a disproportionate interference with their right to the peaceful enjoyment of possessions (violation of Article 1 of Protocol No. 1).

Individual measures:

• *Information provided by the Russian authorities:* As regards the Volkova case, the proceedings which were pending when the European Court delivered its judgment have been closed.
• *Information is expected on possible measures that the Russian authorities envisage with a view to erasing all consequences of the violations found for the applicants (in particular in respect of non-pecuniary damage sustained) in the Chekushkin, Danilchenko, Gavrilenko, Grebechenko, Knyazhichenko, Septa, Sobelin and others and Boris Vasilyev cases, etc..*

General measures:

1) Measures taken following the first judgments of the European Court: The new Code of Civil Procedure in force since 01/02/2003 conferred the right to initiate supervisory review only upon parties to the proceedings and persons whose legal interests are affected by the judgments concerned (Article 376§1) and limited to one year the time-limit for lodging an application for supervisory review (Article 376§2).

2) High-level seminar in Strasbourg: Given the complexity of this issue a seminar was organised on 21-22 February 2005 in Strasbourg by the Directorate General of Human Rights (DG-II) in close cooperation with the Russian authorities. The seminar allowed a unique and constructive exchange between the main representatives of the Russian legal community (of the Russian supreme courts, executive, *Prokuratura* and advocates) and of the Council of Europe and the assessment of the existing *nadzor* practice in criminal, civil and commercial (arbitration) proceedings in the light of the Convention's requirements. The progress achieved so far in reforming the *nadzor* procedure was acknowledged and the outstanding questions calling for further measures identified, most importantly in the domain of civil procedure. The conclusions of the seminar **CM/Inf/DH(2005)20** together with other selected materials appear on the web site of the Department for the execution of judgments (http://www.coe.int/T/E/Human_Rights/execution/).

3) Applicant's submission*:* On 5/10/2005, the applicant's lawyers in the Volkova case, for their part, lodged with the Secretariat a submission concerning further general measures needed to implement the present judgments. These submissions have been transmitted to the Russian authorities for comments which are still awaited.

4) Interim Resolution ResDH(2006)1 and obligation to present an action plan: Having considered the conclusions of the seminar at their 922nd meeting (April 2005), the Deputies adopted Interim Resolution ResDH(2006)1 at their 955th meeting (February 2006) which among other things:
- called upon the Russian authorities to give priority to the reform of civil procedure with a view to ensuring full respect for the principle of legal certainty established in the Convention, as interpreted by the Court's judgments;
- encouraged the authorities to ensure through this reform that judicial errors are corrected in the course of the ordinary appeal and/or cassation proceedings before judgments become final and to give the relevant courts sufficient means and powers better to perform their duties;

- encouraged the authorities, pending the adoption of this comprehensive reform, to consider adoption of interim measures limiting as far as possible the risk of new violations of the Convention of the same kind, and in particular:
- continue to restrict progressively the use of the "*nadzor*" procedure, in particular through stricter time-limits for *nadzor* applications and limitation of permissible grounds for this procedure so as to encompass only the most serious violations of the law;
- to ensure that the "*nadzor*" procedure respects the requirements of a fair trial, including the adversarial principle, the equality of arms, etc;
- to simplify the current "*nadzor*" procedure, thus making it more expeditious;
- to limit as much as possible the number of successive applications for supervisory review that may be lodged in the same case;
- to discourage frivolous and abusive applications for supervisory review which amount to a further disguised appeal motivated by a disagreement with the assessment made by the lower courts within their competences and in accordance with the law;
- to adopt measures inducing the parties adequately to use, as much as possible, the presently available cassation appeal to ensure rectification of judicial errors before judgments become final and enforceable.

Finally, the Russian authorities were invited to present, within one year, a plan of action for the adoption and implementation of the general measures required to prevent new violations of the requirement of legal certainty.

5) Decision of the Constitutional Court: On 5/02/2007 the Constitutional Court examined the compatibility of the supervisory review procedure with the Constitution. Its main findings may be summarised as follows:

- this procedure constitutes an extra ordinary way of appeal which must only be used after the ordinary ways of challenging judicial decisions have been exhausted;
- the examination of an application for supervisory review by a single judge is not inconsistent with the Constitution since he must motivate his decisions. This however does not exclude the right of the federal legislator to provide for collegial examination of the admissibility of supervisory-review application;
- the recognised powers of the Presidents of the Supreme Courts of the subdivisions, of the President of the Supreme Court of the Russian Federation and its Deputy to overrule the inadmissibility decision of the single judge shall be exercised only upon the request of one of the parties to the proceedings and in the same circumstances and within the same time-limits that those provided for the single judge initially examining the issue of the admissibility;
- substantial violations of substantive and procedural law as grounds for supervisory-review should be understood as violations which have influenced the outcome of the proceedings and, unless rectified, make it impossible to ensure effective restitution and protection of rights or of the public interest;
- the power of the President of the Supreme Court of the Russian Federation or its Deputy to lodge an application for supervisory-review of any judicial act to the Presidium of the same Court must be exercised -
  - only if it is based on the request of one of the parties to the proceedings,
  - in the circumstances and within the limits provided by general provisions on supervisory-review and
  - provided that these officials do not participate in the examination of the case on the merits. Accordingly it instructed the legislator to determine the exact procedure for exercising of this power.

As regards the risk of excessively long procedures notably due to the existence of multiple supervisory instances, the Constitutional Court refrained itself from finding these provisions inconsistent with the Constitution.

6) Draft law prepared by the Supreme Court of the Russian Federation: On 6/02/2007 the Supreme Court of the Russian Federation issued a draft law aiming at the reform of the supervisory-review procedure in the light of the findings of the Constitutional Court. Its main provisions may be summarised as follows:

- limitation of the period for lodging an application for supervisory review to three months;
- limitation of the number of the supervisory-review instances by excluding the possibility to challenge the decisions taken by the regional courts as a first-instance court to the Presidium of the Regional Courts if these decisions have not been subject to cassation or supervisory-review by the Supreme Court of the Russian Federation;
- suppression of the power of the Presidents of the Regional Courts and their Deputies to overrule the inadmissibility decisions taken by single judge, except for the President of the Supreme Court of the Russian Federation and its Deputy;
- limitation of the power of the President of the Supreme Court of the Russian Federation or his Deputy to lodge an application for supervisory-review to the Presidium of the same Court to:

o judicial decisions violating rights, freedoms and other legally protected interests of undetermined circle of people or other public interests or taken in breach of jurisdiction rules and
o only within one year since such decision became final.
- introduction of the limits of the examination of the case in the supervisory-review proceedings to the grounds mentioned in the application for supervisory-review, except if the principle of legality requires the examination of the whole decision or decisions on other grounds, provided that these decisions were submitted to it;
- reference to the European Court's judgments as newly discovered circumstances if the consequences of the violations found cannot be erased by other means.

7) Secretariat's comments of the draft law: Following the authorities' request of 16/03/2007, bilateral consultations took place in Moscow and Strasbourg between the Secretariat and the competent Russian authorities. Possible further measures were discussed in order to ensure full compliance of the ongoing reform with the Convention's requirements and in particular with the principle of legal certainty. The Secretariat provided a number of comments and proposals based on recent judgments of the European Court, the Committee's Interim Resolution ResDH(2006)1 and taking into account the findings of the Constitutional Court. The proposed measures are intended to make the ordinary means of appeal more effective and accordingly to reorganise the *nadzor* procedure itself. The main avenues of action proposed are as follows:
- introduction of a specific requirement of exhaustion of the ordinary ways of judicial review prior to lodging a supervisory-review application and increasing their effectiveness, notably through the estoppel rule;
- reducing the number of the *nadzor* instances, to ensure the certainty of time-limits;
- reallocation of powers between the regional courts and the Supreme Court, to ensure appropriate screening of supervisory-review applications in the framework of an effective admissibility mechanism;

It was also pointed out that the simplification of the *nadzor* procedure should be accompanied by appropriate measures to guarantee litigants' rights and their protection against arbitrariness, several proposals are made in this respect.
These comments were welcomed by the competent Russian authorities and were seen as a positive and adequate contribution to the ongoing judicial reform.

8) Follow-up to the draft law: The competent Russian authorities received the Secretariat's comments positively and indicated that they would amend the draft law in the course of the parliamentary procedure. During the visit of the President of the Russian Supreme Court to Strasbourg in September 2007, the Secretary General welcomed these initiatives and the ongoing co-operation between the Supreme Court and the Council of Europe in this regard. He also noted that the President of the Supreme Court and the Council of Europe were in agreement on the objectives of these reforms and expressed the hope that they would have a positive impact on Russia's compliance with judgments of the European Court of Human Rights.
The draft law was adopted on 14/11/2007 by the State Duma. In February 2008 this law was supplemented by a Decree of the Plenum of the Supreme Court providing the lower courts with guidelines on the implementation of this reform notably in the light of the Convention requirements. The full compliance of this reform with the Convention requirements is currently being assessed by the Secretariat.

The Deputies decided to resume consideration of these items:
1 at their 1035th meeting (16-18 September 2008) (DH), in the light of information to be provided on the payment of the just satisfaction, if necessary;
2. at the latest at their 1043rd meeting (2-4 December 2008) (DH), in the light of the Secretariat's assessment of the reform adopted by the Russian authorities and of information to be provided on individual measures.

Case name :	**TIMOFEYEV v. Russia**	**Appl N° :**	**58263/00**
Judgment of :	23/10/2003		
Final on :	23/01/2004		
Violation :		Payment status :	No just satisfaction
Theme / Domain :	**Failure or substantial delay by the administration or state companies in abiding by final domestic judgments**		
Next exam :	1043-4.3(02/12/2008)		
Last exam :	1028-4.3(03/06/2008)		
First exam :	879-2(05/04/2004)		

NOTES OF THE AGENDA

- 106 cases concerning the failure or substantial delay by the administration or state companies in abiding by final domestic judgments

(See Appendix for the list of cases in the Timofeyev group)

CM/Inf/DH(2006)19 revised 2 and CM/Inf/DH(2006)45, CM/Inf/DH(2006)19 revised 3

All these cases concern violations of the applicants' right to effective judicial protection due to the administration's failure to comply with final judicial decisions in the applicants' favour including decisions ordering welfare payments, pension increases, disability allowance increases, etc. (violations of Article 6§1 and of Article 1 of Protocol No. 1).

Individual measures:

• *Information provided by the Russian authorities and additional clarifications requested*:

1) Bogdanov case*:* the judgment of the Krasnoarmeyskiy Town Court of the Saratov Region of 14/09/1998 was enforced by the Federal Treasury on 5/07/2006 (payment order N°9393).

2) Gerasimova case: the judgment of the Commercial Court of Samara Region of 4/09/1995 was executed in March 2006. On 26/05/2006 the applicant submitted her observations with regard to individual measures, she was in particular asking for the indexation of the amounts paid to her according to the domestic judgment. The possibility to claim indexation before courts is provided by Russian law. According to the information provided by the authorities, no such claim was lodged by the applicant.

3) Shatunov case: the judgment of the Leninskiy District Court of 16/04/2002 and the decision of the Kursk Regional Court of 14/05/2002 were enforced by the Ministry of Finance on 05/05/2005 (payment order N°30494) and on 19/04/2006 (payment order N°5082).

4) Shvedov case: by letter of 14/06/06 No. 08-09-14/2006 the Ministry of Finance invited the applicant to submit the execution documents with a view to the enforcement of the judgment of the Rostov-on-Don Proletarskiy District Court of 15/03/1999.

According to the Russian authorities, the applicant has not yet exercised this possibility despite the Ministry of Finance's letters (of 14/06/2006 and 08/10/2007) inviting him to submit writs of execution in view of their enforcement.

• *Information is awaited on the measures taken by the Ministry of Finance, defendant in the proceedings, to obtain writs of execution not least from the relevant court so as to ensure the execution of the judgments in the applicant's favour.*

5) Wasserman case: on 3/08/2006 the Ministry of Finance commissioned the Bank of Foreign Commerce to transfer the money due pursuant to the judgment of the Khostinskiy District Court of Sochi of 30/07/1999, as amended on 15/02/2001, to the applicant's account. However, on 11/08/2006 the transfer failed due to the inaccuracy of the applicant's banking details. The applicant was invited by the authorities to provide his new banking details.

• *Secretariat's assessment: It remains unclear whether the domestic judgment delivered in the applicant's favour was executed. It would also appear that the issue of lengthy non-enforcement of the judgment of the Khostinskiy District Court of Sochi of 30/07/1999, as amended on 15/02/2001, is currently examining by the European Court following the second application lodged by the applicant.*

6) Cases of Chernyshov and 11 others, Kazmina, Vasilyeva and others cases (outstanding pension arrears in the Voronezh Region), the Russian authorities indicated that by the Federal Law No.141 of 4/11/2005 the Law On Federal Budget of 2005 was amended so as to provide the Voronezh Region with additional finding of 221,4 million roubles for the execution of domestic judgments regarding indexation of old-age pensions due to their belated payment in 1998-1999.

According to the information provided, in June 2006 the Administration of the Voronezh Region applied for additional funding for payment of pension arrears for the period starting in 2000.

The Russian authorities indicated that by a Decision No. 196-p adopted on 02/03/2007 by the local Administration, 30 millions RUR were reserved in the local budget for the payment of indexation and compensation of pensions paid with a delay. The law on the 2008 Budget of the Voronezh region also provides for 3 millions RUR for the payment of indexation of belatedly paid pensions.

In the case of Chernyshov and 11 others, the judgments in the applicants' favour were enforced in December 2005; in the Kazmina case, the judgment of 22/10/2000 was fully enforced on 28/11/2006; in the case of Zverev and others, the judgment of 4/08/2000 was enforced on 2/12/2005.

7) Kesyan case: As regards the enforcement of the judgment of 10/01/2002, as amended by the judgment 29/05/2003, the Russian authorities indicated that on 13/09/2006 the enforcement proceedings were discontinued due to the impossibility to locate the assets of the debtor. No further request was lodged by the applicant.

• *Information is awaited on the measures taken by the bailiffs' service in order to locate the debtor's assets.*

8) Korchagin case: On 10/09/2003 the Ministry of finance transferred the amount due according to the decision of the Rostovskiy District Court of the Yaroslavl Region of 26/09/2001 on the applicant's account.

9) Natalya Gerasimova case: On 23/01/2006, the title to the applicant's new appartment was transferred to her.

10) Skachedubova case: the outstanding debt due to the applicant under the judgment of the Second District Court of Salsk of 12/09/2002 was paid to her on 11/06/2004.

11) Lykov case: The Russian authorities are taking a set of measures aiming at ensuring execution of the judgment of 11/05/2004 ordering the Town Council to provide the applicant with a flat, such as
- disciplinary sanctions applied to the bailiff who had previously been at the origin of the delays in execution;
- opening by the Prosecutor's General office of the investigation into the lengthy non-enforcement of the judgment delivered in the applicant's favour.

• *Information is awaited on the results of this investigation and on the enforcement of the judgment of 11/05/2004.*

12) Sypchenko case, the non-pecuniary damage was compensated by the European Court through the just satisfaction. As regards the pecuniary damage, the European Court considered that, given the violations found, the most appropriate form of redress was for the respondent State to secure, by appropriate means, the enforcement of the judgment of 19/11/2004, as upheld on appeal on 9/02/2005, i.e. to provide the applicant with a flat of a size indicated in the judicial decision and in compliance with the sanitary and technical requirements in force.

At the 1007th meeting (October 2007), the Russian authorities indicated that 2 apartments with the total surface area of 134,6 m² (with 79,2 m² of living space), which is even more that the surface provided by the judgment of 19/11/2004, were proposed to the applicant. On 8/10/2007 he was provided with the Order of the Mayor of Bataysk and on 9/10/2007 he signed a contract of social rent and the documents certifying the conformity of the apartments for living.

• *Applicant's position:* The applicant informed the Secretariat that he had to sign the social rent lease under the pressure of family circumstances, i.e. in order that his family should no longer be exposed to the risk of contamination. The signature of this contract allowed his daughters and his granddaughter to move in the first apartment located at No157 building 15 SGM. However, he indicated that the heating was not working. As regards the apartment located at 126, Oktyabrskaya street for which he is currently paying rent without being able to live there as there is no water supply and the lift is not working (this apartment is on the 10th floor). He and his wife are renting another apartment.

• *Russian authorities' position:* At the 1013th meeting (December 2007), the Russian authorities provided certificates showing that both lifts were working.

• *Information is also awaited concerning the state of the apartments.*

• *In addition, urgent measures are still necessary to secure, by appropriate means, the authorities' compliance with those judicial decisions which have not yet been enforced (including default interest for further possible delays, as the European Court's awards of pecuniary damage only take account of the delays prior to its judgments)*.

- Grigoryev and Kakaurova case: on the enforcement of the judgments of 22/09/1995, 1/11/1996 and 13/03/2001;
- Furman case: on the enforcement of the judgment of 11/06/2002;
- Glushakova n°2 case: on the enforcement of the judgment of 3/06/2004, as upheld on appeal on 11/10/2004;
- Pridatchenko case: on the enforcement of the judgment of the Kurtamysh District Court of the Kurgan Region of 8/10/2001 delivered in the Manatov's favour;
- Volokitin case: on the enforcement of the judgment of 6/09/2001;
- Denisov case: on the enforcement of the judgment of 6/03/2001, as upheld on 23/07/2001;
- Politova and Politov case: on the enforcement of the judgment of 15/01/2001;
- Mizyuk case: on the enforcement of the judgment of 20/07/2004;
- Pylnov case: on the enforcement of the judgment of 22/09/2002.

General measures:

1) Sector-specific measures: The Russian authorities indicated that in certain cases the non-enforcement of domestic judicial decisions delivered in the applicants' favour was due to the lack of specific procedures for implementing substantial rights concerned by these decisions. The Russian authorities consequently provided detailed information regarding the measures taken with a view to preventing litigation in these sectors. This information is being assessed by the Secretariat.

For instance, the Konovalov and Shpakovskiy cases concern housing certificates delivered to former members of the armed forces. The housing legislation in respect of this category of persons has changed. The Teteriny case concerns the right of retired judges to state housing. The entire procedure of granting

state housing to judges has changed. The Malinovskiy and Mikryukov cases concern the right of Chernobyl workers to free housing. The appropriate procedure in this respect has been set up at the domestic level.

2) Other fora of reflection within the Council of Europe The European Commission for the Efficiency of Justice (CEPEJ) has since 2005 been conducting a bilateral project with the Russian authorities with a view to examining the situation and finding adequate solutions. A report by the experts issued on 9/12/2005 (CEPEJ(2005)8) summarised the problems at the basis of non-enforcement of judicial decisions and made a number of proposals in this field. This bilateral project is continuing in 2006.

3) Applicant's submission: On 27/01/2006, the Secretariat received, in the case of OOO Rusatommet, an applicant's submission drawing the Committee's attention to the shortcomings of the new law amending the Budgetary Code, the Code of Civil Procedure, the Arbitration Code and the Federal Law on Enforcement proceedings recently adopted by the Russian Parliament. The Law was intended to clarify the enforcement procedure for domestic judicial decisions at the expense of the funds of Federal Treasury. The applicant's submission was transmitted for comments to the Russian authorities on 27/01/2006.

4) Examination of these cases by the Committee of Ministers:

a. Memorandum prepared by the Secretariat (**CM/Inf/DH(2006)19 revised 2**)*:* The memorandum points at a number of outstanding problems and proposes a number of avenues that the Russian authorities may consider in their ongoing search for a comprehensive resolution of this problem. The main avenues proposed are:

- Improvement of budgetary procedures and practical implementation of budget decisions;
- Ensuring effective compensation for delays (indexation, default interest, specific damages, possibility of reinforcing the obligation to pay in case of unjustified delays);
- Increased recourse to judicial remedies;
- Ensuring effective liability of civil servants for non-enforcement;
- Possible introduction of compulsory execution, including seizure of state assets;
- Possible reconsideration of the bailiffs' role and increasing their efficiency.

The latest version of the Memorandum (CM/Inf/DH(2006)19 revised 2) was declassified at the 976th meeting (October 2006).

b. Follow-up to the Memorandum-High level Round Table in Strasbourg: Given the complexity of this issue, it was decided at the 976th meeting (October 2006), to hold a high-level Round Table involving representatives of the Russian Supreme Courts, the Ministries and Federal services concerned and experts of the Council of Europe, to assess the first results of the new enforcement procedure and to establish priorities for further reforms. This Round Table was thus organised on 30-31/10/2006 in Strasbourg by the Department for the Execution of Judgments in co-operation with the European Commission for the Efficiency of Justice (CEPEJ) and the Russian authorities. The thorough and constructive discussions have identified the main outstanding problems and led to a number of commonly agreed proposals for further reforms to ensure the state's effective compliance with judicial decisions. The press release and conclusions of the Round Table appear on the web site of the Execution Department (http://wcd.coe.int/ViewDoc.jsp?id=1057949&BackColorInternet=F5CA75&BackColorIntranet=F5CA75&BackColorLogged=A9BACE&ShowBanner=no&Target=_self) and were made available to the Deputies in CM/Inf/DH(2006)45 at the 982nd meeting.

c. Up-dated version of Memorandum **CM/Inf/DH(2006)19 revised 3:** In a follow-up to the Round Table mentioned above, the Russian authorities have provided the answers of the competent authorities, i.e. the Supreme Courts of the Russian Federation, the Ministry of Finance, the Federal Treasury, the Federal Bailiffs' Office and the General Prosecutor's Office, to the issues raised in Memorandum CM/Inf/DH(2006)19 revised 2. This information gave rise to the updated version of the Memorandum issued at the 997th meeting (June 2007).

d. Multilateral Round Table in Strasbourg: On 21 and 22 June 2007 a high-level Round Table was organised in Strasbourg by the Department for the Execution of Judgments of the European Court of Human Rights in the context of the Execution Assistance programme, which involved representatives of the Council of Europe and the authorities of different states confronted with this issue, to discuss solutions to the structural problems of non-enforcement of domestic court decisions. The constructive exchanges between different participants led to the adoption of Conclusions in which the main problems underlying non-enforcement were identified and a range of possible solutions to be envisaged by the authorities while elaborating their action plans were proposed. These Conclusions may be found on the following web site http://www.coe.int/t/e/human_rights/execution/ConclusionsRoundTableRussiaJune07.doc.

The Russian authorities have recently provided information on the issues raised in the Memorandum and the Conclusions mentioned above. This information is currently being assessed by the Secretariat.

e. Draft law setting up a remedy before domestic courts in case of excessive length of proceedings and execution proceedings: The Supreme Court of the Russian Federation is preparing a draft constitutional law setting up a domestic remedy allowing victims to obtain compensation before domestic courts and/or

acceleration of the pending proceedings. Following the authorities' request, the Secretariat of the Council of Europe delivered its comments on the preliminary version of this draft law, which have been positively received by the competent Russian authorities. These comments are based on the experience of other countries in resolving similar problems and on the European Court's case-law. It would appear that the draft law is still being finalised by the Supreme Court and has not yet been submitted to Parliament.
• *Information is awaited on the progress on the adoption of this draft law.*

The Deputies:
1. invited the Russian authorities to ensure the rapid adoption of the draft law setting up a remedy before domestic courts in case of excessive length of proceedings and execution proceedings;
2. recalled that information on individual measures is awaited in a number of cases;
3 decided to resume consideration of these items at their 1035th meeting (16-18 September 2008) (DH), in the light of information to be provided on the payment of the just satisfaction, if necessary;
4. decided to resume consideration of these items at the latest at their 1043rd meeting (2-4 December 2008) (DH), in the light of the assessment of the information already provided on general measures as well as of the information to be provided on individual measures.