Pending cases against Poland

Application Number	English Case Title	Date of Judgment	Date of Final Judgment	Meeting Number	Meeting Section
39510/98	A.S. v. Poland	20/06/2006	23/10/2006	1013	4.2
38797/03	**AMBRUSZKIEWICZ v. Poland**	**04/05/2006**	**23/10/2006**	**1013**	**5.3**
1543/06	BACZKOWSKI AND OTHERS v. Poland	03/05/2007	24/09/2007	1013	2
37444/97	BAGINSKI v. Poland	11/10/2005	11/01/2006	1028	4.2
31443/96	**BRONIOWSKI v. Poland**	**22/06/2004, 28/09/2005**	**28/09/2005**	**1020**	**4.2**
54723/00	**BRUDNICKA AND OTHERS v. Poland**	**03/03/2005**	**03/06/2005**	**1013**	**4.2**
11562/05	**BYRZYKOWSKI v. Poland**	**27/06/2006**	**27/09/2006**	**1013**	**4.2**
34221/96	**D.P. v. Poland**	**20/01/2004**	**20/04/2004**	**1028**	**4.2**
18235/02	**DABROWSKI v. Poland**	**19/12/2006**	**19/03/2007**	**1013**	**5.3**
46702/99	DZWONKOWSKI v. Poland	12/04/2007	12/07/2007	1013, 1020	3.A, 4.2
33870/96	**FUCHS v. Poland** and 15 other cases concerning excessive length of proceedings concerning civil rights and obligations before administrative bodies and courts	**11/02/2003**	**11/05/2003**	**1013**	**4.2**
38816/97	G.K. v. Poland	20/01/2004	20/04/2004	1028	4.2
14348/02	**GARYCKI v. Poland**	**06/02/2007**	**06/05/2007**	**1013, 1028**	**3.A, 5.3**
63131/00	**GEBURA v. Poland**	**06/03/2007**	**06/06/2007**	**1013, 1028**	**3.A, 5.3**
77710/01	**H.N. v. Poland**	**13/09/2005**	**13/12/2005**	**1028**	**4.2**
35014/97	**HUTTEN-CZAPSKA v. Poland**	**19/06/2006**	**19/06/2006**	**1028**	**4.2**
25196/94	**IWANCZUK v. Poland**	**15/11/2001**	**15/02/2002**	**1028**	**4.2**
59444/00	KANIA v. Poland	10/05/2007	10/08/2007	1013, 1020	3.A, 4.2
31583/96	**KLAMECKI v. Poland (no. 2)** and 13 other cases concerning monitoring of detainees' correspondence	**03/04/2003**	**03/07/2003**	**1013**	**4.2**
23779/02	KOZLOWSKI v. Poland	23/01/2007	23/04/2007	1013, 1020	3.A, 4.2
30210/96	**KUDLA v. Poland** and 10 other cases of excessive length of criminal proceedings and lack of an effective remedy	**26/10/2000**	**26/10/2000**	**1028**	**4.2**
51744/99	KWIECIEN v. Poland	09/01/2007	09/04/2007	1013	3.A, 5.3
77765/01	LASKOWSKA v. Poland	13/03/2007	13/06/2007	1013, 1020	3.A, 4.2
43797/98	**MALISIEWICZ-GASIOR v. Poland**	**06/04/2006**	**06/07/2006**	**1013**	**5.3**
38184/03	**MATYJEK v. Poland**	**24/04/2007**	**24/09/2007**	**1013**	**2**
11638/02	PAWLIK v. Poland	19/06/2007	19/09/2007	1013	2
39199/98	PODBIELSKI and PPU	26/07/2005	30/11/2005	1013	4.1

	POLPURE v. Poland				
27916/95	**PODBIELSKI v. Poland** and 131 other cases of excessive length of civil proceedings and lack of effective remedy	**30/10/1998**	**30/10/1998**	**1028**	**4.2**
51728/99	**ROSENZWEIG AND BONDED WAREHOUSES LTD. v. Poland**	**28/07/2005**	**30/11/2005**	**1028, 1013**	**5.3, Pcour Art41**
17373/02	ROSINSKI v. Poland	17/07/2007	17/10/2007	1020	2
55339/00	ROZANSKI v. Poland	18/05/2006	18/08/2006	1013, 1020	3.B, 4.2
28949/03	SANOCKI v. Poland	17/07/2007	17/10/2007	1013	2
8932/05	**SIALKOWSKA v. Poland**	**22/03/2007**	**09/07/2007**	**1013, 1020**	**3.A, 4.2**
45972/99	**SIEMIANOWSKI v. Poland**	**06/09/2005**	**15/02/2006**	**1020**	**5.3**
43425/98	**SKALKA v. Poland**	**27/05/2003**	**27/08/2003**	**1013**	**5.3**
52589/99	**SKIBINSCY v. Poland**	**14/11/2006**	**14/11/2006**	**1013**	**3.B, 4.2**
46917/99	**STANKIEWICZ v. Poland**	**06/04/2006**	**06/07/2006**	**1028**	**5.3**
59519/00	STAROSZCZYK v. Poland	22/03/2007	09/07/2007	1013, 1020	3.A, 4.2
21541/03	SZMAJCHEL v. Poland	17/07/2007	17/10/2007	1020	2
41187/02	**SZWAGRUN-BAURYCZA v. Poland**	**24/10/2006**	**24/01/2007**	**1028**	**5.3**
6925/02	**SZYMONSKI v. Poland**	**10/10/2006**	**10/01/2007**	**1013, 1020**	**3.B, 5.3**
12825/02	TABOR v. Poland	27/06/2006	27/09/2006	1020	4.2
25792/94	**TRZASKA v. Poland and 44 cases of excessive length of detention on remand**	**11/07/2000**	**11/07/2000**	**1028**	**4.2**
5410/03	TYSIAC v. Poland	20/03/2007	24/09/2007	1013	2
21508/02	W.S. v. Poland	19/06/2007	24/09/2007	1013	2
73192/01	WAWRZYNOWICZ v. Poland	17/07/2007	17/10/2007	1020	2
22860/02	**WOS v. Poland**	**08/06/2006**	**08/09/2006**	**1013**	**4.2**
48542/99	**ZAWADKA v. Poland**	**23/06/2005**	**12/10/2005**	**1013**	**4.1**
49913/99	ZIELONKA v. Poland	08/11/2005	08/02/2006	1013	5.3
42049/98	**ZWIAZEK NAUCZYCIELSTWA POLSKIEGO v. Poland**	**21/09/2004**	**02/02/2005**	**1020**	**4.2**
34049/96	**ZWIERZYNSKI v. Poland**	**19/06/2001, 02/07/2002, 06/03/2007**	**06/06/2007**	**1013**	**3.B, 4.1**

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

Application Number	*English Case Title*	*Date of Judgment*	*Date of Final Judgment*
27715/95	**BERLINSKI v. Poland**	**20/06/2002**	**20/09/2002**
24244/94	MIGON v. Poland	25/06/2002	25/09/2002
26229/95	**GAWEDA v. Poland**	**14/03/2002**	**14/03/2002**

26624/95	**WORWA v. Poland**	**27/11/2003**	**14/06/2004**
26760/95	**WERNER v. Poland**	**15/11/2001**	**15/11/2001**
26761/95	**PLOSKI v. Poland**	**12/11/2002**	**12/02/2003**
28249/95	**KREUZ v. Poland (No. 1)**	**19/06/2001**	**19/06/2001**
28358/95	**BARANOWSKI v. Poland**	**28/03/2000**	**28/03/2000**
29537/95	RADAJ v. Poland	28/11/2002	28/02/2003
29692/96	**R.D. v. Poland**	**18/12/2001**	**18/03/2002**
30865/96	JASINSKI v. Poland	20/12/2005	20/03/2006
31382/96	**KURZAC v. Poland**	**22/02/2001**	**22/05/2001**
33866/96	BOGULAK v. Poland	13/06/2006	13/09/2006
34090/96	W.B. v. Poland	10/01/2006	10/04/2006
34091/96	M.B. v. Poland	27/04/2004	27/07/2004
35489/97	SALAPA v. Poland	19/12/2002	19/03/2003
37774/97	**P.K. v. Poland**	**06/11/2003**	**06/11/2003**
38064/97	**TURCZANIK v. Poland**	**05/07/2005**	**30/11/2005**
38670/97	**DEWICKA v. Poland**	**04/04/2000**	**04/07/2000**
39598/98	HULEWICZ v. Poland	23/02/2006	23/05/2006
45214/99	**SILDEDZIS v. Poland**	**24/05/2005**	**24/08/2005**
45288/99	CIAGADLAK v. Poland	01/07/2003	01/10/2003
45355/99	**SHAMSA v. Poland**	**27/11/2003**	**27/02/2004**
48140/99	TELTRONIC-CATV v. Poland	10/01/2006	10/04/2006
64120/00	NIZIUK v. Poland	15/07/2003	15/07/2003
68880/01	**SCHIRMER v. Poland**	**21/09/2004**	**21/12/2004**
71731/01	KNIAT v. Poland	26/07/2005	26/10/2005
71891/01	HALKA and Others v. Poland	02/07/2002	02/10/2002
73547/01	JEDAMSKI and JEDAMSKA v. Poland	26/07/2005	30/11/2005
75955/01	**SOKOLOWSKI v. Poland**	**29/03/2005**	**29/06/2005**

Main pending cases against Poland

997 (June 2007) section 4.2

- 13 cases of length of proceedings concerning civil rights and obligations before administrative authorities and courts

Application	Case	Object of proceedings	Length of proceedings (within European Court's jurisdiction)	Proceedings still pending when the European Court gave judgment
33870/96	Fuchs, judgment of 11/02/03, final on 11/05/03	Building permit + demolition order	Right of individual petition entered into force: 1/05/93	Yes Yes
51837/99	Beller, judgment of 01/02/2005, final on 06/06/2005	Right of usufruct on nationalised land in Warsaw	Right of individual petition entered into force: 1/05/93	Yes
49961/99	Bogucki, judgment of 15/11/2005, final on 15/02/2006	Closure of expropriation proceedings + compensation	8 years, 2 months	No
43702/02	Grabiński, judgment of 17/10/2006, final on 17/01/2007[1]			
40732/98	J.S. and A.S., judgment of 24/05/2005, final on 12/10/2005	Restitution of nationalised property	Right of individual petition entered into force: 1/05/93	Yes
38049/02	Kaniewski, judgment of 08/11/2005, final on 08/02/2006	Right of usufruct on nationalised land in Warsaw	Began 14/10/93	Yes
52495/99	Koss, judgment of 28/03/2006, final on 28/06/2006	Right of usufruct on a plot of land nationalised in 1945	Began 06/08/1993	Yes
77795/01	Orzechowski, judgment of 24/10/2006, final on 24/01/2007			
77741/01	Piekara, judgment of 15/06/2004, final on 15/09/2004	"2nd world war" status	6 years, 8 months and 21 days	No
36431/03	Skowroński, judgment of 24/01/06, final on 24/04/06	Closure of expropriation proceedings + compensation	Began 19/04/99	Yes
13568/02	Stevens, judgment of 24/10/2006, final on 24/01/2007			
67979/01	Szenk, judgment of 22/03/2005, final on 22/06/2005	Right of usufruct on nationalised land in Warsaw	Right of individual petition entered into force: 1/05/93	Yes
33777/96	Urbańczyk, judgment of 01/06/2004, final on 01/09/2004	Building permit	6 years, 8 months and 13 days	No

These cases concern the excessive length of certain proceedings concerning civil rights and obligations before the administrative authorities and the Supreme Administrative Court (violations of Article 6§1).

In all these cases, the European Court indicated that the length of proceedings was due to the inactivity of administrative authorities (particularly local administrative authorities in the Beller, Grabiński, Kaniewski, Koss and Szenk cases) which were examining the applicants' requests and of the Supreme Administrative Court when examining the appeals against the administrative decisions.

Individual measures:

[1] This case also appears in Section 3.a

1) Fuchs case: Both sets of proceedings at issue are now closed.

2) Beller case:

• *Information provided by the Polish authorities (letters of 8/03/2006 and 29/03/2007)*: On 14/10/2005, following an appeal brought by the applicant, the Warsaw District Administrative Court overturned the *wojewoda* decision of 23/07/2001 and referred the matter to the Mayor of Warsaw to be reconsidered. This nonetheless requires the *wojewoda* to consider an application introduced by the Social Security Agency.

3) Szenk case

• *Information provided by the Polish authorities* (*letter of 29/03/2007*): The matter is still pending before the Mayor of Warsaw pending the outcome of court proceedings to remove the communal status of the building at issue, which is a necessary condition for its restitution to the applicant. The municipal authorities are collecting together the documentation needed to launch such proceedings.

4) J. S. and A. S. case:

• *Information provided by the Polish authorities (letters of 05/02/2006 and 30/04/2007)*: On 24/01/2006 and 21/03/2006 the Ministry of Agriculture and Rural Development issued a decision partially annulling the nationalisation of the land at issue. The decision of 21/03/2006 is enforceable but has been appealed by the opposing party. This appeal is being examined by the Supreme Court.

In the framework of the enforcement of this decision – but only once it becomes final – the applicants may be granted a part of the disputed property and they may obtain compensation for the remaining part.

5) Skowroński case:

• *Information provided by the Polish authorities (letter of 10/10/2006)*: On 27/02/2007 the *starosta* issued a partial decision defusing to award compensation to the applicant, who has consequently appealed.

6) Koss case: By a decision of 12/07/2006, the Mayor of Warsaw assumed *ex officio* competence for the proceedings concerning the applicant's application for perpetual usufruct, and dismissed the application on 22/12/2006. Upon appeal by the applicant, this decision was overturned and a fresh examination ordered.

• *Additional information is awaited on the state of domestic proceedings in the Beller, Szenk, J.S. and A.S., Koss and Skowroński cases. Concerning the Kaniewski and Grabinski cases, information is awaited on the progress of domestic proceedings and on their acceleration, if needed.*

General measures:

• *Measures taken:*

1) Publication and dissemination

The Fuchs and Piekara judgments have been sent out to the authorities competent for construction matters and published on the internet site of the Ministry of Justice (www.ms.gov.pl). The judgments delivered in the Beller, Fuchs, Piekara, Szenk and Urbańczyk cases have been sent out to the Supreme Administrative Court and to Voivodship Administrative Courts. The J.S and A.S. judgment has been sent out to officials of the Ministry of Agriculture and Rural Development.

• *Information is awaited on the publication of the judgments in the cases of J.S. and A.S., Beller and Szenk.*

2) Excessive length of proceedings before the Supreme Administrative Court:

- Organisation and functioning of the administrative court system:

The Act on the Organisation of Administrative Courts and of the Act on Proceedings before Administrative Courts entered into force on 1/01/2004. These laws institute a two-instance system of administrative courts (the newly created voivodship administrative courts and the Supreme Administrative Court) and provide solutions to accelerate procedures, such as mediation and summary proceedings.

Before their entry into force, some two years were required for the Supreme Administrative Court or one of its 11 satellites throughout the country to consider an appeal, taking into account the constantly growing backlog of cases (around 70 000 new cases a year) and the insufficient number of judges (300). The reform set up 16 Voivodship Administrative Courts and personnel numbers were increased so that, as of 30/09/2005 there were 424 judges, 125 trainee judges (*asesorzy*) and 84 judicial assistants (*referendarze sądowi*).

On 1/01/2004, some 92 600 cases were transmitted to the voivodship administrative courts and during the first year about 59 000 new cases were brought before them. In 2004, these courts examined around 83 000 cases, leaving a backlog of approximately 68 000 cases. At the end of 2004, this figure had been reduced to about 68 000 and to 43 780 cases on 31/12/2005. In 2006, the voivodship administrative courts had been seised of 62 436 new cases with a backlog of 27 556 cases, reduced by 37% as compared to the previous year. The present mean duration of an appeal has been

estimated at 5 months (approximately 3 months before the Warsaw voivodship administrative court and 15 months before the Krakow voivodship administrative court).
According to the President of the Supreme Administrative Court (letter of 20/10/2005), the excessive length of some administrative proceedings which took place in the 1990s was also linked to the structural reorganisation of the Polish state which took place at the beginning of the decade.

- Administrative courts' control over administrative authorities:

The Act of 30/08/2002 on Proceedings before Administrative Courts contains provisions to ensure control of the functioning of administrative authorities. It allows parties to administrative proceedings to lodge complaints before the court concerning the inactivity of administrative authorities. Article 154 provides that where a court judgment finding such inactivity has not been enforced, or in cases of administrative inactivity following a judgment quashing an administrative decision, parties may lodge a fresh complaint before an administrative court, requesting that the authority in question be fined. Moreover, Article 155 provides that if the administrative court, when examining the case, finds substantial errors in law or circumstances which might give rise to such errors, it may deliver a decision informing the competent authority or its superior authority about such errors. The authority concerned then has to take a position and inform the court within 30 days.
Moreover, the law of 17/06/2004 on complaints against excessive length of judicial proceedings (examined in context of the Kudła case, judgment of 26/10/2000, Interim Resolution ResDH(2007)28, 992nd meeting, April 2007) also concerns proceedings before administrative jurisdictions.
In a letter of 11/09/2006, the President of the Supreme Administrative Court took the view that the measures set out above guarantee an effective domestic remedy against excessive length of proceedings.

3) Excessive length of proceedings before administrative bodies:

- Construction law:

Following decentralisation, i.e. the administrative reform which entered into force on 01/01/1999, the powers of the central administrative building supervision body were restricted. Proceedings under the Building Act are conducted at first instance before the building supervision inspector of the *powiat* or the *starosta* and at second instance before the building supervision inspector of the voivodship or the voivod. An important amendment to the Building Act, aiming at simplifying and accelerating proceedings, entered into force on 11/07/2003 and introduced a disciplinary provision in respect of the administrative authorities. According to this provision, an administrative authority dealing with a building permit issue shall give its decision within 65 days, otherwise the superior authority may impose a financial penalty on it.

- Requests for the right of usufruct in respect of nationalised land in Warsaw:

The Minister of the Interior and Administration asked the Mayor of Warsaw to send out the judgments in the Beller and Szenk cases to civil servants of the Warsaw-Centre Municipal Office, which deals with such requests.

- Length of proceedings before administrative authorities in general:

In his letter of 11/09/2006 mentioned above, the President of the Supreme Administrative Court stated that he was not in a position to assess whether the excessive length of such proceedings stems from a systemic problem. In his opinion, it is up to the Minister of the Interior and Administration to make an assessment of this issue.
By letter of 25/04/2007, the Minister of the Interior and Administration presented legislative changes which might be envisaged to improve the promptness and efficiency of administrative proceedings, including:
- introduction of "participative proceedings", namely the obligation to appoint a representative when the number of parties to a case reaches a certain level (20 for example);
- introduction of a legal prohibition of abuses of administrative law, in particular a ban on the repeated extension of the legal time-limit for dealing with a case (Article 36 of the Code of Administrative Procedure);
- shortening legal time-limits for examining cases, or imposing financial penalties on administrative organs which do not respect the legal time-limits (as in construction law, see below);
- introduction of "tacit agreement" by administrative organs: when an administrative body does not deliver its decision within a certain time (for example 30 days), it is assumed, under certain conditions, that a tacit decision in favour of the applicant has been rendered;
According to the Minister of the Interior and Administration, some of these proposals do not fall within his competence and should therefore be accepted by other ministers concerned.
In addition, Parliament is examining legislative texts to enhance the decentralisation and distribution of tasks within the public administration.

▪ *Outstanding issues:*

• *Information is awaited concerning:*
- whether the judgments delivered in the Szenk and Beller cases have been sent out to the civil servants of the Warsaw-Centre Municipal Office
- the follow-up to the proposals made by the Minister of the Interior and Administration on the reform of administrative procedure.

The Deputies decided to resume consideration of these items:
1. at their 1007th meeting (15-17 October 2007) (DH), in the light of information to be provided on the payment of the just satisfaction, if necessary;
2. at their 1013th meeting (3-5 December 2007) (DH), in the light of further information to be provided on general measures, as well as individual measures in the cases of Beller, Szenk, Grabiński, J.S. and A.S., Kaniewski, Koss and Skowroński.

997 (June 2007) section 4.2

34221/96 D.P., judgment of 20/01/04, final on 20/04/04
38816/97 G.K., judgment of 20/01/04, final on 20/04/04
37444/97 Bagiński, judgment of 11/10/2005, final on 11/01/2006

These cases concern the prolonged detention on remand of the applicants, without a legal basis, from 01/01/1997 to 24/01/1997 due to the fact that the Polish authorities' request to extend their detention had been filed after the expiry of the time-limit fixed in interim domestic provisions of 1995 (violation of Article 5§1). The cases also concern the excessive length of their detention on remand (respectively about 3 years and 17 days and 2 years and 9 months) given the insufficient reasons to justify it (violations of Article 5§3).
The Bagiński case also concerns the failure to bring the applicant promptly before a judge, in that he was placed in detention initially on the basis of a decision by the prosecutor (violation of Article 5§3).
The Bagiński and G.K. cases also concerns the violation of the applicants' right to obtain a determination of the legality of their detention in the absence of a procedure satisfying the requirements of Article 5§4.
The G.K. case relates to the violation of the applicant's right to respect for his correspondence (violation of Article 8) due to the opening by the authorities in 2000 of one of his letters addressed to the European Court in spite of the provisions of the new Code for Execution of Sentences of 1997 expressly prohibiting control of the correspondence of convicted persons with international institutions as the European Court.
Finally, the Bagiński case concerns the violation of the applicant's right to respect for his family life 5violation of Article 8). The European court found that the restrictions placed on visits by the applicant's mother between December 1995 and May 1996 exceeded what was necessary in a democratic society to defend public order and prevent the commission of offences.
Individual measures: The applicants are no longer detained. The European Court granted them just satisfaction in respect of non-pecuniary damage.
• *Assessment*: *In the circumstances, no further measure seems necessary.*
General measures:
1) Violations of Article 5§1:
• *Information provided by the Polish authorities*: For the year 2005 the Minister of Justice adopted "The Guidelines for the Exercise of Supervision of the Activity of Ordinary Courts", on the basis of the Decree of 25/10/2002 on the Procedure of Supervision of the Administrative Activity of Courts. According to these guidelines, pending criminal cases in which detention on remand has been extended for more than 2 years are placed under the supervision of the presidents of courts of appeal who are to ensure that proceedings are examined rapidly.
Moreover, in February 2006 the Minister of Justice wrote to all prosecutors reminding them of the legal rules concerning detention on remand. In this letter the Minister emphasised *inter alia* that prosecutors should conduct investigations promptly and that they should ask judges to prolong detention on remand, in principle, in cases in which the detainee is suspected of having committed a crime or an offence liable to a sentence of 8 years' imprisonment or more.
Moreover, in March 2007, the Minister of Justice sent out a circular to Presidents of courts of appeal concerning the finding of this violation in the D.P. judgment.
The D.P. judgment has been published on the internet site of the Ministry of Justice www.ms.gov.pl.
• *Assessment*: *In the circumstances, no further measure seems necessary.*
2) Violations of Article 5§3 (length of detention on remand): These cases present similarities to the Trzaska group (Section 4.2).

3) Violation of Article 5§3 concerning the right to be brought promptly before a judge and violation of Article 5§4: The Bagiński and G.K. cases present similarities to that of Niedbała (judgment of 04/07/2000) closed by Resolution ResDH(2002)124 following the entry into force on 01/09/1998 of the new Code of Criminal Procedure. According to Article 249 of the Code, before deciding on the application of preventive measures, a court shall hear the defendant. His counsel shall also be allowed to attend the court's session.

4) Violation of Article 8: The Bagiński and G.K. cases present similarities to that of the Klamecki No.2 group, judgment of 03/04/2003 (Section 4.2).

The Deputies decided to resume consideration of these items at the latest at their 2nd DH meeting of 2008, and to join them, at the same meeting, with the Trzaska group of cases, to supervise general measures.

1007 (October 2007) section 4.1

39199/98 Podbielski and PPU Polpure, judgment of 26/07/2005, final on 30/11/2005

This case concerns the violation of the applicant's right of access to a court due to domestic courts' refusal to exempt him from court fees in respect of an appeal lodged against a judgment concerning his pecuniary claims (violation of Article 6§1).

The applicant, having carried out construction work for the commune of Świdnica, instituted proceedings in 1992 to obtain payment of the amounts due, including contractual penalties and damages for late payment. In 1993 the Wałbrzych Regional Court partially allowed his claims, but rejected those concerning contractual penalties. Following an appeal lodged by the applicant, the Supreme Court annulled this judgment and remitted the case to the court of first instance. Consequently, the applicant increased his claims. By a judgment of 20/02/1995, the Wałbrzych Regional Court ordered the commune to pay nearly 1,8 million PLZ (a tenth of what he had asked for) as penalties and, by a judgment of 23/10/1996, rejected his claims concerning damages. The applicant therefore tried to lodge an appeal against this judgment and requested exemption from court fees. By a final decision of 10/06/1999 the Supreme Court rejected this request and the judgment of 23/10/1996 became final. At this stage of the proceedings, the applicant's financial claims related to an amount exceeding 3,500,000 PLN (980 800 euros).

Given the importance of the right to a court in a democratic society, the European Court concluded that the judicial authorities had failed to secure a proper balance between the interest of the state in collecting court fees and the interests of the applicant in vindicating his claims through the courts. Thus the imposition of the court fees on the applicant constituted a disproportionate restriction of his right of access to a court.

Individual measures:

1) Attempt to reopen proceedings: Following the European Court's judgment the applicant, relying on Article 401, Section 2, of the Code of Civil Procedure, applied for the reopening of the proceedings finally terminated by a decision of the Supreme Court of 10/06/1999. This request was dismissed on 19/10/2005 on the grounds that the Code of Civil Procedure did not contain a clear provision allowing reopening in cases in which the European Court had delivered a judgment in favour of the applicant. This dismissal has been criticised in judicial circles and in the media (see Bulletin No. 2/2005 of the Council of Europe Information Centre in Warsaw).

In November 2005 he attempted to appeal against the Supreme Court's judgment of 19/10/2005 but on 22/12/2005 the Supreme Court declared his appeal inadmissible as not being provided by law. On 07/04/2006 the Minister of Justice sent the applicant a letter in which he joined the Supreme Court's position concerning the interpretation of Article 401, Section 2, of the Code of Civil Procedure and declared himself incompetent to contest the decisions of this jurisdiction.

2) Constitutional complaint: On 12/05/2006 the applicant lodged a constitutional complaint against Article 401, Section 2, of the Code of Civil Procedure as contradictory with the provisions of the Polish Constitution on the superiority of international treaties over domestic laws. On 11/10/2006 the Constitutional Court refused to examine the applicant's appeal on the ground that it had been introduced out of time, the judge indicating that the time-limit for lodging an appeal ran from the date upon which he had received the Supreme Court decision of 19/10/2005 and not that of 22/12/2005. The applicant's counsel lodged objection to this decision, but his appeal was rejected on 5/02/2007.

3) The applicant's situation: The applicant's company has meanwhile become insolvent. On 28/07/2006 he asked the Minister of Justice and the Minister of Finance to stay all judicial and enforcement proceedings related to this insolvency until a decision concerning his constitutional complaint is delivered. The Ministry of Justice informed him on 27/11/2006 and 25/01/2007 that it had no competence to suspend them. Consequently, one set of proceedings is pending (applicant's letter

of 3/01/2007). On 23/01/2007, the applicant refused to allow the bailiff to enter his house and refused to comply with the enforcement proceedings (letter of 23/02/2007). Consequently, criminal proceedings were instituted against him by the police (letter of 24/08/2007).
The applicant complains that, following the violation found by the European Court:
- he does not have the financial means to pay his debts and his enterprise has become insolvent,
- the domestic courts are failing to respect the obligations arising from the European Court's judgment.
He asks the Committee of Ministers to intervene to redress the negative consequences of the violation (in particular the pecuniary damage).
The applicant informed the Secretariat that the Polish government did not intend to reach a friendly settlement making it possible to compensate him for the pecuniary damage resulting from the violation (in a telephone conversation on 30/11/2006).

4) Position of the Polish authorities:

• *Information provided by the Polish authorities at the 976th meeting (October 2006)*: In the opinion of the Polish authorities, no obligation to reopen civil proceedings stems from the European Court's judgment, even in the light of the Committee of Ministers' Recommendation No R 2000(2). However, they do not exclude the possibility of amending the Polish Code of Civil Procedure to allow reopening of proceedings in civil cases following judgments of the European Court in the future.
• *The Secretariat's position at their 922nd Meeting (April 2007):* Referring to the elements of reflection contained in its document CM/Del/OJ/DH(2007)992, the Secretariat finds, *inter alia*, that in the circumstances of this case the principle of legal certainty is not contrary to a review or reopening. In the framework of this dispute, the applicant was opposed to the commune.
• *Information provided by the Polish authorities (992nd meeting, April 2007)*: The Polish authorities are of the opinion that the European Court's judgments have no impact on the domestic judicial decisions. In support of this statement, they invoke Article 41 of the Convention and the principle of legal certainty. Moreover, they underline that the European Court, even though its case-law has not always been coherent, has found several times that the Convention did not impose on a respondent state the obligation to modify judgments or reopen domestic proceedings. In any event, the examination of the compatibility of domestic laws and decisions with the Convention does not fall within the European Court's competence.
However, the Polish authorities' position is in line with that of Secretariat, according to which the principle of legal certainty is not crucial in this case, since the commune was the third person against which the applicant was opposed in the domestic proceedings
According to the Polish authorities, certain legal remedies existing in Polish law may allow the applicant to rectify his situation resulting from the violation of the Convention:
- reopening of the civil proceedings on the basis of general rules included in Article 401 of the Code of Civil Procedure, for instance by invoking the partiality of judges;
- action for compensation on the grounds of Article 417 and 417^1 of the Civil Code, which governs state tort liability;
- action to establish that a court decision is null and void as contrary to the law; such an action may be instituted on the basis of an amendment to the Code of Civil Proceedings of 22/12/2004.

• *Recent information provided by the Polish authorities (10/04/2007)*: According to the Polish Commission on the Codification of Civil Law, the Convention does not impose on states parties the obligation to reopen domestic proceedings closed by a final judgment; the European Court is not a jurisdiction superior to the domestic courts and it may not assess the compatibility of a judicial decision with the Convention. In this case the outcome of the domestic proceedings, terminated by a final decision, is not in itself contrary to the Convention and thus a reopening, which would allow the applicant to have a second review of his claims, is not necessary.
Moreover, according to this commission, the applicant may request the reopening of proceedings on the basis of the provisions of the Code of Civil Procedure currently in force and the court competent to examine such a request would then be obliged to take into account the criteria stemming from the Convention. Besides that, he could also institute an action on the basis of the amendment of 22/12/2004, by invoking the incompatibility of the judicial decisions with the Convention.
Nevertheless the commission does not exclude the possibility of adopting legislative provisions to solve the problem of the consequences of international courts' decisions on the domestic legal order.
• *Assessment by the Secretariat*: The Polish authorities' position raises the question as to whether the Convention imposes an obligation on respondent states to execute the European Court's judgments, and in particular the obligation of *restitutio in integrum*.
Concerning measures proposed by the Polish authorities, the Secretariat notes that:
- the applicant has already asked for reopening of proceedings on the basis of Article 401 of

the Code of Civil Procedure, invoking the lack of possibility to act, and that his request has been rejected (see above);

- as regards the use of Article 417 of the Civil Code, governing the general rules on the State's tort liability, it is not clear whether the use of this remedy would be efficient in the case of the applicant. In this case the possible damage resulted from court decisions. Thus, according to Article 417^1 of the Civil Code, the applicant has to request to the judge to find that the impugned decisions has been delivered in contradiction with the law (amendment to the Code of Civil Proceedings of 22/12/2004). However, the latter provision is applicable only to decisions which became final after 01/09/2004.

Moreover, a similar issue may be raised in the case of Kania (judgment of 10/05/2007, final on 10/08/2007; Section 2), concerning the lack of exemption from court fees for lodging a point-of-law appeal in proceedings instituted against the State Treasury.

• *Bilateral contacts are under way to assess the proposed individual measures.*

General measures: This case presents similarities to the Kreuz case (judgment of 19/06/01) (Section 6.2), in which measures have been already taken.

The Diet adopted a new Act on court costs in civil cases. This law entered into force on 2/03/2006, and brings together in a single text questions of general principle related to the imposition of costs, their amount and procedures for exemption, these questions having previously been determined by different sets of rules (in particular the 1967 Act on court costs and the Civil Code).

The new law provides fixed amounts for costs in most court proceedings; previously, the general rule was that costs should be proportional. In addition, they simplify the calculation of proportional costs, which remain applicable in most disputes over assets. At present, proportional costs are equivalent to 5% of the value of the asset in dispute, with a minimum of 30 PLN and a maximum of 100 000 PLN.

The new aw also lays own the rules for exemption from costs. Parties to a dispute may be exempted, in whole or in part, by the judge if they make a declaration to the effect that they could not pay them without risking their living or that of their family. Such declaration must be accompanied by a detailed statement of their financial situation. In any event, they must pay the minimum charge of 30 PLN.

The possibility of exemption is available equally to physical and legal persons as well as organisational entities without legal personality.

The Deputies decided to resume consideration of this case at their 1013th meeting (3-5 December 2007) (DH), in the light of further information to be provided concerning the individual measures.

1007 (October 2007) section 2

59444/00 Kania, judgment of 10/05/2007, final on 10/08/2007
23779/02 Kozłowski, judgment of 23/01/2007, final on 23/04/2007

These cases concern the violation of the applicants' right of access to a court due to domestic courts' refusal to exempt them from court fees (violation of Article 6§1).

In the Kania case, the applicant as a child had an accident at his state primary school in which he lost the sight in his right eye. In 1994 he lodged a civil action against the State Treasury for compensation and the increase of invalidity pension previously determined in a court decision and was initially exempted from court fees. Consequently, his claims were partially allowed, but those for non-pecuniary damage were dismissed. The applicant lodged a cassation appeal against the Wroclaw Court of Appeal judgment of 11/04/2000 and applied for an exemption from court fees in these proceedings. However, this request was dismissed by the same court on 08/09/2000. As the applicant did not pay the court fees, on 20/09/2000 the Wrocław Court of Appeal rejected his cassation appeal. His interlocutory appeal against this decision was rejected on 17/11/2000, because of non-payment of court fees pertaining to this appeal, even though the applicant had applied for their exemption.

In the Kozłowski case the applicant lodged a civil action seeking to have a notarial deed declared null and void and requested an exemption from court fees. His motion was dismissed by a final decision of 24/10/01 of the Poznań Court of Appeal.

In both cases the European Court found that the judicial authorities failed to secure a proper balance between the interest of the state in collecting court fees and the interests of the applicants in pursuing their civil claims.

Individual measures: The European Court awarded the applicants just satisfaction in respect of non-pecuniary damage. In the Kania case, at the stage of cassation appeal proceedings, the applicant's claims for compensation amounted to 500,000 PLN (approximately EUR 125,000). In the Kozłowski case, the applicant's civil action was related to a property whose value amounted to 1,000,000 PLN (approximately EUR 250,000). As the applicant failed to pay the required court fees, his statement of claim was returned to him on 20/12/2001.

• *Information is awaited on the applicants' current situation in order to assess whether individual measures are necessary.*

General measures:

1) Legislative measures: This case presents similarities to the Kreuz case (judgment of 19/06/01) (Section 6.2), in which measures have been already taken. The Diet adopted a new Act on court costs in civil cases. This law entered into force on 2/03/2006, and brings together in a single text questions of general principle related to the imposition of costs, their amount and procedures for exemption, these questions having previously been determined by different sets of rules (in particular the 1967 Act on court costs and the Civil Code). The new law provides fixed amounts for costs in most court proceedings; previously, the general rule was that costs should be proportional. In addition, they simplify the calculation of proportional costs, which remain applicable in most disputes over assets.

At present, proportional costs are equivalent to 5% of the value of the asset in dispute, with a minimum of 30 PLN and a maximum of 100 000 PLN. The new law also lays down the rules for exemption from costs. Parties to a dispute may be exempted, in whole or in part, by the judge if they make a declaration to the effect that they could not pay them without risking their living or that of their family. Such declarations must be accompanied by a detailed statement of their financial situation. The possibility of exemption is available equally to physical and legal persons as well as organisational entities without legal personality.

2) Other measures: Even though the 2005 Act on Court Costs provides a new scheme for fixing such fees, the rules for exemption remain general. Exemption from such fees depends of the courts' assessment of the individual circumstances of any case. In these two cases, the violations were due to the judicial authorities' assessment of their overall circumstances, which led to refusals of exemption contrary to the requirements of the Convention. In this context, some specific features of these cases should be noted.

In the Kania case, the European Court observed that the Wrocław's Court of Appeal's decision of 08/09/2000 contained no reasons, as no appeal lay against that decision. A similar issue is being examined in the context of the Tabor case (judgment of 27/06/2006, final on 27/09/2006, Section 4.2 of this meeting), in which the applicant's legal aid request was rejected by the second-instance court without invoking any reasons for it. Moreover, in the Kania case the European Court also underlined that there was much at stake for the applicant in the domestic proceedings.

In the Kozłowski case, the European Court noted that the judicial authorities assessed his financial situation solely on the ground that he must haved lived with his wife and shared a household with her, although he had been married under the system of separate ownership and did not indicate where he lived.

• *Considering the specific circumstances in the Kania and Kozłowski cases, information is awaited on publication and dissemination of these two judgments to the competent civil courts.*

The Deputies decided to resume consideration of these items:
1. at their 1013th meeting (3-5 December 2007) (DH), in the light of information to be provided concerning the payment of just satisfaction, if necessary;
2. at the latest at their 1020th meeting (4-6 March 2008) (DH), in the light of information to be provided concerning individual and general measures, in particular the dissemination and publication of the Court's judgment to the authorities concerned.

992 (April 2007) section 4.2

- 11 cases of length of criminal proceedings - Effective remedy
30210/96 Kudła, judgment of 26/10/00 - Grand Chamber and other similar cases
CM/Inf/DH(2004)31

These cases concern the excessive length of criminal proceedings against the applicants, which began between 1990 and 2002 and lasted between 5 years and 3 months and 11 years and 1 month[2] (violations of Article 6§1).

The Kudła case also concerns the excessive length (2 years, 4 months) of the applicant's detention on remand on charges of fraud and forgery (violation of Article 5§3) and the lack of effective remedies to enforce, at national level, the right to a hearing "within a reasonable time" (violation of Article 13).

Individual measures: None. All domestic proceedings have been closed.

General measures:

1) Violation of Article 5§3*:* The case of Kudła presents similarities to those of Trzaska and others against Poland (Section 4.2).

[2] Poland's declaration recognising the right of individual petition (former Article 25 of the Convention) took effect on 1/05/1993.

***2) Violation of Article 6§1**:*

• *Measures taken:*

- Legislative measures:

A number of legislative measures were taken to accelerate criminal proceedings in the framework of the 1997 Code of Criminal Procedure, in particular the most recent amendments which came into effect on 01/07/2003. According to the most important provisions, courts may longer refer cases back to the preliminary proceedings in order to conduct further investigations; increased possibilities of closing criminal proceedings by way of settlement are provided and preparatory proceedings and those concerning several co-defendants are simplified.

- Structural measures to cut the duration of court proceedings and reducing the existing backlog:

Reform of the court system, recruitment of new judges, assessors and judicial assistants (*referendarze sądowi)*, better administrative organisation of courts and case-management, improvement of the efficiency of the activity of court experts and of the execution of judgments, implementation of information technology resources, increase of the courts' budget, etc.

- Supervisory measures:

The Minister of Justice is also involved in analysing the causes of delay in judicial proceedings in the framework of the exercise of its competence of administrative supervision of courts' work.

• *Assessment: the Secretariat is currently assessing the efficiency of these measures.*

***3) Violation of Article 13**:* During the first examination of the Kudła case (732nd meeting, December 2000), the Committee noted the scope of this judgment: for the first time the Court had applied Article 13 of the Convention in order to affirm that contracting states must provide effective domestic remedies to resolve the problem of excessive length of proceedings. The Committee also took note of the fact that the remedies required in this regard by Article 13 could be both compensatory and preventive (§159 of the judgment).

• *Measures taken:*

- Legislative measures:

On 17/06/2004 the Polish Parliament adopted a law on complaints against excessive length of judicial proceedings entered into force on 17/09/2004, which allows those involved in court proceedings to file a complaint concerning the length of their proceedings while those proceedings are still pending. The appellate court may find a violation of Article 6 of the Convention and instruct the lower court to take measures to accelerate the proceedings. The appellate court can also award the complainant compensation of up to 10,000 zlotys (approximately 2,550 euros). On 17/06/2004, the Polish Parliament also adopted an amendment to the Civil Code on 01/09/2004 concerning the civil liability of the State Treasury for actions or omissions of public authorities.

The Polish authorities have provided additional information on the first months of implementation of the new law on effective remedy of 2004 namely until 30/06/2006.

Moreover, it should be noted that on 01/03/2005 the European Court declared inadmissible two Polish test cases concerning the length of judicial proceedings (Charzyński and Michalak), because the applicants had not made applications under a new 2004 law which could have provided them with an effective remedy.

- Other measures:

Publication and wide dissemination of the European Court's judgment in Scordino against Italy (judgment of 29/03/2006), to make magistrates aware of the problem of the amount of just satisfaction for non-pecuniary damage caused by excessive length of proceedings; various training covering the problem of effective remedy, organised in the framework of the newly created National Training Centre for Judges and Prosecutors (created on 04/09/2006).

• *Assessment: the Secretariat is currently assessing the efficiency of these measures.*

Additional information is awaited on the implementation of this remedy, and in particular after 30/06/2007.

The Deputies, 1. adopted Interim Resolution ResDH(2007)28, as it appears in the Volume of Resolutions; 2. decided to resume consideration of these cases at the latest at their second meeting DH of 2008.

992 (April 2007) section 4.2

132 cases of length of proceedings before civil and labour courts (Podbielski group)

These cases concern the excessive length of certain civil proceedings (violations of Article 6§1). In the Lizut-Skwarek and Chyb cases, the European Court also found a violation of the right to an effective remedy (Article 13).
In the Górska, Kroenitz, Krzak and Zynger cases, the European Court found that, having regard to the applicants' age special diligence was required from the Polish authorities in handling the case. Also, in the Durasik, R.P.D., Koblański, Sibilski and Irena Pieniążek cases, the European Court noted that having regard to what was at stake for the applicants (respectively compensation for bad medical treatment in the first two cases, compensation for wrongful conviction and unjustified detention, divorce and protection of personal rights) special diligence was required from the domestic courts in handling them.
As far as the Orzeł, Pachnik and Rychliccy cases are concerned, the Court indicated that the proceedings (which dealt with compensation claims for medical malpractice and in respect of an accident) were of considerable importance for the applicants.
The Lipowicz, Marszał, Mejer and Jałoszyńska, Wiatrzyk and Czech cases concern the excessive length of certain proceedings before labour courts (proceedings in which the applicants sought reinstatement). In all these cases, the European Court noted that the domestic courts should have handled the cases with special diligence, taking into consideration what was at stake for the applicants.
Individual measures: The Polish authorities have provided information on the progress of the proceedings which were still pending when the European Court rendered its judgments (see table above). Moreover, the Polish authorities indicated that measures to accelerate the proceedings (e.g. the cases were placed under the administrative supervision of the president of the court and of the ministry of justice; the president of the competent court was urged by the Ministry of Justice to give priority to the applicants' cases, etc.) had been taken in most of these cases.
• *Information is expected on the acceleration of the proceedings in the Hulewicz case and whether, in the Wyszczelski case, a final judgment has been adopted to close the proceedings brought by the applicant for compensation in respect of a road accident.*
General measures:
1) Structural measures to cut the duration of court proceedings and reducing the existing backlog
• *Measures taken:* The reform of the court system, recruitment of new judges, assessors and judicial assistants (*referendarze sądowi)*, better administrative organisation of courts and case-management, improvement of the efficiency of the activity of court experts and of the execution of judgments, implementation of information technology resources, adoption of special measures to reduce the backlog of certain specific courts (particularly in Warsaw), increase in courts' budget, etc.
2) Supervisory measures: the Minister of Justice is also involved in analysing the causes of delay in judicial proceedings in the framework of the exercise of its competence of administrative supervision of courts' work.
3) Legislative measures: following amendments to the Civil Procedure Code, certain types of court procedures have been simplified. Moreover, a mediation procedure has been made available recently.
4) Publication and wide dissemination of the European Court's judgments: most of these judgments have been published on the Ministry of Justice's website www.ms.gov.pl and sent out to the competent courts.
5) Creation of an effective remedy in case of excessive length of proceedings, information has been provided by the Polish authorities in the context of the examination of the case of Kudła against Poland (see above).
The Marszał case presents also similarities to the Kudła group relating to the excessive length of criminal proceedings (see above).
• *Assessment: the Secretariat is currently assessing these measures.*

The Deputies,
1. adopted Interim Resolution ResDH(2007)28, as it appears in the Volume of Resolutions;
2. décided to resume consideration of these cases at the latest at their second meeting DH of 2008.

997 (June 2007) section 4.2

- 45 cases of length of detention on remand
25792/94 Trzaska, judgment of 11/07/00 and other similar cases

These cases, except the Baranowski case, concern the excessive length of the applicants' detention on remand between 1991 and 2006, given that the grounds relied upon by the domestic courts in support of the detention could not be deemed, as required by the case-law of the European Court, "relevant and sufficient" and since special diligence was not displayed in the conduct of the proceedings (violations of Article 5§3).
The cases of Trzaska, Jabłoński, Iłowiecki and Baranowski also concern the domestic courts' failure to examine promptly the applicants' requests for release between 1993 and 1996 (violations of Article 5§4).
In the cases of Trzaska and Wesołowski, the European Court also found that the proceedings to review the lawfulness of the applicants' detention on remand were not adversarial (violations of Article 5§4).
In the cases of Baranowski and Łatasiewicz, the European Court found that the applicants' detention was irregular in that it was not based on a judicial decision (violations of Article 5§1).
The cases of Jabłoński, Szeloch, Iłowiecki, Kreps and Olstowski also concern the excessive length of the criminal proceedings brought against the applicants (violations of Article 6§1).
The Cabała, Cegłowski, Dzyruk, Gąsiorowski and Góral cases also concern the violation of the applicants' right to correspond with the organs of the Convention (violations of Article 8).
Individual measures:
• *Information provided by the Polish authorities*: In the Olstowski, Iłowiecki and Pasiñski cases, the proceedings were closed respectively on 03/02/2004, 14/09/2004 and 8/03/2007. In the Jarzyński, Kankowski and Krawczak cases the applicants were released on 19/10/2005.
• *Information is awaited concerning the applicant's situation in the Kozłowski and Jaworski cases.*
General measures:
1) Violations of Article 5§3*:*
• *Information provided by the Polish authorities*:
(a) Legislative measures: The grounds for placement and maintenance in detention on remand were modified with the entry into force on 01/09/98 of the new Code of Criminal Procedure. Detention on remand may be ordered if there is a strong probability that the accused has committed an offence and, cumulatively, if there is a risk of his or her absconding, obstructing the proceedings or, in certain cases, re-offending. According to Article 258§2 of the Code of Criminal Procedure, an accused may be detained on remand if he or she risks a long term of imprisonment (if the charges relate to offences punishable by at least 8 years of imprisonment or if a court of first instance sentenced the accused to a minimum of 3 years of imprisonment).
The maximum period of detention on remand before the case is referred to a court is limited to 3 months; in exceptional cases, to 12 months. Before judgment is given, the maximum duration of detention on remand is limited to two years unless the appeal court extends it beyond that limit for any of the reasons set out in Article 263§4 of the Code of Criminal Procedure.
(b) Constitutional Court judgment of 24/07/2006: In this judgment the Constitutional Court found that Article 263§4, of the Code of Criminal Procedure was in contradiction with the Polish Constitution in that it permitted the extension of remand beyond the two-year limit, in the context of investigative procedures, in the case of "insurmountable obstacles". The article was consequently amended on 12/01/2007: it is no longer possible to prolong remand beyond two years for such reasons. This only applies to detention on remand ordered prior to the completion of the preliminary investigation.
(c) Dissemination of the European Court's judgments and courts' practice: On 04/06/2004 the Ministry of Justice sent a letter to all the Presidents of Courts of Appeal together with an analysis of the case-law of the European Court concerning the requirements relating to the reasons for placing and keeping of a person in detention pending trial. It was underlined in particular that the reason evoked in paragraph 2 of Article 258 of the Code of Criminal Procedure cannot justify keeping someone in detention for a long period of time.
Moreover, the Ministry of Justice has sent out circulars, drawing the attention of courts and public prosecutors to the reasoning required for decisions prolonging detention on remand.
In a letter dated 21/03/2006 the Polish authorities provided information on the recent practice of criminal courts concerning the imposition and extension of detention on remand. Out of the 11 appeal courts in the country six have made express reference in their decisions in 26 cases to the case-law of the European Court and also in some cases to the circular sent out by the Ministry of Justice. In most of these cases the courts decided to bring an end to the detention on remand and replace it by some alternative measure of constraint, such as the obligation to report to the police or prohibition on leaving the country. In two other appeal court districts, similar decisions have been handed down in three cases, but without reference to the case-law of the European Court.

The Polish authorities have also provided statistics on the average duration of detention on remand (letters of 10/10/2006 and 10/04/2007).
• *The Secretariat is assessing these measures.*

2) Violation of Article 5§4 *(prompt examination of appeals against detention pending trial*:
• *Information provided by the Polish authorities*: Under the terms of Article 252§3 new Code of Criminal Procedure, any appeal against a preventive measure (including placing and keeping someone in detention pending trial) must be examined promptly. Article 254§1 provides that applications requesting lifting or modification of preventive measures must be decided by a prosecutor at the preliminary investigation stage, or by a judge when the criminal proceedings are at the trial stage, within three days.
• *Assessment: This being the case, no further general measure seems necessary.*

3) Violation of Article 5§4 *(in respect of the lack of fairness of the procedure to review the lawfulness of the applicant's detention on remand)*: The Trzaska case presents similarities to that of Niedbała (judgment of 04/07/2000), closed by Resolution ResDH(2002)124, following a legislative reform of criminal procedures which took effect from 01/09/1998.
• *Assessment: no further general measure seems necessary.*

4) Violation of Article 5§1 *in the* Baranowski and Łatasiewicz cases: in the Baranowski case the European Court found that the domestic practice of keeping someone in detention on the sole basis of a criminal charge was the result of the lack at the material time of any precise rule in national law governing the situation of detainees during judicial proceedings, after expiry of the period of detention fixed by the detention order issued at the investigatory stage. This practice is no longer possible in the light of the provisions of the Code of Criminal Procedure to the effect that any extension of detention must be on the basis of a court decision.
• *Assessment: This being the case, no further general measure seems necessary.*

5) Violations of Article 6§1: The cases present similarities to other cases concerning the length of judicial proceedings before criminal courts (see Kudła , judgment of 26/10/00, Interim Resolution CM/ResDH/(2007)28, 992nd meeting, April 2007, Section 4.2).

6) Violation of Article 8: The Cabała, Cegłowski, Dzyruk, Gąsiorowski and Góral cases also present similarities to that of Klamecki No. 2 (judgment of 3/04/2003, (Section 4.2).

7) Publication of the judgments of the European Court*:* The judgments in the cases of Trzaska, Baranowski, Chodecki, Goral and Iłowiecki were published in the *Bulletin of the Council of Europe Information Centre* and disseminated to the competent authorities.
The Olstowski and Chodecki judgments were also published on the Internet site of the Ministry of Justice, www.ms.gov.pl.

The Deputies, 1. adopted Interim Resolution CM/ResDH(2007)75, as it appears in the Volume of Resolutions; 2. recalled that the general measures concerning violations of Articles 5§1 and 5§4 in the Baranowski case have been taken; 3. decided to resume consideration of the Baranowski case at their 1007th meeting (15-17 October 2007) (DH), in the light of a draft final resolution to be prepared by the Secretariat; 4. decided to resume consideration of the other cases at their 1007th meeting (15-17 October 2007) (DH) in the light of information to be provided concerning payment of just satisfaction, if necessary, and at the latest in one year to supervise individual measures, if appropriate, and general measures.

997 (June 2007) section 4.2

22860/02 Woś, judgment of 08/06/2006, final on 08/09/2006
The case concerns a violation of the applicants right of access to a court (violation of Article 6.1) in the context of his appeal before the Polish-German Reconciliation Foundation under the "first compensation scheme", set up to compensate victims of nazi persecution.
The "first compensation scheme" was set up under an agreement of 16/10/1991 between Poland and the Federal Republic of Germany. Under the scheme, in November 1991, the Polish government set up the foundation mentioned above, the remit of which was to compensate victims of nazi persecution from funds paid by the government of the Federal Republic of Germany. The "second compensation scheme" was established under joint statement of 17/07/2000 between a number of countries, including Poland, the Federal Republic of Germany, the United States and Israel.
Under the first compensation scheme, in February 1994, the Foundation's Verification Commission (*Komisja Weryfikacyjna*) awarded the applicant compensation for forced labour performed between 1941 and 1945. As that decision did not take account of the fact that he had been deported, the applicant appealed to the Appeal Verification Commission (*Odwalawcza Komisja Werfikacyjna*), which

dismissed his appeal. In 1999 the Foundation's Management Board (*Zarzad Fundacji*) adopted Resolution 29/99 laying down that compensation was payable only to forced labourers who had been deported, with the exception of persons who had been subjected to forced labour before the age of 16 (in February 1944). Subsequently, in March 2000, the applicant obtained additional compensation, but only in respect of forced labour performed before he had reached that age, the Foundation having taken the view that the deportation criteria were not met in his case. The applicant challenged this decision to no avail before the Appeal Verification Commission and the Supreme Administrative Court. The Supreme Administrative Court ruled that the administrative courts did not have jurisdiction to review such decisions. In addition, under the Supreme Court's case-law, which was that the Foundation was not a public authority and that the right to awards by the Foundation was not a civil-law matter, the national courts were not competent to deal with entitlement claims.
The European Court held that, in the particular circumstances of the case, the Foundation's actions in respect of both compensation schemes engaged the responsibility of the Polish state (regard being had in particular to the manner in which the Foundation's management bodies had been set up) and that the right to apply to the Foundation for compensation for nazi persecution was a civil right for purposes of Article 6.1 of the Convention.
It held that the Foundation's decision-making bodies, the Verification Commission and Appeal Verification Commission, could not be regarded as tribunals for purposes of Article 6.1 in view, in particular, of the fact that their members were appointed and dismissed by the Foundation's Management Board and Supervisory Board respectively. In addition, by ruling out all judicial review of these boards' decisions in individual cases, the domestic courts had left the applicant with no possibility of having them reviewed by a "tribunal".
Individual measures: In 2001 the applicant unsuccessfully applied to the Foundation for compensation under the scheme dealing with forced or slave labour (the "second compensation scheme"). He did not appeal to the Appeal Verification Commission and his complaints concerning those proceedings were rejected by the European Court on the ground of non-exhaustion of domestic remedies (admissibility decision of 1/03/2005).
The European Court awarded the applicant just satisfaction in respect of non-material damage.
Although the Polish authorities have provided information about the general measures taken to guarantee access to a court in cases similar to the applicant's (see above), it has not yet been shown that the applicant's claims might be examined by a tribunal for the time being.
• *Information is awaited on the applicant's present circumstances, particularly whether he may have the complaints he made in the proceedings under the first compensation scheme examined by a "tribunal".*
General measures:
• *Information provided by the Polish authorities*:
1) Publication and dissemination of the judgment of the European Court: The judgment has been published on the website of the Ministry of Justice www.ms.gov.pl and in the *Bulletin of the Warsaw Information Office of the Council of Europe* (No. 2006/III), with a commentary. It has been also sent out to the Presidents of courts of appeal.
2) Cessation of payments: On 7/06/2006 the Foundation ceased paying compensation under the first compensation scheme under its Resolution 29/2002, the funds from the German government having been exhausted. The second compensation scheme ceased operation on 30/09/2006, the last payments under this scheme being exceptionally made until 30/12/2006. It is no longer possible to receive payments from either of the compensation schemes.
3) Complaints brought under domestic legislation: The Polish Constitutional Court is currently examining a complaint lodged by a certain Stanisław K., supported by the Polish Ombudsman, according to which certain provisions of the laws governing the competence of administrative courts and their rules of procedure are contrary to Article 45§1 of the Polish Constitution, which guarantees the right of access to a court. These provisions exclude decisions of the Polish-German Reconciliation Foundation from the competence of administrative courts, even though they are in general empowered to control the acts of administrative authorities. The Constitutional Court will soon deliver a decision on the admissibility of this complaint.
Secondly, the Polish Ombudsman has referred a question on points of law (*zapytanie prawne*) to the Supreme Court as to whether final decisions of the authorities of the Polish-German Reconciliation Foundation concerning financial assistance may be subject to judicial review by ordinary courts. In this respect the Ombudsman invoked the judgment of European Court delivered in this case and the Recommendation Rec(2000)2 of the Committee of Ministers to member states on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights.

Thirdly, on 12/02/2007 the public prosecutor brought a civil action before the Warsaw Regional Court on behalf of Ms. Walentyna B., contesting a refusal to award financial compensation under the second compensation scheme. These proceedings were instituted on the basis of the provisions of Code of Civil Procedure allowing the public prosecutor to bring action where it is necessary for the protection of the rule of law, citizens' rights and social interest.
Information is awaited on the follow-up to these actions brought under of domestic law.

The Deputies decided to resume consideration of this item at the latest at the 1013th (3-5 December 2007) (DH), in the light of further information to be provided on individual measures, namely the applicant's current situation, as well as general measures.

1007 (October 2007) section 5.3

41187/02 Szwagrun-Baurycza, judgment of 24/10/2006, final on 24/01/2007
This case concerns the denial of effective access to court (violation of Article 6§1).
In 1975 the applicant's parents brought civil proceedings in order to obtain a declaration that they had acquired ownership of a plot of land by prescription. The proceedings were stayed in 1976 on the grounds that the applicant's parents had failed to provide the addresses of all the persons potentially concerned, of whom there were 38. This number subsequently increased to about 50 owing to the appearance of these persons' successors. The applicant inherited her parents' estate in 1977. Being unable to identify these persons, she requested the court to publish a press notice summoning them. In September 1993, the Ostrów Wielkopolski District Court ordered the publication of the press notice and decided to appoint a court officer *(curator absenti)* to represent persons whose addresses were unknown. In spite of this, in 1997, the court again repeatedly instructed the applicant to indicate the addresses of the persons potentially affected by the proceedings. As she was unable to do so, the proceedings were stayed on consecutive occasions in 1999 and 2000, and finally discontinued in 2005.
The European Court found that as a result of the domestic courts' persistent refusal to resume the proceedings, the applicant had been deprived of effective access to court. It noted that the domestic courts had given no decision on the merits although the proceedings had lasted more than 30 years. Despite the fact that the applicant had requested the courts' assistance in order to be able to indicate the addresses of persons potentially affected by the proceedings, the courts had insisted that she do it herself.
Individual measures: The European Court awarded the applicant just satisfaction for the moral damage suffered.
The last court decision on the stay of the proceedings became final following a decision of 21/09/2005 rejecting the applicant's appeal on procedural grounds. The applicant had failed to comply with an order to pay a court fee (PLN 160, approximately 40 euros) and to submit 26 copies of her appeal.
• *Information provided by the Polish authorities (letter of 18/05/2007):* The applicant may still resume the domestic proceedings by lodging a new request for the acquisition of ownership by prescription, as her case has not been decided on the merits yet and does not have the effect of *res iudicata.* She should however take steps to identify the persons potentially concerned by the proceedings. On the grounds of the 1974 Act on Registration and Identity Cards she may submit to the relevant municipal authorities a request for the disclosure of the addresses of certain persons. If that has been uneffective, the competent court will have to take necessary steps, including publishing a press notice.
• *Assessment: in these circumstances, no further individual measure appears necessary.*
General measures: The European Court noted that the statutory requirement to establish the identities and addresses of persons potentially affected by the outcome of a civil case was not *per se* contrary to the Convention. In the instant case, however, the violation of Article 6§1 arose from the poor application of these provisions by the domestic courts, which, in particular, did not make proper use of the publication of a press notice or the appointment of a *curator absenti.*
Given the direct effect of the Convention in Poland, publishing the European Court's judgment on the website of the Ministry of Justice and widely circulating it to the civil courts, together with a circular, are sufficient to prevent further similar violations.
• *Information is awaited on this point.*

The Deputies decided to resume consideration of this item at the latest at their 1028th meeting (3-5 June 2008) (DH), in the light of information to be provided on general measures, namely the publication and dissemination of the European Court's judgment.

1007 (October 2007) section 2

8932/05 Siałkowska, judgment of 22/03/2007, final on 09/07/2007
59519/00 Staroszczyk, judgment of 22/03/2007, final on 09/07/2007

These cases concern violations of the applicants' right of access to a court due to the refusal of their lawyers appointed ex officio to assist them in filing and lodging a appeals on points of law, thus effectively depriving them of access to the Supreme Court (violations of Article 6§1).

In the Siałkowska case, in December 2004 the applicant's lawyer met her three days before the expiry of the time-limit for appeal and then wrote explaining that in his opinion such an appeal did not offer reasonable prospects. In the Staroszczyk case the lawyer was unreachable for almost seven months after the appellate court's judgment had been delivered. Eventually, in January 2000, he informed the applicants that there were no grounds for filing a cassation appeal.

The European Court emphasised the importance of an effective, functioning legal profession to provide a fair administration of justice. However, when examining the circumstances of these cases, it had regard to the specific features of the Polish legal aid system and observed that the refusal of legal aid by a lawyer should meet certain conditions. In this respect the applicable regulations laid down no time-limit for lawyers to inform clients of their intention not to submit an appeal, nor did they oblige lawyers to prepare legal opinions on the prospects of appeals.

Consequently, in the first case the short time left for the applicant to prepare an appeal on point of law deprived her of a realistic opportunity of having the case brought before the Court of cassation. In the second case the absence of a refusal in written form left the applicants without the information they needed concerning their legal situation and the chances of having their appeal accepted by the Supreme Court. **Individual measures**: In both cases the European Court awarded the applicants just satisfaction in respect of non-pecuniary damage. In the first case the domestic proceedings concerned the applicant's claim for a widow's pension from the social insurance authority. It was dismissed by a final judgment of the Wrocław Court of Appeal of 02/09/2004. In the second case, the applicants brought an action against the State Treasury concerning the allocation of a plot in the context of expropriation proceedings. Their claims were dismissed on 25/05/21999 by a final judgment of the Warsaw Regional Court.

• *Information is awaited on the applicants' situation so as to assess whether individual measures are necessary.*

General measures: Both violations resulted from deficiencies in the Polish legal aid system.

In this respect the European Court noted, among others things, that in its judgment of 31/03/2005 the Polish Constitutional Court had observed that the applicable law at the material time on the admissibility conditions for appeals on points of law had given rise to serious interpretational difficulties and discrepancies in the case-law of Polish courts (§§ 50 and 135 of the Staroszczyk judgment).

• *Information is awaited on measures envisaged or already taken to prevent new, similar violations. In any event, publication of the European Court's judgment and its dissemination to competent courts and the Bar would be useful, at least as a provisional measure.*

The Deputies decided to resume consideration of these items:
1. at their 1013th meeting (3-5 December 2007) (DH), in the light of information to be provided concerning the payment of just satisfaction, if necessary;
2. at the latest at their 1020th meeting (4-6 March 2008) (DH), in the light of information to be provided concerning individual and general measures, in particular the dissemination and publication of the Court's judgments to the authorities concerned.

1007 (October 2007) section 4.2

42049/98 Związek Nauczycielstwa Polskiego, judgment of 21/10/2004, final on 02/02/2005

This case concerns the violation of the right of access to court (violation of Article 6§1). In 1964, the applicant, a Polish association, was given an expropriated property. On the basis of the provisions of the Law of 1989 on Relations between the State and the Catholic Church in Poland, the Warsaw Property Commission ordered the applicant to return the property to its former owner, a religious association, in return for a sum in compensation which did not cover all the outlays for the maintenance and renovation incurred by the applicant during 25 years of use of the property. The Property Commission declared itself incompetent to examine the claims of the applicant association, so the applicant filed an action against the State Treasury claiming the outstanding expenses. Following an interpretation of the law given by the Polish Supreme Court, this action was dismissed by a final judgment of the Rzeszów Court of Appeal of 05/12/1996 on the grounds that the 1989 law had

established a mechanism for resolving disputes through the Commission, excluding any judicial competence as a matter of principle, particularly as the State Treasury was no longer the owner of the property. The Supreme Court thus excluded any possibility for the applicant to bring an action before a court in this case, either against the State Treasury or the religious association.
The European Court concluded that restricting access to a court was disproportionate, particularly considering what was at stake for the applicant.
Individual measures:
• *Information provided by the Polish authorities*: The applicant association might still bring an action against the religious association which is the current owner of the property under Article 226 of the Civil Code. According to this provision, the holder of a property may ask the owner to reimburse maintenance costs after the property has been returned.
According to the Polish authorities, despite the judicial decisions already delivered, this appeal was still available. First of all, the judgment of the Rzeszów Court of Appeal of 05/12/1996 did not concern the merits of the case and secondly, according to Article 390§2 of the Code of Civil Procedure, a resolution on a legal question by the Supreme Court is binding only on the parties to the case (the action against the State Treasury in this case). The Polish courts had committed an error in dismissing the applicant's action. This mistake was linked to that of the Warsaw Property Commission, which had wrongly ordered the Public Treasury to reimburse the maintenance and renovation costs to the applicant.
It should be noted that on the basis of Article 229 of the Civil Code, the claims of previous owners of the property concerning maintenance costs are barred one year after the return of the property to its owner. Following the Property Commission's decision, the applicant returned the property to the religious association on 10/11/92 and 31/03/93. Therefore its claims have already been barred.
However, the government underlines that the barring by limitation does not have to be taken into consideration *ex officio* by the judge and that in this case it could be invoked by the defendant, i.e. the current owner of the property. If that was the case, the judge could still reject this exception as incompatible with the principle of "common life in society", as set out in Article 5 of the Civil Code.
• *Information provided by the applicant association (letter of 25/06/2007)*: According to the applicant association, a re-examination of its claims should be allowed following the European Court's judgment.
After the judgment was delivered, the applicant association lodged a motion to reopen the domestic proceedings on the basis of Articles 399 and 401 of the Code of Civil Procedure. On 15/04/2005 the Supreme Court declared this motion inadmissible, not being provided by law (see also the case of Podbielski and PPU Polpure, judgment of 26/07/2005, final on 30/11/2005; Section 4.1).
The applicant association subsequently lodged an action against the State Treasury for payment of compensation for remaining expenses. These proceedings are pending (information also confirmed by the authorities).
According to the applicant association, an action against the current owner of the property would be unsuccessful because the matter is time-barred. It is rather improbable that the judge would reject this objection, on the basis of Article 5 of the Civil Code, which is accepted in practice mainly in labour law cases.
• *Information is awaited on the state and scope of the proceedings instituted by the applicant association against the State Treasury.*
• *Bilateral contacts are under way in order to assess the necessity of taking individual measures.*
General measures
• *Measures taken:* The judgment of the European Court was published on the website of the Ministry of Justice www.ms.gov.pl and sent out to the judges of the Civil Chamber of the Supreme Court.
Information is awaited on the dissemination of the judgment to civil courts.

The Deputies decided to resume consideration of this item at their 1020th meeting (4-6 March 2008) (DH), in the light of the outcome of bilateral contacts on individual measures as well as further information to be provided concerning the situation of the applicant and general measures, namely the dissemination of the European Court's judgment.

1007 (October 2007) section 2

63131/00 Gębura, judgment of 06/03/2007, final on 06/06/2007
The case concerns the unlawfulness of the applicant's continued detention after a final decision ordering his conditional release in April 2000 (violation of Article 5§1).
The European Court found that the delay of more than 48 hours in implementing the decision of the Cracow Court of Appeal to release the applicant conditionally, was not justified.

Individual measures: None. The applicant was released on 14/04/2000. The European Court has awarded him just satisfaction in respect of the non-pecuniary damage sustained.
General measures: The European Court noted that the administrative formalities related to the applicant's release could and should have been carried out more swiftly. It also recalled that the right to liberty imposes on the authorities a duty to do away with organisational shortcomings attributable to the state, which may occasion unjustified deprivation of liberty (§ 35).
Given the direct effect of the Convention in Poland and the isolated character of his case, the publication of the European Court's judgment on the internet site of the Ministry of Justice and its dissemination, together with a circular, to competent criminal courts and prison authorities seem sufficient to prevent new, similar violations.
• *Information is thus awaited in this respect*.

The Deputies decided to resume consideration of these items:
1. at their 1013th meeting (3-5 December 2007) (DH), in the light of information to be provided concerning the payment of just satisfaction, if necessary;
2. at the latest at their 1028th meeting (3 5 June 2008) (DH), in the light of information to be provided concerning general measures, namely the dissemination and publication of the Court's judgment to the authorities concerned.

997 (June 2007) section 4.1

34049/96 Zwierzyński, judgment of 19/06/2001, final on 19/09/2001 and of 02/07/2002, final on 06/11/2002 (Article 41)[3]

The case concerns the excessive length of certain civil proceedings lodged by the State Treasury in 1992 and aiming at acquisition through adverse possession of title to some property illegally expropriated in 1952, at which time the registered owner of the building was the applicant's father. When the European Court delivered its judgment, the case was still pending before the Lomza district Court and had already lasted, within the meaning of the Convention, 8 years and 1 month (violation of Article 6§1).
The European Court also found an infringement of the applicant's right to the peaceful enjoyment of his possessions in particular due to the fact that the state organs continued to occupy the building at issue in spite of an administrative decision retrospectively restoring the title to the property to the applicant's father, and brought directly or implicitly court proceedings, without any reason of "public interest", which have resulted in the postponement of the restitution of the property (violation of Article 1 of Protocol No. 1).
Individual measures: The proceedings for acquisition through adverse possession of title of the building at issue, at the origin of the violation of Article 6§1, ended on 21/09/2001, when the Lomza district Court dismissed the Treasury's action.
Under Article 41 of the Convention, the European Court decided that the respondent state had to restore the property to the applicant within three months from the date at which the judgment became final. Failing such restitution, the state had to pay the applicant, within the same time-limit, a sum of money corresponding to the value of the building (60 500 euros). Moreover, the state had to pay, within the same time-limit, 100 000 euros for the pecuniary damage caused by the disuse of the property. The time-limit expired on 06/02/2003.
In 2002, the Polish delegation informed the Committee that the government had taken steps to return the building at issue to the applicant, who refused it however, preferring to be paid the pecuniary damage afforded by the Court. A notarised deed has been drawn up to this effect.
Moreover, the Polish government twice requested the revision of the European Court's judgments (on the merits and on Article 41), due to the fact that proceedings had been lodged before the national courts by third persons to contest the property right of the applicant's father to the building at issue at the time of the expropriation. The government's requests for revision were rejected by the European Court on 22/01/2003 and 24/06/2003.
A final judgment had been rendered by the domestic courts in November 2003, ruling that the property at issue had not constituted a part of the succession after the applicant's parents. Deducing from this that the applicant cannot be considered as the owner of the property, the delegation concluded that he is not entitled to the restitution of the property or to compensation and asked the Committee of Ministers to postpone the examination of the case until the outcome of the new revision procedure that the authorities envisaged to open.

[3] This case also appears in Section 3.b

A third request for revision, submitted to the European Court on this ground on 19/01/2004, was rejected on 28/01/2005. On 22/04/2005, the Polish government submitted to the European Court additional observations for the reconsideration of this revision request.
The Polish authorities have also asked the Committee of Ministers to adjourn the discussion of the case until the European Court's position will be clearly and comprehensively reconsidered.
• *Latest developments*: the government's request of 22/04/2005 was rejected by the European Court by a final judgment of 06/03/2007. The Court recalled that the modalities of restoring the property in question and payment of the amounts awarded in the judgment under Article 41 (of 02/07/2002) are exclusively within the competence of the Ministers' Deputies (§22 of the judgment of 06/03/2007).
General measures:
1) Violation of Article 6§1: the case presents similarities to the other cases relating to the excessive length of civil proceedings (including Podbielski, Section 4.2 at the 992nd meeting, April 2007).
2) Violation of Article 1 of Protocol No. 1: The judgment of the European Court was communicated to the Ministry of Justice for dissemination to courts, and to the Ministry of Internal Affairs for dissemination, in particular to the police. It has also been distributed to judges and prosecutors.
Moreover, the judgment was published in the Bulletin of the Council of Europe Information Office in Warsaw, as well as on its Internet website.

The Deputies,
1. took note of the Court's judgment of 6 March 2007, by which it rejected the fourth request of the Polish Government for revision of the judgment on the merits, as well as that on the application of Article 41;
2. took note also of the Polish authorities' intention to request the referral of the judgment of 6 March 2007 to the Grand Chamber, as well as of their request addressed to the Committee of Ministers to postpone for the last time the examination of this case, awaiting the decision of the panel of five judges,
3. agreed to resume consideration of this case at the latest at their 1013th meeting (3-5 December 2007) (DH) in the light of the decision of the Grand Chamber, with a view to continuing the normal examination of the execution of this case.

997 (June 2007) section 5.3

38797/03 Ambruszkiewicz, arrêt du 04/05/2006, définitif le 23/10/2006
This case concerns the irregularity of the applicant's detention on remand (violation of Article 5§1).
In 2002, the applicant was suspected of having made false accusations against certain police officers and local magistrates. At a hearing before the District Court of Szczecinek in May 2003, the judge remanded him in custody for three months for having obstructed the proceedings and for failing to appear following an interruption of the hearing.
The European Court concluded that the authorities advanced no essential argument (i.e. the complexity of the case or the seriousness of the sentence the applicant would face if convicted) allowing it to be supposed that the applicant might actually obstruct the proceedings. In addition, the authorities had not considered the use of alternative means of constraint (having the police return the applicant to court, liberation on bail, police supervision). The Court thus concluded that the detention, although provided by law, was arbitrary.
Individual measures: The applicant was freed on 23/07/2003. The European court awarded him just satisfaction in respect of the non-pecuniary damage sustained.
• *Assessment: this being the case, no further individual measure seems necessary.*
General measures: Given the direct effect of the convention in Poland, the publication of the European Court's judgment on the internet site of the Ministry of Justice and its diffusion, together with a circular, to criminal courts seem sufficient to prevent new, similar violations.
• *Information is thus awaited in this respect*.

The Deputies decided to resume consideration of this item at the latest at their 1013th meeting (3-5 December 2007) (DH), in the light of information to be provided concerning general measures, namely publication and dissemination of the European Court's judgment.

997 (June 2007) section 4.2

54723/00 Brudnicka and others, judgment of 03/03/2005, final on 03/06/2005
This case concerns the lack of independence and impartiality of the Maritime Disputes Appeals Chamber in proceedings brought in 1993 to determine the cause of a shipwreck in which relatives of

the applicants had died (violation of Article 6§1). These proceedings resulted on 26/01/99 in a final decision by the Gdańsk Maritime Disputes Appeals Chamber, attributing responsibility to the crew on account its failure to exercise due diligence in that there was no coordination in the conduct of operations.
The European Court found that Polish law provided in principle no form of judicial review of the decisions delivered by maritime disputes chambers and that, as the presidents and vice-presidents of these chambers were appointed and removed from office by the Minister of Justice with the agreement of the Minister for Maritime Affairs, the relationship between them and the ministers was one of hierarchical subordination. It his concluded that a maritime disputes chamber as constituted under Polish law could not be regarded as an impartial court capable of ensuring compliance with the principles of fairness set out in Article 6 of the Convention.
Individual measures:
• *Information provided by the Polish authorities*: The applicants may bring actions in compensation for pecuniary and non-pecuniary damages before the ordinary courts on the basis of Articles 415 *et seq.* of the Civil Code. Lodging such application will oblige the judge to examine the question of the crew members' liability. Accordingly, seven cases arising out of this shipwreck, brought by the families of the crew members, are currently pending before the Szczecin Regional Court.
• *Information is awaited concerning the state of these proceedings.*
General measures: In its judgment, the European Court noted that Polish legislation on maritime disputes chambers has been amended recently, but the new legislation did not provide a right of appeal on points of law against a decision given by a maritime disputes appeal chamber, nor does it alter the procedure for appointing or removing from office the president and vice president of maritime disputes chambers.
• *Information provided by the Polish authorities*:
Legislative modifications are envisaged. According to the Ministry of Transport and Construction, they cannot be adopted until new European Union legislation concerning maritime transport accident investigations has been adopted. These modifications will guarantee Presidents and Vice-Presidents the same security of tenure as that enjoyed by ordinary judges and will introduce the possibility of judicial review (new proceedings or a normal appeal) of all Maritime Chamber decisions. The Ministry of Transport and Construction is currently holding consultations on these matters with the principal actors and experts.
The legislative work entails the adoption of a new law on maritime courts and the amendment of the Sea Code, the Maritime Safety Law and the Law on Ordinary Courts. The new legislation should be adopted before the end of July 2007.
• *Information is expected on the development of these reforms.*

The Deputies decided to resume consideration of this item at the latest at their 1013th meeting (3-5 December 2007) (DH), in the light of information to be provided concerning individual and general measures, in particular progress achieved with the announced legislative reform.

997 (June 2007) section 5.3

43425/98 Skałka, arrêt du 27/05/03, définitif le 27/08/03, rectifié le 16/09/03
The case concerns the criminal conviction (in 1995) of the applicant to 8 months' imprisonment for "insulting a state authority", an offence defined under Article 237 of the 1969 Criminal Code which was in force at the material time. The European Court found this sanction to be disproportionate with the offence committed by the applicant who, while serving a prison sentence, wrote an insulting letter to the Penitentiary Division of the Regional Court – a letter which was not made public and in which the applicant expressed his anger and frustration, yet made no concrete complaints (violation of Article 10).
Individual measures:
• *Information provided by the Polish authorities*: Under Article 540§3 of the Code of Criminal Procedure, the applicant may request the reopening of the criminal proceedings brought against him, by invoking the violation of the Convention found by the European Court.
• *Evaluation*: *no other individual measure appears necessary.*
General measures:
• *Measures taken:*
The judgment of the European Court has been published on the internet site of the Ministry of Justice www.ms.gov.pl.
• *Information is awaited on its dissemination to criminal courts.*

The Deputies decided to resume consideration of this item at the latest at their 1013th meeting (3-5 December 2007) (DH), in the light of information to be provided concerning general measures, namely the dissemination of the European Court's judgment.

997 (June 2007) section 5.3

43797/98 Malisiewicz-Gąsior, arrêt du 06/04/2006, définitif le 06/07/2006
The case concerns a violation of the applicant's freedom of expression (violation of Article 10). In June 1992, Andrzej Kern, at the time Deputy Speaker of the Diet, laid a complaint before the public prosecutor against the applicant, whom he suspected of having kidnapped his daughter. The applicant was placed in custody – for some days in a "psychiatric" cell – and her apartment was searched by the police. In September 1992 the prosecutor abandoned the prosecution, realising that the kidnapping accusation was unfounded.
In 1993, the applicant presented herself as an independent candidate in the general election. During the election campaign, in two press articles, she accused Mr Kern of having abused his powers. These accusations were also broadcast on local television and radio. The applicant was prosecuted for defamation. At appeal she was sentenced on 18/11/97 to a year's suspended prison term, to pay for the publication of the judgment against her in a national daily newspaper, to issue a pubic apology to Mr Kern in a weekly journal and to pay 480 PLN (about 100 euros) in court costs and 90 PLN (about 20 euros) to the Treasury.
On 01/12/2000, the Supreme Court dismissed the appeal on points of law introduced by the Ombudsman on the applicant's behalf.
The European Court considered that the allegations of abuse of power uttered by the applicant did not constitute a gratuitous personal attack but were rather part of the pubic debate, and that criticism of a politician in a lively political debate could not justify a custodial sentence. Thus the breach of the applicant's freedom of expression was not "necessary in a democratic society".
Individual measures: Although the applicant did not present her apologies to Mr Kern, the Skierniewice District Court decided on 23/10/2000 not to enforce the custodial sentence (§§ 42-43 of the judgment of the European Court). On the grounds of Article 76§1 of the Criminal Code, her conviction was automatically removed from her criminal record on 18/05/2001.
The European Court awarded the applicant just satisfaction in respect of the non-pecuniary damage sustained. The applicant made no request in respect of pecuniary damage.
Under Article 540§3 of the Code of Criminal Procedure, the applicant may apply to gave the criminal proceedings reopened invoking the finding of a violation by the European Court (see the Skałka cse, judgment of 27/05/03, final on 27/08/03, Section 5.3).
• *Assessment*: *in these circumstances, no other individual measure appears necessary*.
General measures: Given the direct effect of the Convention in Poland, it would seem sufficient to prevent new, similar violations to publish the European Court's judgment on the internet site of the Ministry of Justice and to send it out under cover of a circular to criminal courts and to the Justices of the Supreme Court.
• *Information provided by the Polish authorities (letter of 28/11/2006)*: The Justices of the Supreme Court may inform themselves of the European Court's judgment through the *Review of the European Judicature in Criminal Cases* (*Przegląd Orzecznictwa Europejskiego dotyczącego Spraw Karnych),* No. 1-2/2006, which may be found on that court's Intranet website.
• *Information is awaited on the publication of the European Court's judgment on the Internet site of the Ministry of Justice and its dissemination to criminal courts.*

The Deputies decided to resume consideration of this item at the latest at their 1013th meeting (3-5 December 2007) (DH), in the light of further information to be provided concerning general measures, namely the publication and dissemination of the European Court's judgment.

997 (June 2007) section 2

18235/02 Dąbrowski, arrêt du 19/12/2006, définitif le 19/03/2007
51744/99 Kwiecień, arrêt du 09/01/2007, définitif le 09/04/2007
18235/02 Dąbrowski, judgment of 19/12/2006, final on 19/03/2007
51744/99 Kwiecień, judgment of 09/01/2007, final on 09/04/2007
These cases concern the violation of the applicants' right of freedom of expression (violations of Article 10).

In the Dąbrowski case the applicant, a journalist, was convicted of criminal defamation for having published articles about the Deputy Mayor of Ostróda.
In the Kwiecień case, a civil court found against the applicant in October 1998 under the Law on Local Elections in proceedings brought by Mr S. L., Head of the Dzierżoniów District Office, for having sent out, the previous month, just before local elections, an open letter in which the applicant alleged that Mr S. L. had been incompetent and had broken the law in the exercise of his professional functions, and calling on him to withdraw his candidature.
In the both these cases the European Court concluded that the findings of the national courts, particularly in view of the penalties imposed, were not "necessary in a democratic society". Accordingly, in the Dąbrowski case, it noted that the applicant had been found guilty of an offence, and that this verdict potentially threatened the freedom of the press to contribute to the public debate on questions of community interest. In the Kwiecień case, the Court considered that the national courts had not given sufficient reason for awarding maximum damages against the applicant.
Individual measures:
1) Dąbrowski case: By a judgment of 7/11/2000, upheld at appeal by the Olsztyn Regional Court on 18/10/2001, the criminal proceedings against the applicant were conditionally discontinued and he was ordered to pay 1000 PLN to a charity and 300 PLN in costs to the prosecution (in all, a total of approximately 330 euros).
The European Court awarded the applicant just satisfaction in respect of the non-pecuniary and pecuniary damage sustained, not least to cover the pecuniary penalty imposed.
In addition, under Article 540§3 of the Code of Criminal Procedure, the applicant may apply for the reopening of the criminal proceedings against him on the grounds of the finding of the European Court (See the Skałka case, judgment of 27/05/03, final on 27/08/05, in Section 5.3).
2) Kwiecień case: The applicant was ordered to withdraw his accusations and apologise. He was also ordered to pay 10 000 PLN to Mr S. L. in non-pecuniary damages, 10 000 PLN to a charity and 1500 PLN costs before the appeal court.
The European Court awarded the applicant just satisfaction in respect of the non-pecuniary and pecuniary damage sustained, not least to cover the damages which he had been ordered to pay.
• *Reopening of domestic proceedings*: In 1999 the applicant applied to have the proceedings reopened, but in vain. Following an appeal lodged by the applicant, the Constitutional Court delivered a decision on 13/05/2001 finding that Article 72§3 of the Law on Local Elections was unconstitutional in that it prevented the reopening of the domestic proceedings in question. The applicant asked for an interpretation of this decision, and on 14/04/2004 the Constitutional Court confirmed that proceedings closed by a decision (*postanowienie*) rendered on the basis of a legal disposition which had been declared unconstitutional could be reopened.
• *Information is awaited on the applicants' present situation: in Dąbrowski concerning the applicant's criminal record and in Kwiecień as to whether the applicant has lodged any further requests to have the proceedings reopened.*
General measures: In both of these cases the violations found arise from the failure of domestic courts to take account in their practice of the criteria flowing from the Convention and the European court's case-law concerning the right of freedom of expression, in particular through not adequately examining the evidence submitted by the applicants and by giving insufficient reasons for decisions of some gravity against them.
In the Kwiecień case in particular, the finding against the applicant was based on a specific provision, i.e. Article 72 of the 1998 Law on Local Elections, which was amended in July 2002 specifically to repeal the provision making it possible to order the payment of damages (§28 of the judgment). The European Court also noted moreover that the case-law of certain national courts concerning the application of this provision had evolved (§§30-31).
• *Information is awaited concerning:*
- the publication and broad dissemination of the two judgments to relevant courts;
- the legal provisions currently in force regarding summary procedures in the context of local election campaigns;
- recent internal case-law concerning these provisions;
- other measures taken or envisaged to prevent new, similar violations.

The Deputies decided to resume consideration of these items:
1. at their 1007th meeting (15-17 October 2007) (DH), in the light of information to be provided 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 on individual and general measures.

997 (June 2007) section 5.1

25196/94 Iwánczuk, arrêt du 15/11/01, définitif le 15/02/02
The case concerns the infliction of degrading treatment on the applicant while detained on remand in Wroclaw prison, in that, on 19/09/1993, he was ordered without justification to strip naked in front of a group of prison guards and was verbally abused by them (violation of Article 3).
The case also concerns unjustified delays before releasing the applicant on bail (violation of Article 5§3) and the excessive length of criminal proceedings (8½ years), which were still pending when the European Court gave judgment (violation of Article 6§1).
Individual measures: The domestic proceedings have ended. By a decision of 13/05/2005 the applicant's appeal on a point of law against the second-instance judgment was dismissed.
• *Assessment*: *no other individual measure appears necessary.*
General measures:
1) Violation of Article 3
• *Information provided by the Polish authorities*: On 31/10/2003 the Minister of Justice adopted new regulations on safety in penitentiary establishments, which were amended on 29/03/2007 (amendment in force on 01/06/2007). Article 94 of these regulations, concerning searches, henceforth only concerns "cursory searches", the term "body search" being deleted. The paragraph contains a list of situations in which detainees may be subjected to search, including where it is justified for the protection of order or security.
The Polish authorities also indicated that Polish law did provide a guarantee against the abuse of body searches: according to Article 116§2 of the Criminal Enforcement Proceedings Code a body search may be carried out when it is necessary for the protection of order or security.
• *Assessment*: *no further general measure seems necessary*.
2) Violation of Article 6§1: the present case presents similarities to the Kudła case (judgment of 26/10/2000, Interim Resolution CM/ResDH(2007)28 last examination at the 992nd Meeting, April 2007, Section 4.2).
3) Violation of Article 5§3*:* the judgment of the European Court was published on the Internet site of the Ministry of Justice www.ms.gov.pl and in the Bulletin of the Council of Europe, issue No. 3 of 2002. It was also sent out by the Ministry of Justice to prison authorities and courts (letters of 22/01/2003 and 04/07/2003).
• *Assessment*: *no other general measure appears necessary.*

The Deputies,
1. decided to resume consideration of this item at their second DH meeting in 2008 and to join it at that meeting with the Kudła group, to supervise general measures;
2. recalled that the necessary individual measures as well as the general measures required in respect of the violations of Articles 3 and 5§3 have already been taken.

1007 (October 2007) section 5.3

46917/99 Stankiewicz, judgment of 06/04/2006, final on 06/07/2006
The case concerns a violation of the applicants' right to a fair trial in that the courts refused to pay the court costs they incurred in a civil suit brought against them unsuccessfully by the public prosecutor on behalf of the treasury (violation of Article 6§1). In a judgment dated April 1998, the Krakow Appeal Court ordered them to pay the costs, including in particular the fees of their counsel, amounting to 23 987, 26 PLN (6 665 euros).
The European Court observed that in civil proceedings, costs should be borne by the losing party but that this rule did not apply in principle to the public prosecutor. However, given the existing exceptions and relevant case-law, the European Court nonetheless considered that the judicial authorities have had insufficient regard to the particular circumstances of the case. In this context it concluded that the complexity of the case had obliged the applicants to be represented by counsel and that accordingly the costs had not been incurred recklessly or without good reason.
Individual measures: The European Court awarded the applicants just satisfaction in respect of pecuniary damage sustained, to an amount covering the costs they had been ordered to pay (50 000 PLN, or 12 828 euros) and in respect of non-pecuniary damage.
• *Assessment: This being the case, no further individual measure seems necessary.*
General measures: Article 98 of the Polish Code of Civil Procedure obliges the losing party to civil proceedings to pay the wining side the costs which it has incurred. However, under Article 106 of the Code, this rule is not applicable when the public prosecutor intervenes in civil proceedings as defender of the public order.

In its case-law, the Polish Supreme Court has mitigated the scope of this latter rule, by declaring that it did not apply to proceedings initiated by the prosecutor himself but only to those which were already pending when he declared himself party. It has also emphasised that the rule does not apply in cases where the prosecutor intervenes to defend the financial interests of the public treasury (§35 of the European Court's judgment). However, this case-law was not applied in the present case.
Moreover the case-law of the Polish Constitutional Court has also tended in the same way, to ensure an equitable treatment of both parties with regard to the reimbursement of court costs (§§36-37 of the European Court's judgment).
• *Information provided by the Polish authorities (letter of 15/03/2007)*: According to the authorities, the violation resulted from a misunderstanding of the Supreme Court's case-law by the Krakow Appeal Court. It referred to the Supreme Court's decisions of 17/06/1966 (I Cz 54/66, mentioned in § 34 of the judgment) and 05/05/1989 (II CR 155/89), from which it stems that Article 106 of the Code of Civil Procedure is not applicable if the public prosecutor has instituted the proceedings. This rule is not applicable either if the public prosecutor defends the financial interests of the state.
• *Information is awaited concerning the publication and dissemination of the European Court's judgment to civil courts.*

The Deputies decided to resume consideration of this item at the latest at their 1028th meeting (3-5 June 2008) (DH), in the light of further information to be provided on general measures, namely publication and dissemination of the European Court's judgment.

997 (June 2007) section 4.2

31443/96 Broniowski, judgment of 22/06/2004 - Grand Chamber and of 28/09/2005 - Friendly settlement (Article 41) Interim Resolution ResDH(2005)58

The case relates to the violation of the applicant's right to the peaceful enjoyment of his possessions (Article 1 of Protocol No. 1), in that his entitlement to compensation for property abandoned in the territories beyond the Bug River (the Eastern provinces of pre-war Poland) in the aftermath of the Second World War had not been satisfied.
By adopting both the 1985 and 1997 Land Administration Acts, the Polish State reaffirmed its obligation to compensate the "Bug River claimants" and to incorporate into domestic law obligations it had taken upon itself by virtue of international treaties concluded in 1944. However, the Polish authorities, by imposing successive limitations on the exercise of the applicant's right to compensation, and by resorting to practices which made it unenforceable in concrete terms, rendered that right illusory and destroyed its very essence.
Moreover, the right was extinguished by legislation of December 2003 under which claimants in the applicant's position who had been awarded partial compensation (2% of the value of the property, in the applicant's case) lost their entitlement to additional compensation, whereas those who had never received any compensation were awarded an amount representing 15% of their entitlement.
In the light of these considerations, the European Court concluded that the applicant had to bear a disproportionate and excessive burden which could not be justified in terms of the legitimate general community interest pursued by the authorities.
Individual measures: Under the friendly settlement on Article 41 the parties agreed that the payment of a lump sum of 237,000 PLN (about 60 000 euros) shall constitute the final settlement of the case. This sum has been paid.
General measures:
***1) Principal judgment**:* The Court concluded in the operative provisions of the judgment that:
- the violation found had originated in a systemic problem connected with the malfunctioning of domestic legislation and practice caused by the failure to set up an effective mechanism to implement the "right to credit" (according to the terminology used by the Polish Constitutional Court) of Bug River claimants;
- the respondent state must, through appropriate legal measures and administrative practices, secure the implementation of the property right in question in respect of the remaining Bug River claimants or provide them with equivalent redress in lieu, in accordance with the principles of protection of property rights under Article 1 of Protocol No. 1;
The Court recalled that the violation of Article 1 of Protocol No. 1 originated in a widespread problem which resulted from deficiencies in the domestic legal order which has affected a large number of persons (nearly 80 000 people) and which may give rise in future to numerous subsequent, well-founded applications.

Referring to the Committee of Ministers' Resolution of 12/05/04 on judgments revealing an underlying systemic problem (Res(2004)3) and to the Recommendation of the same date on the improvement of domestic remedies (Rec(2004)6), the Court decided to indicate the measures that the Polish State should take, under the supervision of the Committee of Ministers and in accordance with the subsidiary character of the Convention, so as to avoid being seised of a large number of similar cases. It should further be emphasised that this is the first time that the Court has ruled in the operative provisions of a judgment on the general measures that a respondent state should take to remedy a systemic defect at the origin of the violation found.
On 06/07/2004 the Court decided that all similar applications (248 at present) - including future applications - should be adjourned pending the outcome of the leading case and the adoption of the measures to be taken at national level. It also decided that the Polish government and the Committee of Ministers should be informed of the adjournment and supplied with a list of the adjourned cases.

2) Interim Resolution adopted by the Committee of Ministers:

On 05/07/2005 the Committee of Ministers adopted Interim Resolution ResDH(2005)58, taking stock of the measures adopted so far and pointing out the outstanding questions.
The Committee:
Welcomed the fact that on 15/12/2004 the Polish Constitutional Court, basing itself in particular on the Court's judgment, declared several provisions of the law of December 2003 contrary to the Polish Constitution with the result that claimants in the applicant's situation (those who had been awarded partial compensation) will no longer meet any legal obstacles to obtaining at least a proportion of their entitlement on an equal footing with the remaining Bug River claimants;
Noted that a new draft law had been submitted to the Polish Parliament to improve compensation conditions for all Bug River claimants so as to ensure full compliance with the Convention and the Court's judgment;
Noted with concern that, pending the entry into force of this new law, the implementation of Bug River claimants' rights is to a large extent suspended,
Called upon the Polish authorities to intensify their efforts rapidly to finalise the legislative reform and create the conditions necessary for its effective implementation.

3) Friendly settlement under Article 41:

It should be noted that for the first time that one of the European Court's judgments under Article 41 sets out not only the individual measures but also the general measures adopted in execution of the principal judgment.
a) General measures adopted: On 08/07/2005 Parliament passed the Law on the realisation of the right to compensation for property left beyond the present borders of the Polish State. The statutory ceiling for compensation for Bug River property was set at 20% instead of the 15% envisaged in the Bill. According to this law the “right to credit” may be realised in two forms, depending on the claimant's choice: either, as previously, through an auction procedure or through cash payment to be distributed from a special compensation fund.
b) Undertakings of the government:
- to implement as rapidly as possible all the necessary measures in terms of domestic law and practice to secure the implementation of the property right in question in respect of the remaining Bug River claimants or provide them with equivalent redress in lieu;
- to intensify their efforts to make the new Bug River legislation effective and to improve the practical operation of the mechanism designed to provide the Bug River claimants with compensation;
- to ensure that the relevant State agencies do not hinder the Bug River claimants in enforcing their “right to credit”;
- to make available to the remaining Bug River claimants some form of redress for any material or non-material damage caused to them by the defective operation of the Bug River legislative scheme.
In this friendly settlement the European Court noted the development of the specific civil-law remedies enabling the remaining Bug River claimants to seek compensation before Polish courts for any material and/or non-material damage caused by the systemic situation found in the principal judgment. The Court observed furthermore that the measures taken by the government had demonstrated an active commitment to remedying the systemic defects found in this case.
The European Court's judgment has been published on the Internet site of the Ministry of Justice www.ms.gov.pl.

4) Latest developments: The measures necessary for the implementation of the new Bug River legislation of 2005 are now adopted. For instance, a regulation concerning the management of the compensation fund was adopted in December 2005 by the Treasury Minister and in April 2006 an agreement concerning the conditions of payment of compensations was concluded between the Treasury Ministry and the Bank of National Property. Furthermore, the IT system which will transfer

information on the personal files from the local registries to the Central register within the Treasury Ministry and then to the Bank of National Property which will make the payments is operational at present.
In the meantime, the Polish authorities have selected 50 priority cases amongst those pending before the European Court with a view to testing the new compensation mechanism. As of 10/01/2007, payments in application of this mechanism were made in respect of 77 persons (their cases correspond to 37 applications pending before the Court). Payments concerning 17 other persons (corresponding to 5 applications) were expected in February 2007. More generally, up to 22/03/2007, the Treasury Ministry transferred to the Bank of National Property data relating to 373 entitled claimants. According to the authorities, payments are made within a period of one month after the transfer of this data. Finally, it should be recalled that according to the 2005 legislation, entitled claimants may lodge requests for compensation until the end of 2008.
▪ *Additional information is awaited on further implementation of the compensation mechanism. An evaluation by the European Court of the development concerning the applications pending before it is also expected.*

The Deputies,
1. took note with interest of the information provided by the Polish authorities on the implementation of the new compensation mechanism for claimants concerned by property abandoned in the territories beyond the Bug River implementation of the new compensation mechanism;
2. agreed to resume consideration of this item at the latest at their first DH meeting in 2008, in particular in the light of the evaluation of this mechanism by the European Court which is expected in two similar cases, recently communicated to the parties.

1007 (October 2007) section 4.2

35014/97 Hutten-Czapska, judgment of 19/06/2006 - Grand Chamber
This case concerns a violation of the applicant's right to the peaceful enjoyment of her possessions (violation of Article 1 of Protocol No. 1). Despite several civil and administrative actions brought between 1992 and 2002 the applicant, who had inherited her parent's house in Gdynia in 1990, could neither secure the re-housing of the tenants who had been assigned apartments in her house nor freely fix the amount of their rent. This resulted from a law applied to private property in Poland instituting rent controls and restrictions on the termination of leases (a law of 1994, replaced by a 2001 law and subsequently modified in 2004 following certain decisions by the Constitutional Court). This system, which had its origins in laws adopted during the communist period, fixed such a low rent ceiling that landlords could not even cover the cost of maintaining their buildings, still less make a profit.
The European Court (Grand Chamber) concluded that the finding of a violation did not reside solely in the question of the amount of the rent (unlike the conclusions of the chamber in its judgment of 22/02/2005) but was rather the result of the combined effect of the unsatisfactory provisions on the fixing of rent and the various restrictions on the right of landlords in the matter of terminating leases, the financial burdens imposed upon them and the total absence of any legal mechanism whereby they might compensate or mitigate losses sustained on maintenance or to obtain, where justified, any state assistance to that end.
In the light of the foregoing, and having regard to the effects of the operation of the rent-control legislation during the whole period under consideration on the rights of the applicant and other persons in a similar situation, the Court considers that the Polish State has failed to strike the requisite fair balance between the general interests of the community and the protection of the right of property.
Individual measures: The applicant's house was definitively made available to her in February 2006.
As regards the pecuniary damage sustained, the Court has reserved the application of Article 41. It awarded the applicant 30 000 euros in respect of non-pecuniary damage and 22 500euros for costs and expenses.
• *Assessment: No further individual measure seems to be required at this stage.*
General measures: Applying the "pilot-judgment" procedure, in line with the case of Broniowski against Poland (judgment of 22/06/2004, Grand Chamber), the European Court concluded in the operative part of the judgment that:
1) the violation found was the result of a structural problem linked to a malfunctioning of national legislation which:
- despite the amendments introduced in 2004, had imposed and continued to impose restrictions on landlords' rights, particularly as the legislation contains defective provisions on the determination of rent;

- had lacked and continued to lack any legal ways and means enabling them to at least to recover losses incurred in connection with property maintenance;

2) the respondent state must secure in its domestic legal order a mechanism maintaining a fair balance between the interests of landlords and the general interest of the community in accordance with the principles of the protection of property rights under the Convention.

In this respect the European Court took due note of the Polish Constitutional Court's judgment of 19/04/2005 (i.e. rendered after the Chamber judgment of 22/02/2005) abrogating the provisions introduced by the 2004 law setting an annual 10% ceiling for in creases in rents greater than 3% of the reconstruction value of the dwelling.

Nonetheless, and notwithstanding this judgment of the Constitutional Court, the Grand Chamber took the view that the general situation has not yet been brought into line with the standards of the Convention: the Polish authorities have not yet repealed the former restrictions with regard to the termination of leases nor put in place legal ways and means for landlords to mitigate or compensate losses incurred in connection with maintenance.

The European Court also observed that amongst the many possibilities at the disposal of the Polish state, there were those set out in the recommendations made to Parliament by the Constitutional Court on 29/06/2005 which among other things set out the features of a mechanism balancing the rights of landlords and tenants and criteria for what might be considered a "basic rent", "economically justified rent" or "decent profit" (§§136-141 of the judgment).

Finally, the European Court noted that the rent control scheme might potentially affect some 100 000 landlords and from 600 000 to 900 000 tenants. It accordingly postponed the examination of similar pending applications (standing at 18, one of which had been lodged by an association of some 200 landlords).

• *Action plan provided by the Polish authorities (letters of 29/01/07 and 24/08/2007))*:

1) Amendment to the Act of 21/06/2001 on the protection of the rights of tenants and the housing resources of municipalities: On 15/12/2006 the Polish Parliament adopted an amendment to this Act, which entered into force on 1/01/2007. Consequently, annual rent increases of more than 3% of the reconstruction value of the dwelling may only be made in justified cases (Article 8a, Section 4a, of the amended Act). The increase of rent is justified if :

- it does not exceed the index of the average general annual increase of the prices of consumer goods and services in the previous year (Article 8a Section 4e), or
- the landlord has no profit from the rent or other charges for the use of the dwelling at a level allowing him/her to cover the costs of maintenance of the dwelling, as well as a return on capital and a profit (Article 8a Section 4a). The limits within which such increase may be made are set out in Article 8a, Section 4b, which determines what percentage of the costs borne by the landlord for the construction or the modernisation of the dwelling (such costs are defined in the provision of Article 2, Section, 1 Item 8a) may be included in such an increase.

This provision also provides that the increase of rent mentioned in Article 8a, Section 4a, may include a "decent profit"; however, the Act does not define this term.

At a tenant's written request, the landlord shall give the reasons for the increase and its calculation in writing within 14 days (Article 8a Section 4). A rent may not be increased before 6 months have elapsed since the last increase (Article 9 Section 1 b).

Although the newly adopted amendments extend and specify landlords' rights as regards rent increases, they neither define the notion of "decent profit" nor introduce the terms of "basic rent" or "economically justified rent", as stated in the Constitutional Court's decision of 29/06/2005. According to the authorities, the scope of the notion of "economically justified rent" has been determined in the provisions of Article 8a on the increase of rents.

The definition of the "decent profit" has been, however, left to national courts. The "decency" of rents is to be determined on a case-by-case basis. In this respect, the authorities provided an example of a judicial decision (decision of 14/06/2007 of the Tarnów District Court), in which the court referred to the usual meaning of the word "decent" in the Polish language and also to the average interest rate on State Treasury bonds (5%). In any event, the financial situation of the tenant should have no impact on the determining of the "decency" of a rent.

2) Constitutional Court's Judgment of 11/09/2006: The Constitutional Court found that the provision of Article 18, Section 4, of the Act of 21/06/2001 limiting municipalities' civil liability for damage resulting from failure to provide welfare accommodation to tenants entitled to it, was contrary to the Constitution. Consequently, this provision has been repealed. Nowadays, landlords may claim full compensation for such damage on the basis of Article 417 of the Civil Code.

3) Act of 8/12/2006 on financial assistance for welfare accommodation, protected accommodation, night shelters and housing for the homeless: This new legislation aims at

solving the problem of the shortage of welfare accommodation in municipalities by providing means whereby the state may finance the construction of such housing. It entered into force on 23/12/2006.

4) Amendment to the 1997 Act on Real Estate Management: on 06/07/2007 the Parliament adopted an amendment which introduces the "rent-mirror system", i.e. a system for monitoring the levels of rent in all municipalities. It provides information on average rent levels in a given region and should serve as an auxiliary instrument enabling the courts to assess the basis for fixing or increasing rents.

5) Other measures foreseen: The Minister of Construction is currently preparing a draft law on assistance for landlords whose dwellings have been subject to the special lease regime. Such landlords will be entitled to receive financial assistance from the state for carrying out renovations on preferential terms. Moreover, the Minister is drafting another law which would extend landlords' right to dispose of the object of lease. This draft law should be ready before the end of 2007.

• *Further information is awaited on the development of domestic courts' case-law concerning the definition of "decent profit", the legislative work mentioned in item 5 above as well as on other measures to prevent new, similar violations. Clarification would be also useful concerning the determination of the scope of the notion of "basic rent" and its introduction into the legislative framework.*

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

997 (June 2007) section 2

52589/99 Skibińscy, arrêt du 14/11/2006, définitif le 26/03/2007

This case concerns an interference with the applicants' right to the peaceful enjoyment of their possessions (violation of Article 1 of Protocol No 1) in that they were deprived *de feacto* of the use of their land from 1994 until 31/12/2003, when the local development covering their land plan expired. This plan was amended in 1994 tp include the construction of a road on part of the land. Moreover, the applicants had no effective entitlement for compensation throughout this period, under the specific provisions of Local Planning Act of July 1994, which excluded the application of its compensatory provisions in respect of plans adopted before 1995. A new Local Planning Act, which entered into force in July 2003, did not alter the applicants' situation, as it was operational only in respect of local land development plans adopted after that date.

The European Court concluded that a fair balance was not struck between the competing general and individual interests and that the applicants had been required to bear an excessive individual burden.

Individual measures: The Local Development Plan expired at the end of 2003 and in April 2004, the municipal authorities granted her initial planning permission (§27 of the judgment).

The European Court awarded just satisfaction in respect of the costs and expenses of the proceedings before the Court and reserved the question of the application of Article 41 in respect of just satisfaction for pecuniary and non-pecuniary damage.

General measures: The European Court noted that the measures which affected the applicants' situation were taken on the basis of the Local Planning Act of 1994 and that the planning laws subsequently adopted had made no provision for retroactive compensation (§95 of the judgment).

• *Information is awaited on measures envisaged or taken to avoid further similar violations, and especially on those aimed at guaranteeing compensatory measures to persons in a position similar to that of the applicants.*

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 on 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 on the general measures.
3. with regard to possible individual measures once the European Court has pronounced upon pecuniary and non-pecuniary damage supported by the applicants.

1007 (October 2007) section 4.1

48542/99 Zawadka, judgment of 23/06/2005, final on12/10/2005

This case concerns the violation of the applicant's right to respect for his family life (violation of Article 8).
The applicant had the right to visit his youngest son, P, born in 1994, in accordance with a settlement concluded with the mother of the child in 1996. In 1997, after obstacles were posed by the mother, he tried in vain to obtain assistance from the court. In the meantime, the mother brought proceedings to establish her parental authority. In May 1997, the applicant took the child. By a decision of 24/02/1998 the Białystok Regional Court limited his visitation rights and on 19/06/1998 the District Court stripped him of all parental rights. In August 1998 the police removed the child from him.
The applicant subsequently seised the Białystok Regional Court to complain of the way in which the exercise of his visiting rights had been obstructed asked the court to help him in enforcing them, but without success. In March 2001, the court informed him that his son had gone to London in May 2000. In August 001, it suspended proceedings concerning his visiting rights because the mother could not be found.
The European Court found that the authorities had been remiss in their obligation to provide the applicant the assistance he would have needed to exercise his parental visitation rights effectively. In particular, the authorities had omitted to encourage the parties to co-operate in implementing the access arrangements. They also omitted to secure concrete and appropriate assistance by competent state agents within a specific legal framework suited to the needs of the separated parents and their under-age child. The Court underlined, that as a consequence, the applicant has permanently lost contact with his child.
Individual measures:
• *Information provided by the Polish authorities (letter of 07/01/2007)*: The proceedings concerning the enforcement of the judicial decision of 24/02/1998 on the applicant's visiting rights had been discontinued at an unspecified date because for more than three years the applicant was not able to indicate the address of his child and his mother. In January 2000, he requested the reopening of these proceedings, but his request was rejected (also at an unspecified date).
According to the authorities, the applicant may institute proceedings on the basis of the 1980 Hague Convention on the Civil Aspects of International Child Abduction, if his son is residing abroad, and/or request the reopening of proceedings concerning the execution of the judicial decision concerning his visiting rights.
• *Bilateral contacts between the Polish authorities and the Secretariat are under way to assess the need for individual measures.*
General measures:
• *Measures taken*: The European Court's judgment has been published on the internet website of the Ministry of Justice www.ms.gov.pl and sent out to the presidents of courts of appeal with a circular drawing judges' attention to the Court's reasoning in this case. It has been also sent out to the National Police Commander-in-Chief, who in turn requested the competent directors and commanders to publish it on the Police internet site and to include it in the police officers' training programme.
• *Assessment: in these circumstances no additional measure appears to be necessary*.

The Deputies decided to resume consideration of this item at their 1013th meeting (3-5 December 2007) (DH), in the light of the outcome of bilateral contacts concerning the necessity for individual measures.

997 (June 2007) section 4.2

11562/05 Byrzykowski, judgment of 27/06/2006, final on 27/09/2006
This case concerns the violation of the right to life due to the failure to carry out an effective investigation into the death of the applicant's wife and the serious damage to his son's health (violation of Article 2).
In July 1999 the applicant's wife was about to give birth to their child and was admitted to the Wrocław Medical Academy hospital. The physicians decided to perform a caesarean section and gave her an epidural, as a result of which she went into a coma. All resuscitation efforts failed and she died on 31/07/1999. Their son, born by caesarean section, suffers from serious health problems, mostly of neurological character, and requires permanent medical attention.
At the applicant's request, a police inquiry was opened and led to the opening on 29/12/1999 of a criminal investigation into the suspected offence of manslaughter. Due to the lengthy process of taking evidence, and in particular forensic reports, these proceedings were stayed once, three times discontinued and three times resumed. They are still pending.

In August 1999 the applicant also requested that disciplinary proceedings be brought. Those proceedings were stayed, resumed and then stayed again on 25/04/2005 and are still pending.
Moreover, in July 2002 the applicant also lodged a compensation claim against the hospital before a civil court. On 07/04/2003 those proceedings were stayed, pending the outcome of the two other sets.
The European Court noted that three sets of proceedings had been and were still pending for periods ranging from four to almost seven years and that the applicant had used all the remedies available to him concerning the alleged medical malpractice. It observed that after almost seven years, there had been no final decision in any of them.
Moreover, it observed that the authorities repeatedly referred to the other sets of pending proceedings as a justification for staying them or the refusals to resume them. However, having regard to the overall length of the period which had elapsed since the death of the applicant's wife and also to the fact that the procedures instituted seemed rather to have hindered the overall progress in the proceedings, the Court concluded that the procedures applied in order to elucidate the allegations of medical malpractice did not resulted in an effective examination into the cause of the death of the applicant's wife
Individual measures: The European Court awarded just satisfaction in respect of non-pecuniary damage.
• *Information provided by the Polish authorities*: Following the police investigation of the alleged manslaughter of the applicant's wife the Wrocław District Prosecutor found on 18/05/2006 that there was insufficient evidence. This finding, which was based on expert medical opinions supplied by the Universities of Krakov, Katowice, Poznań and Bialystock, became final on 7/06/2006. The disciplinary proceedings are still suspended but given the Prosecution's decision not to prosecute, they should be discontinued soon.
The civil proceedings for compensation, pending before the Wrocław Regional court, have been resumed and are subject to administrative supervision. Four hearings have taken place. At the last hearing, held on 17/01/2007 a witness was heard. The applicant had previously been ordered to contribute an advance on the costs of obtaining medical opinions. The Registry of the District Court contacted the experts within the universities of the other Polish cities and it transpired that opinions would take approximately six months to prepare. This opinion will probably be prepared by the University of Szczecin.
• *Information is awaited concerning the progress of the civil proceedings as well as the present state of the disciplinary proceedings and its acceleration.*
General measures: The European Court found no indication of any failure on the part of the state in its obligation to provide a procedure to determine the criminal, disciplinary or civil responsibility of persons who might be held answerable (§ 106 of the judgment). The finding of a violation in this case resulted from the Court's assessment of how this procedure had worked in the concrete circumstances.
• *Information provided by the Polish authorities*: The Polish authorities have undertaken reforms with a view to:

1) Making judicial experts more efficient: On 27/12/2006 the government laid before Parliament a Bill on experts in judicial proceedings. The text was referred to the Parliament's Committee on Justice and Human Rights which examined it at first reading on 16/02/2007.
The Bill lays down guidelines for the preparation of expert opinions for courts and other authorities, aiming in particular to ensure the professional status of experts, their impartiality and their respect for the law. Except in certain specific circumstances – including those laid down by law – experts may not refuse to draw up an opinion in any proceedings led by a prosecutor, a judge or other state authority (section 46, sub-paragraph 1 of the Bill). In addition, where an opinion has been prepared in a defective manner, with insufficient diligence, after the time-limit set or in a manner inconsistent with the terms of reference laid down by the body competent for the proceedings, the latter may reduce or even cancel the expert's fee.

2) Introducing a remedy in case of excessive length of investigations: On 21/12/2006 the Minister of Justice wrote to the Polish Ombudsman suggesting that certain provisions of the Code of Criminal Procedure were incompatible with the requirements flowing from the European Court's case-law in relation to Article 13 and indicating his intention of taking steps to introduce an effective national remedy in case of excessively lengthy pre-trial investigations.

3) Changing the disciplinary procedure before the Medical Association: The Minister of Health is currently preparing an amendment to the 1989 Act on the Medical Association, the main effect of which would be to broaden injured parties' rights in disciplinary proceedings. At present, their status is limited to that of witness. It is also proposed to make hearings before the professional body public, to introduce the possibility of appealing its decisions before criminal courts, to increase the

range of disciplinary sanctions available and to fix time-limits for each phase of disciplinary proceedings.
• *Information is awaited concerning the development of these reform proposals. A copy of the draft amendment to the Act on the Medical Association would also be appreciated.*

The Deputies decided to resume consideration of this item:
1. at their 1007th meeting (15-17 October 2007) (DH), in the light of further information to be provided concerning the individual measures, namely the current state of the pending proceedings;
2 at the latest at their 1013th meeting (3-5-December 2007) (DH), in the light of further information to be provided concerning general measures.

1007 (October 2007) section 5.3

6925/02 Szymoński, judgment of 10/10/2006, final on 10/01/2007[4]
This case concerns the excessive length of proceedings concerning the readjustment of the amount of the applicant's pension (violation of Article 6§1). They took place between 1992 and 2001 before the pension fund and civil courts of Siedlce and Lublin.
Individual measures: None. All sets of proceedings were terminated following a final decision of the Siedlce pension fund, notified to the applicant on 19/02/2001.
General measures: The problem of the excessive length of civil proceedings in Poland is under examination in the context of the Podbielski group (judgment of 30/10/98, Interim Resolution CM/ResDH(2007)28, 992nd meeting, April 2007 in Section 4.2).
• *Information provided by the Polish authorities (letter of 18/05/2007)*: An amendment to the Code of Civil Procedure was adopted on 18/04/1985 and came into force on 01/07/1985. According to the modified provision of Article 477^{14} § 2 of this Code, in cases concerning social insurance, if the court allows an appeal, it shall modify the contested decision entirely or partly and decide on the merits. Thus in this case this procedural provision was disregarded by the domestic court, which referred the case back to the pension fund several times.
• *Information is awaited publication and dissemination of the judgment of the European Court before social insurance courts and pension funds.*

The Deputies decided to resume consideration of this item:
1. at their 1013th meeting (3-5 December 2007) (DH), in the light of information to be provided on the payment of the just satisfaction, if necessary;
2. at the latest at their 1020th meeting (4-6 March 2008) (DH), in the light of information to be provided on general measures, namely publication and dissemination of the European Court's judgment.

[4] This case also appears in Section 3.b

Interim Resolutions

Interim Resolution CM/ResDH(2007)75
concerning the judgments of the European Court of Human Rights
in 44 cases against Poland (see Appendix II)
relating to the excessive length of detention on remand

(Adopted by the Committee of Ministers on 6 June 2007,
at the 997th meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 46, paragraph 2, of the Convention for the Protection of Human Rights and Fundamental Freedoms which provides that the Committee supervises the execution of the judgment of the European Court of Human Right (hereinafter "the Convention" and "the Court"),

Having regard to the great number of judgments of the Court finding Poland in violation of Article 5, paragraph 3, of the Convention on account of the unreasonable length of detention on remand (see Appendix II);

Recalling that the obligation of every state, under Article 46, paragraph 1, of the Convention, to abide by the judgments of the Court involves an obligation rapidly to adopt the individual measures necessary to erase the consequences of the violations found as well as general measures to prevent new, similar violations of the Convention;

Stressing the importance of rapid adoption of such measures in cases where judgments reveal structural problems which may give rise to a large number of new, similar violations of the Convention;

Having invited Poland to inform it of the measures adopted or being taken in consequence of the judgments concerning the excessive length of detention on remand and having examined the information provided by the Polish authorities in this respect (as it appears in the Appendix I);

Having noted the individual measures taken by the authorities to provide the applicants redress for the violations found (*restitutio in integrum*), in particular by bringing an end as far as possible to those detentions on remand still in force after the findings of violations by the Court;

Taking note of the steps taken so far by the authorities to remedy the structural problems related to detention on remand in Poland, and in particular:

the legislative reforms (the Code of Criminal Procedure of 1997 and subsequent amendments);

the judgment of the Polish Constitutional Court of 24 July 2006 finding that a provision of the Code of Criminal Procedure relating to certain aspects of the extension of detention on remand was unconstitutional;

the further measures to make courts and prosecutors aware of the requirements stemming from the Convention and the European Court's case-law as regards the use of detention on remand;

Noting also the statistical data provided by the Polish authorities concerning (a) the number of detentions on remand ordered in a given year and (b) the number and length of detentions on remand not yet ended on 31 December of that year;

Noting further that, according to the statistics provided, the number of cases in which detention on remand lasts for more than 12 months still seems high, especially in cases pending before regional courts; noting, however, that these statistics do not give a full picture of the situation, as they only show the length of detentions that have not yet been terminated as of 31 December, and that they could be usefully supplemented by taking stock of the length of all detentions on remand ordered during a year;

Noting also with interest that following changes to Polish legislation in response to the judgment of the Constitutional Court of 24 July 2006 the general rule according to which detention on remand shall not exceed 2 years in cases pending for trial has been strengthened; noting however that under the amended legislation there might still be situations in which this time-limit may not be observed;

Noting also that, although some courts have begun to refer to the Convention and the European Court's case-law in rendering decisions on the use of detention on remand, this preventive measure still seems often to be ordered without taking into consideration the Convention's requirements;

Underlining that continued detention can be justified only if there are specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty;

Recalling that the persistence of reasonable suspicion that a person arrested has committed an offence, although a condition *sine qua non* for the lawfulness of the continued detention, may no longer suffice after a certain lapse of time and that consequently other relevant and sufficient grounds must be presented in order to extend such detention;

Noting that the number of cases in which the European Court has found similar violations is constantly increasing,

ENCOURAGES the Polish authorities, in view of the extent of the systemic problem concerning the excessive length of detention on remand:

- to continue to examine and adopt further measures to reduce the length of detention on remand, including possible legislative measures and the change of courts' practice in this respect, to be in line with the requirements set out in the Convention and the European Court's case-law; and in particular

- to take appropriate awareness-raising measures with regard to the authorities involved in the use of detention on remand as a preventive measure, including judges of criminal courts and prosecutors;

- to encourage domestic courts and prosecutors to consider the use of other preventive measures provided in domestic legislation, such as release on bail, obligation to report to the police or prohibition on leaving the country;

- to establish a clear and efficient mechanism for evaluating the trend concerning the length of detention on remand;

EXPECTS to receive further information on additional measures planned or already taken to comply with the judgments concerning the unreasonable length of detention on remand and,

DECIDES to resume consideration of the outstanding measures in these cases, within one year at the latest.

Appendix I to Interim Resolution CM/ResDH(2007)75

Information provided by the Government of Poland
during the examination of the cases
concerning the excessive length of detention on remand
by the Committee of Ministers

I. Individual measures

In the majority of these cases, the detention on remand impugned by the European Court has been ended.

II. General measures taken to reduce the length of detention on remand

1. Legislative measures as regards the length of detention on remand

A. Grounds for detention on remand (as set out in the Code of Criminal Procedure of 1997)

The grounds for remanding in custody were modified with the entry into force on 01/09/98 of the Code of Criminal Procedure of 6 June 1997.

According to Article 257§1, detention on remand shall not be imposed if another preventive measure is sufficient. The provisions of the Code of Criminal Procedure also set out other preventive measures, such as bail, police supervision, guarantee by a responsible person or a social entity, temporary ban on engaging in a given activity and prohibition to leave the country.

Detention on remand may be ordered if there is a strong probability that the accused has committed an offence and, cumulatively, if there is a risk of his or her absconding, obstructing the proceedings or, in certain cases, re-offending (Article 258§1). According to Article 258§2 of the Code of Criminal Procedure, an accused may be detained remanded if he or she risks a long term of imprisonment (if the charges relate to offences punishable by at least 8 years of

imprisonment or if a court of first instance sentenced the accused to a minimum of 3 years of imprisonment).

B. Placement in detention on remand and extension (as set out in Art. 263 of the Criminal Code of Procedure)

Article 263 sets out time-limits for detention. In the version applicable up to 20 July 2000 it provided:

> "1. Imposing detention in the course of an investigation, the court shall determine its term for a period not exceeding 3 months.
>
> 2. If, due to the particular circumstances of the case, an investigation cannot be terminated within the term referred to in paragraph 1, the court of first instance competent to deal with the case may – if need be and on the application made by the [relevant] prosecutor – prolong detention for a period [or periods] which as a whole may not exceed 12 months.
>
> 3. The whole period of detention on remand until the date on which the first conviction at first instance is imposed may not exceed 2 years.
>
> 4. Only the Supreme Court may, on application made by the court before which the case is pending or, at the investigation stage, on application made by the Prosecutor General, prolong detention on remand for a further fixed period exceeding the periods referred to in paragraphs 2 and 3, when it is necessary in connection with a stay of the proceedings, a prolonged psychiatric observation of the accused, a prolonged preparation of an expert report, when evidence needs to be obtained in a particularly complex case or from abroad, when the accused has deliberately prolonged the proceedings, as well as on account of other significant obstacles that could not be overcome."

On 20 July 2000, paragraph 4 was amended and since then the competence to prolong detention beyond the time-limits set out in paragraphs 2 and 3 has been vested with the court of appeal within whose jurisdiction the offence in question has been committed.

C. Ruling of the Constitutional Court on paragraph 4 of Article 263 of the Criminal Code of Procedure

In its judgment of 24 July 2006 (reference No. SK 58/03), the Polish Constitutional Court, having examined a constitutional complaint on the length of detention on remand, ruled that the provision of Article 263§4 of the Code of Criminal Procedure, according to which such detention may be extended beyond the period of 2 years, if "other important obstacles whose removal has not been possible" exist, is in breach of Article 41, paragraph 1 in connection with Article 31 paragraphs 1 and 3 of the Constitution of the Republic of Poland. It should be noted that the Constitutional Court declared the unconstitutional character of this provision only as it relates to investigation stage.

This judgment was grounded on the fact that this provision curtailed the enjoyment of constitutional rights and freedoms in such an imprecise, arbitrary and broad way that it affected the very essence of constitutional freedoms. The lack of statutory time limitation for the extension of detention on remand only strengthened the finding of unconstitutionality of this provision.

The Constitutional Court also declared that this provision was to expire within 6 months after publication of the judgment in the Journal of Laws – *Dziennik Ustaw*. Therefore it lost its binding force on 8 February 2007.

D. Amendment of the Code of Criminal Procedure following the Constitutional Court's ruling

Accordingly, Article 263, paragraph 4, of the Code of Criminal Procedure was amended as follows:

"Paragraph 4. The extension of applying detention on remand over the periods specified in paragraphs 2 and 3, may be made only by the court of appeal in whose jurisdiction the proceedings are conducted, on a motion from the court before which the case is pending, and at the investigation stage on a motion from the appellate prosecuting authorities. This can be done if deemed necessary in connection with a suspension of criminal proceedings, in connection with actions aiming at establishing or confirming the identity of the accused, prolonged psychiatric observation of the accused, prolonged preparation of an opinion of an expert, conducting evidentiary action in a particularly intricate case or conducting them abroad, or intentional protraction of proceedings by the accused."

Moreover, a new provision was added in paragraph 4a of Article 263:
*"*paragraph 4a. The court of appeal, in whose jurisdiction the proceedings are being conducted may also, on a motion from the court before which the case is pending, order the extension of the detention on remand for a fixed period, exceeding that specified in paragraph 3, because of other important obstacles whose removal has not been possible".

This amendment was adopted on 12 January 2007 and entered into force on 16 February 2007.

According to the explanatory report on this amendment:
- the changes introduced in paragraph 4 of Article 263 of the Code of Criminal Procedure eliminated the clause of "other important obstacles whose removal has not been possible" as a legal ground for extending detention on remand;
- furthermore, extension of detention on remand was also allowed in cases in which proceedings could not have been completed because of measures under way to establish or confirm the identity of the accused.
- however, the new paragraph 4a will enable courts conducting criminal proceedings to extend detention on remand beyond the period of 2 years because of 'other obstacles whose removal has not been possible', which would allow a more flexible use of this provision. This new regulation is not contrary to the Constitutional Court's judgment, which declared the clause of the said obstacles unconstitutional only in reference to the investigationl stage of the proceedings.

2. Practice of criminal courts and statistical data

A. Recent practice of criminal courts

In March 2006 the Polish authorities provided information on the recent practice of criminal courts concerning the imposition and extension of detention on remand. In 26 cases the courts (in the jurisdiction of 6 out of the 11 appeal courts in the country) made express reference in their decisions to the case-law of the European Court and in some cases to the circular sent out by the Ministry of Justice. In most of these cases the courts decided to bring an end to the detention on remand and replace it by some alternative measure of constraint, such as the obligation to report to the police or prohibition on leaving the country. In two other appeal court districts, similar decisions have been handed down in three cases, but without reference to the case-law of the European Court.

B. Latest figures on the length of detention on remand in 2006:

According to the figures provided by the Polish Ministry of Justice the courts delivered 33 181 decisions on detentions on remand in the year 2006 compared with 34 830 in the year 2005.

The three tables and charts below (I, II and III) show the number of detentions on remand and their length as recorded on the last day of the reporting period, i.e. respectively on 31 December 2005 and 31 December 2006. The relevant data are presented separately for each category of courts.

Table and Chart I. - **District courts**

	2005	2006
Up to 3 months	2 528	2 358
3 – 6 months	2 035	2 263
6 – 12 months	1 963	1 899
12 months – 2 years	918	911
Over 2 years	191	190
In total	7 635	7 632

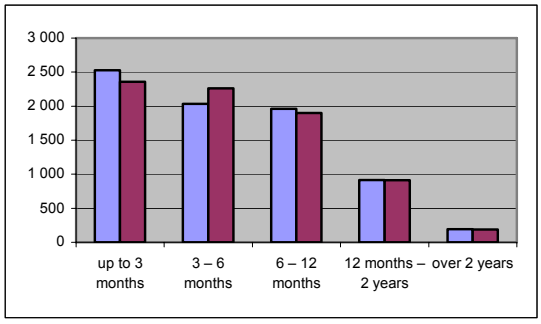


Table and Chart II. - **Regional courts**

	2005	2006
Up to 3 months	207	160
3 – 6 months	432	391
6 – 12 months	1 166	1 237
12 months – 2 years	1 165	1 326
Over 2 years	863	850
In total	3 833	4 000

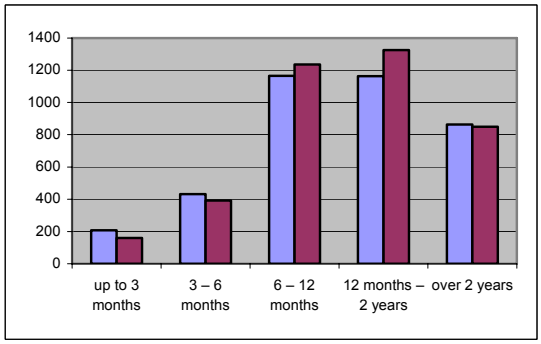
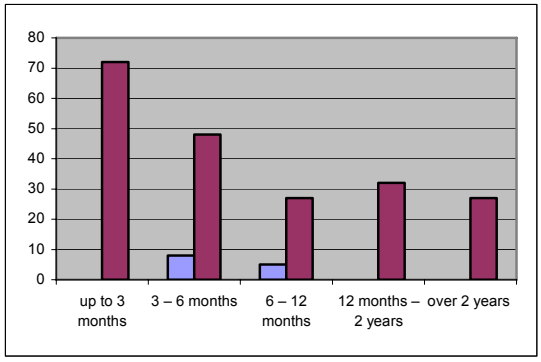


Table and Chart III - Courts of appeal

	2005	2006
Up to 3 months	0	72
3 – 6 months	8	48
6 – 12 months	5	27
12 months – 2 years	0	32
Over 2 years	0	27
In total	13	206



As it transpires from the above tables, that, for obvious reasons, district courts were those which have ordered detention on remand in the highest number of cases.

Nonetheless detention on remand imposed by regional courts lasted longer: as recorded on the last day of the reporting period, these courts ordered the highest number of detentions on remand which lasted between 12 months and 2 years or more than 2 years. In 2006, such detentions accounted respectively for 33.15 per cent and 21.25 per cent of the total number of detentions on remand ordered by these courts (respectively 30 per cent and 23 per cent in 2005). It should be noted in this respect that these courts deal with very serious cases, including those of organised crime, in which detention on remand as the most severe measure appears to be indispensable.

According to the Polish authorities, the problem of excessively lengthy detentions on remand concerns mainly the detentions ordered by the regional courts. However, the number of detentions on remand lasting between 12 months and 2 years and more than 2 years, ordered by such courts does not indicate a general upward trend.

3. Publication and dissemination

The European Court's judgments delivered in the cases of Chodecki and Olstowski have been translated into Polish and published on the Internet site of the Ministry of Justice www.ms.gov.pl.

On 4 June 2004 the Ministry of Justice wrote to all the Presidents of Courts of Appeal with an analysis of the case-law of the European Court concerning the requirements relating to the reasons for placing and keeping a person in detention pending trial. It was underlined in particular that the reason evoked in paragraph 2 of Article 258 of the Code of Criminal Procedure cannot justify keeping someone in detention for a long period of time.

Moreover, the Ministry of Justice has sent out circulars, drawing the attention of courts and public prosecutors to the reasoning required for decisions prolonging detention on remand.

III. Conclusions of the respondent state

The government believes that the measures set out above demonstrate its determination and the sustained efforts that it has already made to reduce the length of detention on remand. The

government will continue to take all necessary measures to that effect and will keep the Committee of Ministers informed of all new developments, and in particular of the practical implications of the measures adopted.

* * *

Appendix II to Interim Resolution CM/ResDH(2007)75

List of cases

- 44 cases of length of detention on remand

25792/94 Trzaska, judgment of 11/07/00
23042/02 Cabała, judgment of 08/08/2006, final on 08/11/2006
3489/03 Cegłowski, judgment of 08/08/2006, final on 08/11/2006
17584/04 Celejewski, judgment of 04/05/2006, final on 04/08/2006
49929/99 Chodecki, judgment of 26/04/2005, final on 26/07/2005
75112/01 Czarnecki, judgment of 28/07/2005, final on 28/10/2005
5270/04 Drabek, judgment of 20/06/2006, final on 20/09/2006
77832/01 Dzyruk, judgment of 04/07/2006, final on 04/10/2006
7677/02 Gąsiorowski, judgment of 17/10/2006, final on 17/01/2007
31330/02 Gołek, judgment of 25/04/2006, final on 25/07/2006
38654/97 Goral, judgment of 30/10/03, final on 30/01/04
28904/02 Górski, judgment of 04/10/2005, final on 15/02/2006
38227/02 Harazin, judgment of 10/01/2006, final on 10/04/2006
27504/95 Iłowiecki, judgment of 04/10/01, final on 04/01/02
36258/97 J.G., judgment of 06/04/2004, final on 06/07/2004
33492/96 Jabłoński, judgment of 21/12/00
15479/02 Jarzyński, judgment of 04/10/2005, final on 04/01/2006
25715/02 Jaworski, judgment of 28/03/2006, final on 28/06/2006
10268/03 Kankowski, judgment of 04/10/2005, final on 04/01/2006
25501/02 Kozik, judgment of 18/07/2006, final on 18/10/2006
31575/03 Kozłowski, judgment of 13/12/2005, final on 13/03/2006
17732/03 Krawczak, judgment of 04/10/2005, final on 04/01/2006
34097/96 Kreps, judgment of 26/07/01, final on 26/10/01
16535/02 Kubicz, judgment of 28/03/2006, final on 28/06/2006
44722/98 Łatasiewicz, judgment of 23/06/2005, final on 23/09/2005
36576/03 Leszczak, judgment of 07/03/2006, final on 07/06/2006
57477/00 Malik, judgment of 04/04/2006, final on 04/07/2006
13425/02 Michta, judgment of 04/05/2006, final on 04/08/2006
39437/03 Miszkurka, judgment of 04/05/2006, final on 04/08/2006
34052/96 Olstowski, judgment of 15/11/01, final on 15/02/02
6356/04 Pasiński, judgment of 20/06/2006, final on 23/10/2006
42643/98 Paszkowski, judgment of 28/10/2004, final on 28/01/2005
44165/98 Skrobol, judgment of 13/09/2005, final on 13/12/2005
29386/03 Stankiewicz, judgment of 17/10/2006, final on 17/01/2007
30019/03 Stemplewski, judgment of 24/10/2006, final on 24/01/2007
3675/03 Stenka, judgment of 31/10/2006, final on 31/01/2007
9013/02 Świerzko, judgment of 10/01/2006, final on 10/04/2006
33079/96 Szeloch, judgment of 22/02/01, final on 22/05/01

56552/00 Telecki, judgment of 06/07/2006, final on 06/10/2006
29687/96 Wesołowski, judgment of 22/06/2004, final on 22/09/2004
31999/03 Żak, judgment of 24/10/2006, final on 24/01/2007
25301/02 Zasłona, judgment of 10/10/2006, final on 10/01/2007
13532/03 Zborowski, judgment of 31/10/2006, final on 31/01/2007
28730/02 Zych, judgment of 24/10/2006, final on 24/01/2007

Interim Resolution CM/ResDH(2007)28
concerning the judgments of the European Court of Human Rights
in 143 cases against Poland (see Appendix II)
relating to the excessive length of criminal and civil proceedings
and the right to an effective remedy

(Adopted by the Committee of Ministers on 4 April 2007
at the 992nd meeting of the Ministers' Deputies)

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

Having regard to the great number of judgments of the European Court of Human Rights ("the Court") finding Poland in violation of Article 6, paragraph 1, of the Convention on account of the excessive length of judicial proceedings before the civil and criminal courts (see Appendix II to this resolution);

Having regard to the fact that in several cases the Court also found that there had been a violation of Article 13 of the Convention in that the applicants had no domestic remedy whereby they might enforce their right to a "hearing within a reasonable time" as guaranteed by Article 6, paragraph 1 of the Convention (e.g. Kudła against Poland, judgment of 26 October 2000 and D.M. against Poland, judgment of 14 October 2003);

Recalling that excessive delays in the administration of justice constitute a serious danger for the respect of the rule of law;

Recalling that the obligation of every state, under Article 46, paragraph 1, of the Convention, to abide by the judgments of the Court involves an obligation rapidly to adopt the individual measures necessary to erase the consequences of the violations as well as to adopt general measures preventing new violations of the Convention similar to those found including provision of effective domestic remedies pending the entry into effect of the necessary changes;

Recalling in this respect the Committee of Ministers' Recommendation to member states Rec(2004)6 regarding the need to improve the efficiency of domestic remedies;

Stressing the importance of rapid adoption of such measures in cases where judgments reveal structural problems which may give rise to a large number of new, similar violations of the Convention;

Having invited Poland to inform it of the measures adopted or being taken in consequence of the judgments concerning the excessive length of judicial proceedings and having examined the information provided by the Polish authorities in this respect (as it appears in the Appendix I to this interim resolution);

<u>Measures to remedy the excessive length of proceedings</u>

Having noted the individual measures taken by the authorities to provide the applicants redress for the violations found (*restitutio in integrum*), in particular by accelerating as far as possible the proceedings which were still pending after the findings of violations by the Court (see details in Appendix I);

Welcoming the reforms adopted so far by the authorities in order to remedy the structural problems related to the excessive length of judicial proceedings in Poland, and in particular:

- the legislative reforms (new Code of Criminal Procedure and subsequent amendments) adopted in 1997 and 2003 aimed at simplifying and accelerating criminal proceedings;

- the additional administrative and structural measures adopted to prevent further, unreasonably long proceedings and to accelerate those which have already been excessively lengthy (in particular increasing the number of judges and administrative personnel, increasing courts' budgets and establishing of monitoring mechanisms); and

- the setting-up of a domestic remedy in 2004 for cases of excessive length of judicial proceedings allowing litigants to seek acceleration of the proceedings and claim compensation for damages caused by their excessive length;

Noting the statistical data provided by the Polish authorities and in particular the positive trend concerning the decrease in the number of "old" cases pending before civil courts (those pending for more than five years) and the increasing efficiency of criminal courts;

Noting, however, that the existing mechanism for evaluating the average length of judicial proceedings at national level is unclear and hinders supervision of the evolution of the duration of proceedings;

Measures to put right the lack of effective remedy

Welcoming the creation of a domestic remedy in cases of excessive length of judicial proceedings and noting that the Court has already found, on the basis of the provisions of the legislation of 2004, that it satisfies the "effectiveness" test established in the *Kudła* judgment (see Appendix I, Section II B);

Noting nevertheless that the new remedy seems to exclude the possibility of complaining against the excessive length of the pre-trial stage of criminal proceedings;

Underlying that the creation of the new domestic remedy does not obviate the obligation to pursue with diligence the adoption of general measures required to prevent new violations of the Convention;

ENCOURAGES the Polish authorities, in view of the gravity of the systemic problem concerning the excessive length of judicial proceedings:

- to continue the examination and adoption of further measures to accelerate judicial proceedings and reduce the backlog of cases;

- to establish a clear and efficient mechanism for evaluating the trend concerning the length of judicial proceedings; and

- to ensure that the new domestic remedy is implemented in accordance with the requirements of the Convention and the case-law of the Court and to consider introducing such a remedy as regards the pre-trial stage of criminal proceedings;

EXPECTS to receive further information soon on additional measures planned or already taken to comply with the judgments concerning the excessive length of judicial proceedings and on the implementation in practice of the new remedy introduced in June 2004 and,

DECIDES to resume consideration of the outstanding individual measures and the general measures in these cases, in one year at the latest.

Appendix I to Interim Resolution CM/ResDH(2007)28

Information provided by the Government of Poland
during the examination of the cases
concerning the excessive length of criminal and civil proceedings
and the right to an effective remedy
by the Committee of Ministers

I. Individual measures

In the majority of these cases, the domestic proceedings impugned by the European Court in its judgments have ended. Concerning the rest of the cases, the competent authorities have taken measures to accelerate the proceedings still pending (i.e. the cases were placed under the administrative supervision of the president of the court and of the Ministry of Justice; the president of the competent court was urged by the Ministry of Justice to give priority to the applicants' cases, etc.).

II. General measures

A) Measures taken to reduce the length of criminal and civil proceedings

1. Legislative measures as regards the length of criminal proceedings

Measures introduced by the Code of Criminal Procedure of 1997

The Code of Criminal Procedure of 6 June 1997, which entered into force on 1 September 1998, has introduced the possibility under some conditions of conducting a hearing without the presence of a defendant if she or he refuses to participate in the trial or does not provide justification for her or his absence (Art.376 and 377). The opportunity to conduct a hearing without the presence of a defendant will considerably accelerate criminal proceedings, especially in cases brought against several co-defendants.

Measures introduced by the amendments to the 1997 Code of Criminal Procedure

The main purpose of the amendments to the Code which came into effect on 1 July 2003 was to introduce procedural mechanisms to speed up proceedings in criminal cases. The most important provide the following:

- preparatory proceedings and those concerning several co-defendants have been simplified by extending the range of offences liable to inquiry and not to investigation, which is more formal, and assigning the majority of investigations to the police instead of prosecutors (Art.325 b and 311§1);

- the possibilities of closing criminal proceedings by way of settlement have been extended (Art. 335, 343 and 387);

- first-instance courts may use at the trial stage evidence, such as testimonies, defendants' explanations or expert opinions collected during the preliminary investigation without the further hearing a witness, a defendant, an expert or other person, by reading aloud the relevant protocols, reports or other documents (Art. 377§4 and Art. 389, 391-394);

- the possibility of the remote hearing of witnesses by means of video conferences with the use of appropriate technical equipment (Art. 177§1 a);

- the court shall dismiss motions on evidence aimed at “obvious prolongation of the trial” (Art. 170§1 point 5);

- summonses may be served by fax or electronic mail (Art. 132§3);

- it is no longer necessary to re-hear a particular trial from the very beginning because the term of 35 days between subsequent hearings has been exceeded, if the parties so agree (Art. 404§2);

- when essential deficiencies in the pre-trial proceedings become apparent only at the hearing, courts may no longer refer the case back to the pre-trial proceedings stage for further inquiry to be carried out (Art. 397);

- special proceedings allowing prompt examination of a criminal case – the so-called “summary proceedings” and proceedings under writ of payment (decree proceedings) - were excluded from unnecessarily strict rules – see Art. 500 §§ 2 and 4 (e.g. concerning the summary proceedings the catalogue of cases considered under a simplified procedure now covers all cases in which an inquiry was carried out – see Art. 469);

- delays in criminal proceedings concerning several co-defendants due to the time taken to draft the reasons for the first-instance judgment will be reduced, as at present it is possible to draw up and to serve the reasons of the judgment only in respect of those of the co-defendants who requested it (Art. 423 §1a).

2. Legislative measures as regards the length of civil proceedings

Measures introduced by the amendments to the Code of Civil Procedure

The most important provisions of the recent amendments to the Code (of 21 August 1997, 22 December 2004 and 28 July 2005) provide the following:

- law clerks (*referendarze sądowi*) are now allowed to perform certain acts in proceedings such as: making entries in the land and mortgage registers, establishing of a land register, registration of proceedings, issuing payment writs (*nakazy zapłaty*) in accelerated proceedings (*postępowanie upominawcze*) and examining applications for exemption from court fees;

- the institution of mediation has been established. Any civil case which can be examined in civil proceedings may be subject to mediation, which may end in a friendly settlement. Such a friendly settlement, if confirmed by a court, is tantamount to a friendly settlement concluded before the court. The costs of mediation are relatively low in comparison with the costs of court proceedings, which should be an additional incentive to use mediation;

- new regulations concerning arbitration (*sądownictwo polubowne*) have been introduced.

Measures introduced by the Act of 28 July 2005 on Court Fees:

Following the entry into force of this Act, other mechanisms to accelerate civil proceedings have been introduced: for instance, certain decisions concerning court fees may no longer be subject to appeal.

3. Administrative and structural measures concerning civil and criminal proceedings

Increase of the capacity of the judiciary (judges and staff)

Having been faced since 1989 with an increase of about 275 % in cases lodged with Polish courts, the government is aware of the need to increase the number of posts for judges and court administrative staff. The scale of this effort is illustrated by the increase of the number of judges from 7000 in 1989 to nearly 8000 in 2000. In 2002 courts were granted additional full-time posts for 230 judges, 50 assessors and 350 assistants.

Moreover, the post of judges' associate and that of law clerk were introduced in Poland in 2001 by the Law on the organisation of common courts, with the aim of reducing the work of judges with respect to various administrative tasks which did not require their examination.

The table below shows the levels of employment in the courts in 2003-2006:

Reporting period	judges	assessors	judges' associates	law clerks	assistants
2003	8 268	1 276	198	785	21 329
2004	8 232	1 595	498	985	22 255
2005	8 227	1 688	850	1 185	23 412
2006 (as foreseen in the budget for 2006)	+ 80 new posts		+ 800 new posts	+ 250 new posts	+ 1020 new posts

Organisation and management

As of 1 May 2005 the Warsaw courts were divided into two regional courts. Each regional court was divided into district courts. Consequently, in 2005 there was an improvement in the efficiency of the Warsaw courts in proceedings concerning social insurance cases.

Moreover, the Minister of Justice set up a special unit within his ministry. This unit has been entrusted with the task of assessing the work-load of judges and other court staff as well as with human resources management in common jurisdictions (and in particular their allocation and efficient use in courts). It has drawn up a method, based on objective criteria, of assigning posts for assistants and court clerks, and is currently working on an instrument allowing the assessment of the efficiency of judges' work, on the basis of the so-called *pensum,* that is the average number of cases concluded by judges in Poland. This method will be used to ensure a better allocation of posts, in particular by reshuffling posts from one court to another one.

Supervisory activities

The Ministry of Justice is also involved in analysing the causes of delays in judicial proceedings within the framework of its competence in the administrative supervision of courts' work. The Department of Common Courts within the Ministry of Justice is coordinating other initiatives in this field, such as inspecting courts where the average length of proceedings gives rise to concerns. The question of supervision has been included in the supervisory work of presidents of courts as a permanent task. In particular, presidents have been invited to:

- ask judges heading divisions to perform direct supervision, mainly for the purpose of fixing hearings as a priority in the so-called “old cases”;
- organise meetings to sum up their results and identify any reasons for delays; and
- undertake measures to request court experts to submit reports on time and to discipline the parties in the proceedings.

In 2003 the presidents of the Regional Courts were invited by the Ministry of Justice to examine the reasons for delays in all cases waiting for adjudication longer than 3 years. In addition, permanent monitoring of all proceedings lasting over five years is being carried out.

Moreover, the Minister of Justice recommended that the presidents of courts intensify their supervision of the assignment of court experts and discipline or discharge them if they do not perform their duties properly. The Minister of Justice further advised the presidents of courts to examine the legitimacy of decisions to stay proceedings and to assess the actions of heads of court sections in relation to stayed proceedings. In particular the presidents of courts have been called upon to supervise these proceedings, in which the European Court of Human Rights found a violation of Article 6§1 of the Convention or the domestic court allowed a complaint based upon the 2004 Act (see below).

Budget

The budgetary Act for 2002 allocated the amount of PLN 2 560 317 000 to expenditure of the common courts, which was 15.41% more than the budget for the judiciary in 2001. Between 2003 and 2006 a constant yearly growth of the courts' budget was registered: by 24.89% in 2003, by 10% in 2004, by 12% in 2005. In 2006 this budget amounted to PLN 4 638 462 000,

an increase by 8 % in comparison with the expenses for common courts incurred in 2005 and by 45% in comparison with such expenses in 2002.

It should be noted that the budget of common courts was set up in accordance with the principles contained in the revised Act on Public Finance which entered into effect on 1 January 2002. Budgets became autonomous in such a way that the Minister of Finance does not have the authority to introduce any changes to the proposal submitted by the Minister of Justice – he simply includes the budget of common courts in the Government's draft of the budgetary act which is submitted to Parliament.

Court premises

The Ministry of Justice carries out numerous activities to improve office conditions, especially as regards courts in Warsaw, which operate in exceptionally difficult conditions. A new building was acquired, which will house the Warsaw-Praga District Court. Premises for another district court in Warsaw are also being sought.

Computerisation

Finally, IT projects, aimed at providing computerised support to courts and Public Prosecutor's Offices to ensure access to different data bases have been developed in order to:

- lodge e-pleadings;
- have remote access to information on proceedings, without having to appear in court *in persona*;
- replace traditional methods of recording with new digital techniques;
- show the evidence by using multimedia;
- use video conferences to enable a witness or an expert to be heard at a distance;
- provide an electronic exchange of documents between the internal units of the justice system and persons outside;
- keep evidence on electronic file; and
- archive documents on proceedings in electronic files.

The main objectives of the IT programme are the following:

- computerising sections' secretariats (case-flow register, correspondence with participants in proceedings, access to public information etc.) and assisting the judges, law clerks and judges' associates in dispensing justice;
- computerising courtrooms (recording of the hearings by using new digital techniques, e-docket);
- introducing management and logistics resources (efficient use of resources and working time, scheduling of hearings for a whole court building; improving the organisation of court ushers);
- electronic exchange of documents, e-claim, electronic access to information gathered and kept by court units (on-line access to courts' case-files and courts' registers).

4. Statistical data

Cases pending before all courts

The table below shows a steady increase of both new and completed cases brought before Polish civil and criminal courts between 2002 and 2006.

reporting period	backlog	new cases	completed cases	backlog (cases pending at the end of the reporting period)
2002	2 245 000	8 696 913	8 704 897	2 278 665
2003	2 278 665	9 521 329	9 679 823	2 122 222
2004	2 122 222	9 728 822	10 116 016	1 747 897
2005	1 747 897	9 581 613	9 834 086	1 496 229
2006	nearly 1 500 000	10 114 122	9 918 101	nearly 1 700 000

The table shows all cases brought in the Polish courts in the period from 2002 to 2006. In each reporting period the number of new cases was higher than that in the previous period (except in 2005). It should be noted that for the last 10 years there has been a considerable increase of new cases and this upward trend still continues. Nearly 4.9 million cases were brought to courts in 1995; in 2005 the new cases amounted to 9,5 million and in 2006 to 10,1 million. However, in each reporting period (except in 2006) the number of completed cases exceeded the number of new ones, which contributed to the reduction of the remaining backlog. Consequently, the total number of proceedings is declining and court efficiency is improving.

Cases pending before civil and labour courts

The table below shows the number of new and completed cases in a given branch of law between 2002 and 2006.

Type of cases	2002 new cases/ completed cases	2003 new cases/ completed cases	2004 new cases/ completed cases	2005 new cases/ completed cases	2006 new cases/ completed cases
civil cases	2 162 594	2 476 251	2 478 745	2 432 639	2 337 382
	2 079 218	2 452 344	2 620 476	2 465 799	2 264 092
commercial cases	1 057 938	1 048 681	1 016 690	944 329	952 359
	1 063 636	1 078 828	1 099 957	980 653	931 877
labour law cases	332 908	401 122	326 056	255 767	222 981
	325 338	374 001	339 000	296 000	227 847
social insurance cases	302 008	285 501	296 810	212 151	269 158
	337 059	303 059	308 000	268 000	241 491
family law cases	944 500	981 440	988 649	1 077 219	1 123 860
	994 000	981 998	1 009 000	1 062 000	1 115 313
land register cases	2 035 000	2 301 000	2 494 000	2 439 000	2 637 036
	2 167 000	2 417 000	2 545 000	2 473 000	2 603 568

The above data show a decrease in the number of cases relating to labour law and social insurance as well as in commercial cases and land register cases. There has been a steady increase in the number of family law cases, criminal and civil cases.

As regards labour law cases, the average length of proceedings before first-instance courts was 3.4 months in the first half of 2005 and 2.7 months in the first half of 2006 before district courts. When such cases were examined by regional courts as first-instance courts, their average length amounted to 6.4 months in the first half of 2005 and 8.7 months in the second half of 2006. Thus there has been an increase in the length of proceedings. As regards the proceedings before regional courts as second-instance jurisdictions, the average length amounted respectively to 3.8 and 2.6 months, which shows an improvement.

Moreover, it should be noted that 2005 was the year in which the greatest number of such cases was brought before the Warsaw district courts: 20 384 new cases, which constituted an increase of more than 40%. Simultaneously, these courts concluded the greatest number of such cases: 26 309 cases were closed and thus a backlog amounting to 6 375 cases was reduced. The number of labour law cases examined in the second instance by the Warsaw Regional Court declined by more than 56%.

Cases pending before criminal courts:

The table below shows the number of cases which were brought to courts in a given reporting period and the number of completed cases.

Reporting period	2002	2003	2004	2005	2006
criminal cases:	1 861 966	2 027 000	2 126 327	2 218 272	2 571 347
new cases/completed cases	1 788 189	2 071 237	2 185 995	2 279 961	2 533 913

The improvement of criminal courts' efficiency was triggered by the overhaul of the Polish criminal procedure (see above).

5. Publication and dissemination

The European Court's judgments in the majority of these cases have been translated into Polish and published on the Internet site of the Ministry of Justice www.ms.gov.pl. They have been sent out to the courts directly concerned. The competent authorities' attention has been drawn in particular to the Convention's requirement of special diligence in handling some cases (e.g. cases relating to civil status, employment law, cases concerning compensation for medical malpractice, wrongful conviction etc), having regard to the particular importance of the proceedings for the applicants concerned.

B) Legislative measures to introduce an effective domestic remedy in cases of excessive length of judicial proceedings

New Polish legislation was introduced in June 2004 in response to the European Court of Human Right's Grand Chamber judgment in the case Kudła aginst Poland (judgment of 26/10/2000), in which the Court notably held that the lack of an effective remedy for a breach of the right to a hearing within a reasonable time was in violation of Article 13.

On 17 June 2004, the Polish Parliament adopted a Law on complaints about a breach of the right to a trial within a reasonable time (the 2004 Act) and a Law on Amendments to the Civil Code Concerning the Civil Liability of the State Treasury for Actions or Omissions of Public

Authorities. They have been published in the Official journal, No. 179 and No. 162 of 2004 and entered into force respectively on 17 September 2004 and 1 September 2004.

1. A remedy aimed at accelerating proceedings and awarding compensation to the applicants

The 2004 Act allows parties to court proceedings to file a complaint concerning the length of their proceedings while those proceedings are still pending. The competent appellate court may find that there have been undue delays in the proceedings and recommend to the lower court to take **measures to accelerate the proceedings**. The appellate court can also award the complainant **compensation** of up to PLN 10,000 (approximately 2,550 euros). Additional compensation for damages can be sought in separate proceedings before the civil courts according to the general regime regulating the liability of the state for damages caused by an unlawful action or omission of public authorities (Article 417 *et seq.* of the Civil Code). The remedy introduced by the amendments to the Civil Code is also open to persons involved in proceedings which have been terminated.

2. Retroactivity of the new remedy

The new remedy introduced by the new legislation of June 2004 is also available to individuals who lodged applications with the European Court of Human Rights while their domestic proceedings were still pending even if the proceedings have subsequently been terminated, provided their applications have not yet been declared admissible by the Court (Article 18 of the 2004 Act). They had until 17 March 2005 to apply to the Polish courts.

3. First implementation results of the new remedy

Since the entry into force of the 2004 Act and until 31 December 2004, 2 528 complaints concerning excessive length of judicial proceedings have been filed before domestic courts. More than 80% of the complaints concerned civil cases. In 290 cases the competent courts found that there have been undue delays in the impugned proceedings. Compensation has been awarded in 165 of theses cases amounting to PLN 2 406 on average.

In 2005, the courts examined 4 921 complaints of that kind: 1 607 were dismissed (33%); 2 313 (47%) were declared inadmissible and 1001 (20 %) were allowed. In the first half of 2006 these figures stood at respectively: 1 879 579 (37 %); 835 (44%) and 361 (19%), in half of these cases just satisfaction was awarded).

Proceedings in which the court allowed the complaint are subject to supervision by the president of that court. In particular, the president of the court supervises whether the recommendations given by the court examining the complaint have been implemented. Should the court find that the judge caused the excessive length of proceedings, disciplinary proceedings may be instituted against him/her.

4. Positive assessment of the new remedy by the European Court

Finally, it should be noted that in March 2005 the European Court examined this remedy for the purposes of Article 35, paragraph 1, of the Convention and found it effective in respect of complaints about the excessive length of judicial proceedings in Poland. In particular, it considered that it was capable both of preventing the alleged violation of the right to a hearing

within a reasonable time, and of providing adequate redress for any violation that has already occurred (see decisions in Michalak against Poland, Application No. 24549/03, §§ 37-43 and Charzyński against Poland, Application No. 15212/03, §§ 36-42). The European Court also considered that from 17 September 2004, the date on which the 2004 Act entered into force, action for damages under Article 417 of the Civil Code had attained a sufficient level of certainty to become an "effective remedy" within the meaning of Article 13 of the Convention (see decision in Krasuski against Poland, Application No. 61444/00, §74).

5. Other measures

The Polish government noted with interest the European Court's judgment delivered in the case of Scordino against Italy (29 March 2006), and in particular the rules for the assessment of non-pecuniary damage as a consequence of the length of proceedings (§§ 267-271 of the Scordino judgment). Bearing in mind that the problems indicated in the Scordino judgment might also become relevant in the near future with respect to the 2004 Act, the Polish gdecided to take the following steps in order to improve the domestic practice and consider possible amendments to the national legislation:

- the judgment was translated into Polish and sent out, together with an evaluation of the 2004 Act, to all institutions responsible for the administration of justice as well as to domestic courts. The translation of the judgment is also available on the website of the Ministry of Justice (http://www.ms.gov.pl/re/re_wyroki.shtml);

- considerable attention was paid to the issue of implementing the 2004 Act in the course of drafting the governmental "Plan of Action with regard to execution of the ECHR judgments". This document is being prepared by the representatives of the ministries involved in the execution of the European Court's judgments in Polish cases;

- the implementation of the 2004 Act by courts has been continuously discussed in the course of training organised for judges and prosecutors. On 4 September 2006 the National Training Centre for Judges and Prosecutors was inaugurated (cf. http://www.kcskspip.gov.pl). Issues concerning the implementation of the 2004 Act will be included in the curriculum of the training organised by the Centre.

III. Conclusion

The Polish government believes that the measures set out above demonstrate its determination and the sustained efforts that it has already made with a view to improving the efficiency of the judicial system and to set up an effective domestic remedy against the excessive length of judicial proceedings. The Polish authorities will continue to take all necessary measures to that effect and will keep the Committee of Ministers informed of all new developments, and in particular of the practical implications of the measures adopted.

* * *

Appendix II to Interim Resolution CM/ResDH(2007)28

- 132 cases before civil courts

Cases

Adamscy, judgment of 27/07/04
Badowski, judgment of 08/11/05
Barszcz, judgment of 30/05/06
Bednarska, judgment of 15/07/04
Bejer, judgment of 04/10/01
Biały, judgment of 27/07/04
Biskupska, judgment of 22/07/03
Bukowski, judgment of 11/02/03
C., judgment of 03/05/01
Cegielski, judgment of 21/10/03
Chyb, judgment of 12/07/06
Ciborek, judgment of 04/11/03
Czech, judgment of 15/11/05
D.M., judgment of 14/10/03
Dańczak, judgment of 21/12/04
Dojs, judgment of 02/11/04
Domańska, judgment of 25/05/04
Dudek, judgment of 05/10/04
Durasik, judgment of 28/09/04
Dybo, judgment of 14/10/03
Falęcka, judgment of 05/10/04
Fojcik, judgment of 21/09/04
Gęsiarz, judgment of 18/05/04
Gibas, Interim Resolution DH(97)242
Gidel, judgment of 14/10/03
Goc, judgment of 16/04/02
Góra, judgment of 27/04/04
Górska, judgment of 03/06/03
Grela, judgment of 13/01/04
Gronuś, judgment of 28/05/02
Gryziecka and Gryziecki, judgment of 06/05/03
Guzicka, judgment of 13/07/04
Hajnrich, judgment of 25/05/04
Hulewicz, judgment of 30/03/04
I.P., judgment of 14/10/03

Iżykowska, judgment of 28/09/04
Jablonska, judgment of 09/03/04
Janas, judgment of 21/09/04
Janik, judgment of 27/04/04
Jastrzębska, judgment of 28/09/04
Jedamski, judgment of 26/07/01
Kaczmarczyk, judgment of 24/01/06
Kaszubski, judgment of 24/02/04
Koblański, judgment of 28/09/04
Kolasiński, judgment of 01/02/05
Koral, judgment of 05/11/02
Korbel, judgment of 21/09/04
Kranc, judgment of 31/01/06
Kranz, judgment of 17/02/04
Kreuz No. 2, judgment of 20/07/04
Kreuz No 3, judgment of 24/01/06
Kroenitz, judgment of 25/02/03
Król, judgment of 28/09/04
Kruk, judgment of 05/10/04
Krzak, judgment of 06/04/04
Krzewicki, judgment of 27/04/04
Kubiszyn, judgment of 30/01/03
Kusiak, judgment of 21/09/04

Cases

Majewski and others, judgment of 08/11/05
Majewski, judgment of 11/10/05
Majkrzyk, judgment of 06/05/03
Małasiewicz, judgment of 14/10/03
Majewski, judgment of 11/10/05
Majkrzyk, judgment of 06/05/03
Malinowska Henryka, judgment of 14/10/03
Malinowska, judgment of 14/12/00
Malinowska-Biedrzycka, judgment of 05/10/04
Maliszewski, judgment of 06/05/03
Małasiewicz, judgment of 14/10/03
Marszał, judgment of 14/09/04
Mączyński, judgment of 15/01/02
Mejer and Jałoszyńska, judgment of 19/10/04
Młynarczyk, judgment of 14/12/04
Nierojewska, judgment of 22/08/06
Nowak, judgment of 05/10/04
Orzeł, judgment of 25/03/03
Pachnik, judgment of 30/03/04
Palka, judgment of 11/10/05
Parciński, judgment of 18/03/01
Paśnicki, judgment of 06/05/03
Peryt, judgment of 02/12/03
Piechota, judgment of 05/11/02
Pieniążek Irena, judgment of 28/09/04
Piłka Andrzej and Barbara, judgment of 06/05/03
Podbielski, judgment of 30/10/98
Pogorzelec, judgment of 17/07/01
Politikin, judgment of 27/04/04
Porembska, judgment of 14/10/03
Przygodzki, judgment of 05/10/04
R.O., judgment of 25/03/03
R.P.D., judgment of 19/10/04
R.W., judgment of 15/07/03
Ratajczyk, judgment of 18/07/06

Cases

Rawa, judgment of 14/01/03
Romanow, judgment of 21/09/04
Rychliccy, judgment of 18/05/04
Sawicka, judgment of 01/10/02
Sibilski, judgment of 04/10/05
Sienkiewicz, judgment of 30/09/03
Sikora, judgment of 05/10/04
Sikorski, judgment of 09/11/04
Sitarek, judgment of 15/07/03
Sitarski, judgment of 08/08/06
Sobański, judgment of 21/01/03
Sobczyk, judgment of 26/10/00
Sobierajska-Nierzwicka, judgment of 27/05/03
Styranowski, judgment of 30/10/98
Surman-Januszewska, judgment of 27/04/04
Szarapo, judgment of 23/05/02
Szczeciński, judgment of 11/10/05
Uthke, judgment of 18/06/02
W.M., judgment of 14/01/03
W.Z., judgment of 24/10/02
Wasilewski, judgment of 21/12/00
Wiatrzyk, judgment of 26/10/04
Wierciszewska, judgment of 25/11/03

Cases

Kuśmierek, judgment of 21/09/04
Kuśmierkowski, judgment of 05/10/04
Ł., judgment of 27/07/04
Leszczyńska, judgment of 22/06/04
Lipowicz, judgment of 19/10/04
Lisławska, judgment of 13/07/04
Lizut-Skwarek, judgment of 05/10/04
Łobarzewski, judgment of 25/11/03
Majchrzak, judgment of 22/08/06
Majewski and others, judgment of 08/11/05
Wojnowicz, judgment of 21/09/00
Wojtkiewicz, judgment of 21/12/04
Wylęgły J. and J., judgment of 03/06/03
Wyszczelski, judgment of 29/11/05
Zarjewska, judgment of 21/12/04
Zaśkiewicz, judgment of 30/11/04
Zawadzki, judgment of 20/12/01
Zmaliński, judgment of 22/03/05
Zynger, judgment of 13/07/04
Zys-Kowalski, judgment of 28/09/04

- 11 before criminal courts

Cases

Kudła, judgment of 26/10/00 - Grand Chamber
Lisiak, judgment of 05/11/02

A.W., judgment of 24/06/2004
B.R., judgment of 16/09/03
Bogacz, judgment of 09/05/2006
Bzdyra, judgment of 15/11/2005
Dzierżanowski, judgment of 27/06/2006
Panek, judgment of 08/01/04
Skawińska, judgment of 16/09/03
Wojda, judgment of 08/11/2005
Wróbel, judgment of 20/07/2004

Interim Resolution ResDH(2005)58
concerning the judgment of the European Court of Human Rights
of 22 June 2004 (Grand Chamber)
in the case of Broniowski against Poland

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

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

Having regard to the judgment of the European Court of Human Rights ("the Court") of 22 June 2004 in the case of Broniowski against Poland transmitted on the same date to the Committee of Ministers in accordance with Article 46 of the Convention;

Recalling that the case originated in an application (No. 31443/96) against Poland, lodged with the European Commission of Human Rights on 12 March 1996 under former Article 25 of the Convention by Mr Jerzy Broniowski, a Polish national, and that the Court, seised of the case under Article 5, paragraph 2, of Protocol No. 11, declared admissible the complaint concerning the authorities' failure to implement the applicant's entitlement to compensation for property abandoned in the territories beyond the Bug River as a result of boundary changes following the Second World War;

Noting that the Court, referring to the Committee of Ministers' Resolution of 12 May 2004 on judgments revealing an underlying systemic problem (Res(2004)3) and to the Recommendation of the same date on the improvement of domestic remedies (Rec(2004)6), decided to indicate the measures that the Polish State should take, under the supervision of the Committee of Ministers and in accordance with the subsidiary character of the Convention, so as to avoid being seised of a large number of similar cases;

Whereas in its judgment of 22 June 2004 the Court held unanimously, *inter alia*:

- that there had been a violation of Article 1 of Protocol No. 1 to the Convention;

- that this violation had originated in a systemic problem connected with the dysfunction of domestic legislation and practice caused by the absence of an effective mechanism to implement the "right to credit" of Bug River claimants;

- that the respondent state must, through appropriate legal measures and administrative practices, secure the implementation of the property right in question in respect of the remaining Bug River claimants or provide them with equivalent redress in lieu, in accordance with the principles of protection of property rights provided by Article 1 of Protocol No. 1;

- that, as regards the financial award to the applicant for any pecuniary or non-pecuniary damage resulting from the violation found in the present case, the question of the application of Article 41 was not ready for decision and accordingly reserved and postponed for a later stage;

- that the respondent state was to pay the applicant, within three months, 12,000 euros in respect of costs and expenses incurred up to the present stage of the proceedings before the Court, less 2,409 euros received by way of legal aid from the Council of Europe to be converted into the currency of the respondent state at the rate applicable on the date of payment, and that simple interest at a rate equal to the marginal lending rate of the European Central Bank plus three percentage points would be payable on the above amount from the expiry of the above-mentioned three months until settlement;

Recalling that on 6 July 2004 the Court decided that all similar applications (216 at present) – including future applications - should be adjourned pending the outcome of the leading case and the adoption of the measures to be taken at national level;

Stressing the obligation of every state, under Article 46, paragraph 1, of the Convention, to abide by the judgments of the Court;

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

Recalling that the adoption of such measures is particularly pressing in cases where a judgment which points to structural or general deficiencies in national law or practice has been delivered, and a large number of applications to the Court concerning the same problem are pending or likely to be lodged;

Drawing attention in this connection to the Committee's Recommendations and Declaration of 12 May 2004 aimed at ensuring the long-term effectiveness of the European Court of Human Rights and improving the execution of its judgments (see, in particular, Res(2004)3 and Rec(2004)6, cited above);

Stressing that the need to adopt the necessary measures rapidly in the present case is of particular concern in view of the fact that persons concerned by the situation impugned by the Court are unable to obtain redress either through domestic remedies or from the Court itself, as the latter has decided to adjourn the examination of similar complaints pending the solution of the underlying problem in Poland;

Having invited Poland to inform it of the measures adopted or being taken in consequence of the judgment in this case;

Having examined the information provided so far by the Polish authorities concerning the measures adopted or planned to abide by the judgment (as it appears in the Appendix to this resolution);

Having satisfied itself that on 9 September 2004, within the time-limit set, the government of the respondent state paid the applicant the sum provided for in the judgment of 22 June 2004 in respect of costs and expenses;

Welcoming the fact that on 15 December 2004 the Polish Constitutional Court, basing itself in particular on the Court's judgment, declared several provisions of the law of December 2003 contrary to the Polish Constitution with the result that claimants in the applicant's situation (those who had been awarded partial compensation) will no longer meet any legal obstacles to

obtain at least a proportion of their entitlement on an equal footing with the remaining Bug River claimants;

Noting that a new draft law has been submitted to the Polish Parliament aiming at improving the conditions for compensation of all Bug River claimants so as to ensure full compliance with the Convention and the Court's judgment;

Noting with concern that, pending the entry into force of this new law, the implementation of Bug River claimants' rights is to a large extent suspended,

CALLS UPON the Polish authorities to intensify their efforts rapidly to finalise the legislative reform and create the conditions necessary for its effective implementation;

EXPECTS to receive from the Polish authorities a comprehensive plan of action including time-table, on how they plan to ensure this implementation so as to guarantee that the claimants' right to compensatory property does not remain illusory but becomes enforceable;

DECIDES to continue to give priority to the examination of this case until the judgment has been fully executed.

Appendix to Interim Resolution ResDH(2005)58

Information provided by the Government of Poland during the examination of the Broniowski case by the Committee of Ministers

I. The Constitutional Court's decision of 15 December 2004

On 15 December 2004 the Constitutional Court declared contrary to the Polish Constitution several provisions of the law of December 2003 (Law on offsetting the value of property abandoned beyond the present borders of the Polish State against the price of State property or the fee for the right of perpetual use), challenged in the judgment of the Grand Chamber.

This decision concerns in particular Article 2, paragraph 4 of this Law, according to which claimants in the applicant's position who had been awarded partial compensation, lost their entitlement to further compensation. The provision limiting the right to compensation to 50,000 Zlotys has also been declared contrary to the Constitution (Article 3, paragraph 2).

In accordance with national law, the provisions invalidated in the Constitutional Court's judgment lost their binding force on 27 December 2004 (the date of the publication of this judgment), except for Article 3, paragraph 2, which remained applicable until 30 April 2005.

Consequently, claimants in the applicant's situation will no longer meet any legal obstacles to fulfilling their entitlement to compensation equal to that planned for claimants who had received no compensation before, i.e. 15% of the value of their property.

II. Activities of the Agricultural Property Agency in application of the law of December 2003

Between 30 January 2004 and 31 October 2004 the Agency organised 30,000 auctions and offered for sale 60,000 hectares of land. In the relevant period persons entitled to receive

compensatory property under the law of December 2003 participated in 60 auctions and concluded 33 purchase contracts with the Agency.

III. Legislative reform

In response to the judgment of the European Court in this case, the Polish authorities initiated a reflection process concerning the necessity of legislative reform. This process subsequently also extended to the judgment of the Constitutional Court of 15 December 2004. The conclusion was that new legislation regulating the implementation of the property right in question should be adopted.

A draft law was drawn up by the competent ministries in consultation with the associations representing Bug River claimants. The text was submitted to Parliament on 3 March 2005 and is expected to be adopted by the end of July 2005.

The provisions of the draft law take into account the considerations of both the European Court and the Polish Constitutional Court. The main aim of this new legislation is to ensure a comprehensive legal framework for the implementation of the entitlement for compensatory property in conformity with the Polish Constitution and the Convention requirements.

It should be noted in particular, that the new draft law provides further possibilities to assert claims concerning property beyond the Bug River in comparison with the December 2003 Act. According to Article 13, paragraph 1-1, claimants' entitlement to property abandoned beyond the present borders of the Polish state may be offset not only against the price of state property acquired at public auctions or against the fee for perpetual use of such property, but also against the price to be paid for the transformation of the right for perpetual use into a right of property. Furthermore, the claimants may have their entitlement paid from the Privatisation Fund established under the 1996 Act on Privatisation and Commerialisation (Article 13, paragraph 1-2).

As regards the amount of the compensation for Bug River claims, the draft law, like the December 2003 Act, also provides that it is limited to up to 15% of the value of the abandoned property. The Polish authorities consider that this specific limitation should remain in the new law as it is based on a thorough analysis of the registered claims and the financial capacity of the Polish state and has been challenged neither by the Polish Constitutional Court nor by the European Court.

IV. Publication

The European Court's judgment has been published on the Internet site of the Ministry of Justice www.ms.gov.pl. The present resolution will also be published on the same Internet site.

V. Conclusion

The Polish government believes that the above measures demonstrate its determination to bring domestic law fully into line with the Convention requirements, as set out in the Court's judgment, and to ensure the effective implementation of the Bug River claimants' right to compensation. The Polish authorities will continue to take all necessary measures to that effect and will keep the Committee of Ministers informed of all new developments, and in particular of the practical implications of the measures adopted.