Pending cases against UKRAINE

Application Number	English Case Title	Date of Judgment	Date of Final Judgment	Meeting Number	Meeting Section
39042/97	**KUZNETSOV and 7 other cases**	29/04/2003	29/07/2003	1020	4.2
41984/98	**Svetlana NAUMENKO and 30 other cases**	09/11/2004	30/03/2005	1020	4.2
47148/99	**NOVOSELETSKIY**	22/02/2005	22/05/2005	1020 1028	3.Aint, 4.1
48553/99	**SOVTRANSAVTO HOLDING and 10 other cases**	02/10/2003	24/03/2004	1028	4.3
54825/00	**NEVMERZHITSKY**	05/04/2005	12/10/2005	1020	4.2
56848/00	**ZHOVNER and 233 other cases**	29/06/2004	29/09/2004	1020	4.2
61406/00	**GUREPKA**	06/09/2005	06/12/2005	1020	4.2
63134/00	**KECHKO**	08/11/2005	08/02/2006	1028	4.2
65518/01	**SALOV**	06/09/2005	06/12/2005	1028	4.3
66561/01	**MERIT and 10 other cases**	30/03/2004	30/06/2004	1020	4.2
67531/01	**GORSHKOV**	08/11/2005	08/02/2006	1028	5.1
72286/01	**MELNIK**	28/03/2006	28/06/2006	1020	4.2
803/02	**INTERSPLAV**	09/01/2007	23/05/2007	1020	3.A, 4.2
7577/02	**BOCHAN**	03/05/2007	03/08/2007	1020	3.A], 4.2
17707/02	**MELNYCHENKO**	19/10/2004	30/03/2005	1020	3.B, 4.2
23543/02	**VOLOKHY**	02/11/2006	02/02/2007	1020	4.2
32478/02	**SHEVCHENKO**	04/04/2006	04/07/2006	1020	3.B, 4.2
33949/02	**BELUKHA**	09/11/2006	09/02/2007	1028	4.2
34056/02	**GONGADZE**	08/11/2005	08/02/2006	1020	4.2
38722/02	**AFANASYEV**	05/04/2005	05/07/2005	1028	4.2
29458/04	**SOKURENKO**	20/07/2006	11/12/2006	1028	5.1
31111/04	**HUNT**	07/12/2006	07/03/2007	1020	4.2

Cases against Ukraine 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*
61333/00	TREGUBENKO	02/11/2004	30/03/2005
21040/02	LYASHKO	10/08/2006	10/11/2006
25921/02	FEDORENKO	01/06/2006	01/09/2006
23436/03	MELNYK	28/03/2006	28/06/2006
63566/00	PRONINA	18/07/2006	18/10/2006

Main pending cases against Ukraine

1007 (October 2007)

- Cases concerning the poor conditions of the applicants' detention

39042/97 Kuznetsov, judgment of 29/04/03
41220/98 Aliev, judgment of 29/04/03, final on 29/07/03
40679/98 Dankevich, judgment of 29/04/03, final on 29/07/03
41707/98 Khokhlich, judgment of 29/04/03, final on 29/07/03
38812/97 Poltoratskiy, judgment of 29/04/03
39483/98 Nazarenko, judgment of 29/04/03, final on 29/07/03

These cases concern the poor conditions of the applicants' detention between 1996 and 2000 on "death row" in four different prisons in Ukraine, found by the European Court to amount to degrading treatment due in particular to their prolonged confinement in a very restricted living space without natural light and the virtual impossibility of any activity or human contact (violations of Article 3).
The Court also found that the Ukrainian authorities' interferences with the applicants' rights to private and family life (in all these cases), with their correspondence (in the four last cases) and their freedom of thought were not in accordance with the law as their detention was governed until 1999 principally by an internal instruction inaccessible by the public (violations of Articles 8 and 9).
The cases of Kuznetsov and Poltoratskiy also concern the failure to carry out an effective official investigation into allegations of assaults by prison authorities (violations of Article 3).
In the Dankevich case the Court also held that the applicant had not had an effective remedy in respect of the complaints as regards his rights under Article 3 and Article 8 of the Convention (violation of Article 13).
Individual measures: The applicants' death sentences were commuted to life imprisonment in June 2000 following the abolition of the death penalty in Ukraine.
In the Poltoratskiy case, by letter of 10/09/2003, the representative of the applicant (his father Mr. Y.N. Poltoratskiy) complained that two of his private letters addressed to the applicant had been confiscated and that prison authorities still applied the unpublished Instruction criticised in the Court's judgments. By a letter of 03/10/2003 the Ukrainian delegation indicated that prisoners' correspondence is regulated only by the Correctional Labour Code (see below) and that disciplinary sanctions were imposed on those officials who were responsible for the breach of the applicant's right to correspondence.
By letters of 22/12/2003 and 16/03/2004 Mr. Poltoratskiy's representative also stated that the Ukrainian authorities had not carried out an effective investigation into the allegations of ill-treatment of the applicant by prison authorities in September 1998. He also sent the Secretariat copies of decisions of national jurisdictions of 2002, which refer among other things to the provisions of "the Instruction on the organisation of the supervision of correspondence" to conclude that the seizure of the applicant's correspondence with his father was in accordance with law. Information on these issues was requested from the Ukrainian delegation (letters of the Secretariat of the 18/02/2004 and 27/04/2004). By letter of 04/06/2004 the delegation transmitted to the Secretariat a declaration signed by the applicant on 30/09/2003, in which he states that he is satisfied with the response received from the penitentiary administration concerning the control of his correspondence and asks that his relatives' complaints concerning this issue are not taken into consideration. The applicant's declaration has been sent to his representative.
General measures:

1) Violations of Article 3

- Conditions of the applicants' detention on death row:

• *Information provided by the Ukrainian authorities (letter of 03/10/2003)*: Detention conditions for prisoners sentenced to life imprisonment have considerably improved since the facts at the origin of these cases, as acknowledged by the European Court in these judgments (see for example §147 of the Poltoratskiy judgment). Detention conditions are at present regulated by the Correctional Labour Code as modified in 2000 and 2001 and a Regulation on the execution of life sentences adopted in 2001 by the Department for the Execution of Sentences with a view to bringing these conditions into conformity with European standards for the protection of human rights. The most important of these improvements relates to access to natural light in cells and the possibility for sentenced persons to receive visitors, to send and receive letters and to have a daily walk. The delegation also sent a comparative table of the various regulations on conditions of detention in prisons in Ukraine since 1992 which sets out the changes which have been introduced since that date (letter of 04/06/2004).

- Cleaning and bathing facilities:

On 11/10/2006, Order No. 193 relating to the approval of regulations on laundry and bath service for prisoners and detainees was adopted. According to this regulation, prisoners shall have access to a bath not less than once a week with an obligatory change of linen and clothes. More frequent use of hygienic bath wash may be allowed by the head of the institution following a physician's findings. For personal hygienic needs prisoners and detainees shall take shower in specially equipped places but not less than twice a week.
• *Information provided by the Ukrainian authorities: (letter of 30/07/2007)*: A number of construction works and repairs have been completed or are under way to improve prison facilities and related buildings, including medical units and sanitary zones.

2) Absence of an effective investigation of the alleged ill-treatment: (see in particular §160 of the judgment in the Kuznetsov case and §126 of the judgment in the Poltoratskiy case).
Following the facts of the present cases, the Ukrainian Department for the Execution of Sentences adopted a number of legal acts to ensure effective investigation of alleged ill-treatment:
a) Instruction No. 117 of 5/05/2000, provides, among other things, the opening of criminal proceedings on the basis of applications from prisoners or detainees on remand concerning physical injuries possibly resulting from illegal acts. Under such circumstances, the head of the prison establishment must open criminal proceedings to conduct a preliminary inquiry and to identify the perpetrators.
b) Instruction No. 12/369/nm of 29/01/2004, provides that physical injuries revealed by the initial medical examination of detainees on their arrival in detention centres should be recorded. Any injuries thus revealed must be notified within 3 days to the body authorised to investigate such complaints and decide on the opening of a criminal case.
c) Order No. 39 of 21/02/2005 provides that medical staff of prisons or detention centres must visits cells daily to see whether any detainee needs medical assistance, consultation or examination. Where physical injuries are discovered, medical staff must provide the necessary treatment, record the injuries and inform the prison administration on its findings with a view to opening a criminal investigation.
• *<u>Examples are expected</u> on the application of these provisions.*

3) Violations of Articles 8 and 9:
In 1999 the Internal Instruction which was criticised in the judgments was revoked by a decision of the Department for Execution of Sentences. At the present time, the detention of prisoners sentenced to life imprisonment is regulated by the Correctional Labour Code and the Regulation on the execution of sentences of life imprisonment (see above), which was made public according to the legislation in force.

- *Prisoners' correspondence:*

The Ukrainian authorities stated that the current legislation did not provide censorship of correspondence in respect of the prisoners or detainees but review thereof for the security reasons. According to the Code of Criminal Execution (Article 113) and the Law on Pre-trial Detention, as amended on 01/12/2005, the correspondence to the Ukrainian Parliament Commissioner for Human Rights (Ombudsperson), the General Prosecutor of Ukraine, the European Court of Human Rights or supervisory bodies of international organisations shall not be subject to any review and shall be dispatched within 24 hours.
Regulation No. 275 of the Department of Execution of Sentences of Ukraine *("*On adoption of Internal regulations of the punishment execution establishments") relates to the ordering of mail, arranging money transfers, meeting relatives, other persons and lawyers by the convicts. Apparently the document is unclassified and accessible to public.
On 25/01/2006, the State Department for the Execution of Sentences adopted Order No. 13 ("Instruction on the Procedure for Review of Correspondence of Persons Held in Penitentiary Facilities") which is accessible to public. The Order replaced the previous Internal Instruction adopted by the Department for the Execution of Sentences on 30/08/2002.
In the letter of 04/04/2005 the Ukrainian authorities mentioned that the *Verkhovna Rada* (Ukrainian Parliament) was considering a draft law concerning the correspondence of prisoners and detainees with the European Court.
• *<u>The Ukrainian authorities are expected to provide information</u> on progress in adoption of this draft law.*

- *<u>Prisoners' freedom of religion</u>:*

The conditions of religious activities in prisons are regulated by the Rules of Internal Order in the Establishments of the Execution of Sentences, adopted by the Order of State Department No. 275 of 25/12/2003, which is accessible to public.
• *<u>The Ukrainian authorities are expected to submit</u> translations of the relevant legal provisions.*

4) Violation of Article 13

• *Information provided by the Ukrainian authorities (letter of 15/11/2005)*: The legislation at issue had not yet been amended, but national practice with regard to its application had already changed. The Ukrainian authorities also mentioned the possibility to lodge a complaint with the court against decisions of the prison or remand centre administration to apply a disciplinary punishment (i.e., detention in a punishment cell). Although this action does not immediately stop implementation of the disciplinary punishment, the finding of unlawfulness by a court opens the possibility to lodge a civil suit for reimbursement of pecuniary and/or non-pecuniary damage.
• *The Ukrainian authorities are expected to provide examples, if there are any, of the practice mentioned in their submissions.*

***5) Publication and dissemination of the European Court's judgments*:** All the judgments have been translated into Ukrainian and published on the internet site of the Ministry of Justice. They have been also published in a specialised quarterly journal, *Case-Law of the European Court of Human Rights. Judgments. Comments*. Apparently, the prison authorities have been informed about the judgments.
The judgments have also been brought to the attention of prosecutor and prison authorities during their regular training.

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 on the payment of the just satisfaction, if necessary;
2. at the latest at their 1st DH meeting in 2008, in the light of further information to be provided on general measures.

1007 (October 2007)

- cases of length of civil proceedings (and absence of an effective remedy)

41984/98 Naumenko Svetlana, judgment of 09/11/2004
22431/02 Baglay, judgment of 08/11/2005
61679/00 Dulskiy, judgment of 01/06/2006
55870/00 Efimenko, judgment of 18/07/2006
23853/02 Karnaushenko, judgment of 30/11/2006
23786/02 Krasnoshapka, judgment of 30/11/2006
10437/02 Kukharchuk, judgment of 10/08/2006
56918/00 Leshchenko and Tolyupa, judgment of 08/11/2005
36545/02 Moroz and others, judgment of 21/12/2006
39404/02 Mukhin, judgment of 19/10/2006, rectified on 9/01/2007
70767/01 Pavlyulynets, judgment of 06/09/2005
23926/02 Silin, judgment of 13/07/2006
36655/02 Smirnova, judgment of 08/11/2005
49430/99 Strannikov, judgment of 03/05/2005
72551/01 Teliga and others, judgment of 21/12/2006

All these cases concern the excessive length of civil proceedings (violations of Article 6§1) and, in addition in the Efimenko case, the absence of an effective remedy (violation of Article 13).
The case of Svetlana Naumenko also concerns the quashing of final court decisions given in the applicant's favour by means of a supervisory review procedure (*protest*), following applications lodged by a state official under the Code of Civil Procedure in force at that time. The European Court found that the use of the supervisory review procedure infringed the principle of legal certainty and thus the applicant's right to a court (violation of Article 6§1).
The European Court also found that the sustained non-enforcement of the final judicial decision in the applicant's favour (recognising her right to a pension and entitlement to state privileges) constituted a violation of her property rights (violation of Article 1 of Protocol No.1).
In addition, it found that examination by the Deputy President of the Odessa Regional Court of the application for supervisory review that he had himself lodged with the Presidium - of which he had been a member and Deputy President - was incompatible with the requirement of impartiality (violation of Article 6§1).
Individual measures: No individual measures are required, except for those described below.

1) Efimenko: Two sets of proceedings were pending at the time of the Court's judgment.
• *Information is awaited on the current state of these proceedings and, if appropriate, measures to accelerate them.*

***2) Baglay**:*

• *<u>Information is awaited</u> as to whether the applicant has lodged separate civil proceedings, as advised by the Supreme Court of Ukraine (§ 19 of the judgment) and, if appropriate, on the current state of such proceedings.*

<u>General measures</u>:

1) Excessive length of court proceedings and absence of an effective remedy: In accordance with Articles 6 and 31 of the Law on the Status of Judges, which entered into force on 10/02/1993, disciplinary proceedings can be instituted against a judge who has not performed his or her duties in compliance with the Constitution and legislation, concerning the observation of time-limits, while administrating justice.

In the context of the Committee's examination of the Zhovner group (Section 4.2), the Ukrainian authorities transmitted on 11/10/2005 the text of a draft law on pre-trial and trial proceedings and the enforcement of judgments within a reasonable time setting forth a new remedy whereby a higher court may be requested to order particular procedural actions within a certain time-limit and/or award compensation for delays, totalling up to fifteen minimum wages. The draft also specifies that such a decision should be dispatched to the competent authority to decide on disciplinary action against the persons responsible for the delay.

On 11/01/2007 the Secretariat wrote to the Ukrainian authorities stressing the importance of adopting appropriate general measures related to repeated violations of Article 6§1 and Article 13. On 07/06/2007, the draft law entitled On Amendments to Certain Legal Acts of Ukraine (concerning the protection of a person's right to pre-trial and trial proceedings as well as enforcement of court decisions within reasonable time) was submitted to Parliament (registration No. 3252).

• *<u>Information is awaited</u> on further developments in this respect, and, in particular, on progress in the adoption of the draft law.*

1) Sustained failure to enforce final judicial decisions: The case of Svetlana Naumenko presents similarities to those in the Zhovner group (see above) in which the Committee is supervising the adoption of general measures to prevent further similar violations.

2) Supervisory review procedure and the related issue of impartiality: The case of Svetlana Naumenko presents similarities to that of Sovtransavto Holding against Ukraine (987th meeting, February 2007, Section 4.3), in which the Committee is supervising the adoption of general measures to prevent further similar violations.

The Deputies decided to resume consideration of these items at the latest at their 1st DH meeting in 2008, in the light of further information to be provided concerning general measures, including in particular the establishment of an effective remedy against the excessive length of judicial proceedings, and individual measures, if necessary.

<u>1007 (October 2007)</u>

47148/99 Novoseletskiy, judgment of 22/02/2005

This case concerns the applicant's eviction from a flat following his temporary departure for Russia in 1995. This flat had been earlier granted to the applicant for unlimited duration by the Melitopol State Teacher Training Institute where he had taught. The applicant's complaints were examined by the Ukrainian courts, which finally recognised his right to occupy the flat refusing, however, to award him compensation for being deprived of it between 1996 and 2001. Moreover, the flat had been restored to the applicant in a condition unfit for human habitation, which prevented the applicant from living there with his family.

The European Court found that the state had failed in its positive obligations consisting in restoring and protecting the effective enjoyment by the applicant of his right to respect for his home, his private and family life (violation of Article 8).

The Court also found a violation of the applicant's right to property as his possessions disappeared from the flat during his absence and the criminal investigation was neither effective nor impartial (violation of Article 1 of Protocol 1).

<u>Individual measures</u>:

1) Violation of Article 8: The European Court noted that, according to the last witnesses' statements received in 2004, the flat was still in a degraded condition and no action had been taken by the authorities since 28/03/2001 to remedy the situation (see § 88 of the judgment).

• *<u>Clarification is accordingly awaited</u> concerning the condition of the flat as well as on measures envisaged or taken to remedy the consequences of the violation*.

2) Violation of Article 1 of Protocol No. 1: The European Court awarded the applicant just satisfaction in respect of all heads of damage including, apparently, the property which disappeared from the flat.

General measures: The judgment was promptly translated into Ukrainian and placed on the Ministry of Justice's official web-site. It has also been published in the *Official Herald* of Ukraine, No. 31, 2005 and in the *Bulletin of the Supreme Court*, No. 8, 2005. Finally, the Government Agent before the Court drew attention to the present judgment in the course of a number of seminars and trainings for judges.

The Deputies decided to resume consideration of this item:
2. at their 1013th meeting (3-5 December 2007) (DH), in the light of information to be provided concerning payment of just satisfaction, if necessary;
2. at latest at their 2nd DH meeting in 2008, in the light of information to be provided on individual measures, namely those envisaged or taken to remedy the degradation of the applicant's flat.

1013 (December 2007)

- **Cases concerning the quashing of the final judgments through the supervisory review procedure (*protest*)**

48553/99 **Sovtransavto Holding, judgment of 25/07/02, final on 06/11/02 and judgment of 02/10/03, final on 24/03/04 (Article 41), Interim Resolution ResDH(2004)14**
62608/00 **Agrotehservis, judgment of 05/07/2005**
74104/01 **Ivanova, judgment of 13/09/2005**
77317/01 **Poltorachenko, judgment of 18/01/2005, rectified on 26/01/2005**
63158/00 **Timotiyevich, judgment of 08/11/2005**
53500/99 **Zherdin, judgment of 21/02/2006**

All cases concern the application of supervisory review procedure (*protest*) leading to the quashing of final court decisions rendered in applicants' favour, without any time-limit and based on discretionary power of certain judiciary and state officials (violations of Article 6§1).
All cases, except Zherdin case, concern also the violation of applicants' right to peaceful enjoyment of their possessions due to the manner in which the impugned proceedings were conducted (violations of Article 1 of Protocol No. 1).
In addition, the Sovtransavto Holding case concerns the failure to respect the applicant company's right to a fair trial before an impartial and independent tribunal in respect of certain proceedings conducted between 1997 and 2002 before the Ukrainian courts with a view to establishing the unlawfulness of domestic decisions which resulted in the depreciation of its shares in - and the ensuing loss of control over - a Ukrainian transport company (violation of Article 6§1).
The main deficiencies found by the Court consist of:
- repeated attempts by the President of Ukraine to influence domestic court decisions;
- application of *protest* procedure making it possible to quash final judicial decisions without any limitations;
- the refusal by courts to examine the arguments on the merits in a public hearing and the absence of adequate motivation of judicial decisions.

Individual measures:
1) Sovtransavto Holding case: Following the judgment of the European Court, in its decision of 20/05/2005 the first-instance court had partially granted the claim of the applicant company's legal successor and awarded 1 616 178,33 USD in respect of pecuniary damage in reopened proceedings. This decision has become final.
2) Other cases: No further individual measure seems necessary. The European Court awarded just satisfaction to all applicants in respect of the damages sustained.

General measures: On 11/02/2004 the Committee of Ministers adopted an Interim Resolution ResDH(2004)14 in the Sovtransavto Holding case, taking stock of the measures adopted so far and pointing out the outstanding questions.
• *Summary of the Interim Resolution*:
The Committee encouraged the Ukrainian authorities rapidly to ensure that the necessary measures are taken to guarantee that each and every state authority fully respects the independence of the judiciary, in particular by ensuring:
- that all necessary measures are taken to implement the President's order of 12 July 2003 (aiming at ensuring the unconditional implementation of all legal norms, including the Convention, protecting the independence of the judiciary),
- that it is no longer possible for public prosecutors to question the final character of court judgments in civil cases.

The Committee called on the competent authorities to continue the training on the Convention, including the case-law of the European Court, during the initial and in-service training of judges and prosecutors and to ensure that the latter have ready access to such case-law.

The Committee urged the Ukrainian authorities to ensure the wide dissemination of the interim resolution in Ukrainian translation to the Government ministries, General prosecutor's office, local authorities and courts.

• *Further developments and outstanding issues*:

1) Executive's repeated interferences with judicial proceedings: The Ukrainian authorities have indicated that the independence of the judicial power is guaranteed by the current legislation. In particular, the Constitution of Ukraine guarantees the independence and immunity of judges (Article 126) and provides that in the administration of justice, judges are independent and subject only to law (Article 129). The legislation in force, such as the Law on Status of Judges, prohibits external influence on the process of administration of justice. According to the Criminal Code, interference aimed at obstructing judges in the execution of their duties or at delivering unjust decisions is punishable by a fine equivalent to a maximum of 50 times the national minimum wage (tax-free) or up to two years' community service or up to six months' imprisonment (Article 367§1 in its wording of 05/04/2001). Various draft laws have been prepared to enhance judicial independence in various aspects (such as financing of judiciary, judges' remuneration and fringe benefits, judicial appointments, disciplinary procedures, judicial self-administration, etc.)

- draft amendments to the Law on the Judicial System of Ukraine (registration No. 2834 of 27/12/2006) were approved by Parliament at first reading on 03/04/2007;
- draft Laws on the Status of Judges and on the Judiciary: see comments in Salov for details, Section 4.3;
- draft Law on the Temporary Order of Financing of Judiciary in Ukraine was approved at first reading while the draft Law on Court Fees has been submitted to Parliament for consideration. Finally, in order to improve financing of judiciary, the President approved the State Programme for the Provision of Judges with Appropriate Premises 2006-2010 (Decree No. 242/2006 of 04/07/2006);
- Order for Keeping a Unified Register of Courts' Judgments was drawn up by the State Courts Administration (No. 740 of 25/05/2006).

• *Information is awaited on further developments related to these drafts laws, and in particular on the timetable envisaged for their adoption: copies of the texts would be appreciated*.

2) Concerning supervisory review ("protest"):

The supervisory review procedure was abolished in June 2001.

The new Code of Civil Procedure adopted on 18/03/2004 (in force since 01/09/2005) also abolished the prosecutors' power to request revision of final judgments in civil cases (Articles 353 and 362).

• *Outstanding issues:* It would appear that the relevant provisions of the Code of Commercial Procedure of 1991 still envisage this possibility (Articles 29, 107, 111-14 and 113) (see Parliamentary Assembly Resolution 1466(2005) Explanatory Memorandum §261

• *Information provided by Ukrainian the authorities (January and April 2007)*: Prosecutors may still appeal, appeal in on a point of law or apply n for review under newly-discovered circumstances. However, the grounds and the time-limits for such appeals were strictly provided by law and are the same for all parties to the proceedings, thus conferring on prosecutors no particular discretion.

• *Clarification would be useful as to*

- *whether the Code of Commercial Procedure expressly establishes a limited list of issues on which the prosecutor may intervene in proceedings or whether the Code just provides that he/she may intervene each time and at whatever stage of proceedings if the public interest is concerned;*
- *in this latter case, what is the authority competent to decide what is the public interest and whether it is concerned in a particular case.*

• Examples would also be useful of cases which more frequently give rise to the prosecutors' intervention.

The Ukrainian authorities also indicated that on 25/05/2006 a new draft Code of Commercial Procedure was submitted to Parliament. Articles 5, 56 and 57 provide that the prosecutor has the right to apply to the commercial courts with a view to protecting rights and legal interests of other persons, undetermined circle of persons, the state and public interests.

• *More details are expected on the concrete rules governing prosecutors' participation in the proceedings according to this draft Code.*

3) Training activities on the Convention, the authorities provided comprehensive information on trainings of judges and prosecutors.

a) Training activities for judges only: The Ukrainian authorities provided information on the aims of the Judges' Academy established in October 2002, and also a list of the seminars and conferences (see <http://aj.court.gov.ua>) . Furthermore, the authorities indicated that pilot training programmes have been drawn up within the Judges' Academy for the in-service training of judges. These programmes include themes on Convention law. In 2005/2006, 24 training sessions for judges

on the Convention and Court's case-law took place, while 2 080 judges participated in the training. The authorities also indicated that every judge follows such in-service training prior to his or her nomination to a post of unlimited duration. In 2007, the Judges' Academy is proceeding with special training on the Convention for judges, who will further be able to train their colleagues.
The Judges' Academy, together with Ukrainian Legal Foundation, also carried out a joint project "Implementation of the European Human Rights Standards in Ukrainian legal proceedings: special training for judges". Forty-two appeal-court judges (including judges of commercial courts of appeal) received systematic training under this project over two years.
Also a number of activities in the framework of the Council of Europe/European Commission Joint Programme are designed to train Ukrainian judges to apply European human rights standards in their daily work (see <http://www.jp.coe.int/CEAD/JP/Default.asp?SA=1&SpecificObjectiveID=381#5.1>)
With regard to plans to transform the Judges' Academy into a school for magistrates, the relevant amendments have been proposed in the draft Law on the Status of Judges.
• *Information is awaited on the timetable for adopting this draft law and the transformation of the Judges' Academy into a school for magistrates*.

b) Training activities for prosecutors only: Total of 53 trainers of future prosecutors underwent in-depth training on the Convention organised in the framework of the Council of Europe/European Commission Joint Programme (four four-day training sessions took place between January and April 2005). The trainers gave one-day seminars for prosecutors from all regions of Ukraine. By March 2006, 70 seminars of this kind had taken place and more than half the 10 000 Ukrainian prosecutors received initial training on the Convention.
Furthermore, a compulsory subject "Implementation of the European Convention on Human Rights" has been included in the curriculum of the Academy of Prosecution of Ukraine. At the end of 2006, the Council of Europe and the European Commission started the programme "Supporting Respect of Human Rights" for 2007-2008, envisaging 30 seminars for Ukrainian prosecutors. The Office of the Prosecutor General offered to include the provisions concerning knowledge of Convention and its case-law in the list of questions for examination of professional knowledge of candidates for prosecutor-investigators' positions at a certain level.

c) Combined training activities for judges and prosecutors and others: On 13/07/2006, the Ministry of Justice conducted consultations with other state authorities on the inclusion of study of the Convention and its case-law in the educational programs for professional development of judges, prosecutors, lawyers, notaries and other lawyers, and on the introduction of changes to the professional requirements for these categories.
Various state authorities (Ministry of Internal Affairs, State Department of Execution of Sentences, the State Tax Administration) confirm they will or they already included the study of the Convention and its case-law in training for their members.
The government proposed certain amendments to current legislation with regard to the professional requirements for judges, prosecutors and lawyers. The Academy of Prosecution of Ukraine, together with Judges' Academy of Ukraine, is preparing a basic list of questions on the Convention and the Court's case-law, which must be included in the programmes of initial training and professional development of judges and prosecutors. This basic list of questions was the subject of a round-table discussion on 25/12/2006. The Ministry of Justice of Ukraine offered the Higher Qualification Advocacy Board of Ukraine to make amendments to the current regulations, with a view to implementing qualification requirements for practicing lawyers. The Ministry of Justice is also co-operating with the Ministry of Education and Science with a view to including the study of the Convention and its case-law in law schools' programmes.

4) Publication and dissemination: all the judgments of the European Court have been translated into Ukrainian and placed on the Ministry of Justice's official website, except judgment in the Zherdin case, which will be placed on the website shortly. They have also been published in the *Official Herald* of Ukraine as follows:
- Sovtransavto - in No. 44/2003; also in the *Bulletin of the Ministry of Justice*, No. 9/2003 and in the *Journal Case-law of the ECHR*. The Interim Resolution was published in Ukrainian translation in the *Bulletin of the Supreme Court* (No. 3(43), 2004),
- Agrotehservis - No. 4/2006;
- Ivanova - No. 4/2006;
- Poltorachenko - No. 21/2006;
- Timotiyevich - No. 8/2006;
- Tregubenko (Section 6.2) - No. 21/2005;
- Zherdin - No. 49/2006.

In addition, circulars on particular judgment were sent, in the Sovtransavto case on 07/11/2006 to the Academy of Judges of Ukraine, the Institute of Legislation of the Parliament and the Academy of Prosecutors of Ukraine; and in the Tregubenko case on 31/01/2006 to the Supreme Court with recommendation to reopen proceedings. Reference was made in a number of seminars and other events to the judgments rendered in Agrotehservis, Ivanova and Poltorachenko cases.

The Deputies,
1. encouraged the competent Ukrainian authorities to hold bilateral consultations with the Secretariat with a view to clarifying possible outstanding issues related to the reform of the supervisory-review procedure;
2. welcomed the adoption, at first reading, of the draft amendments to the Law on the Judicial System of Ukraine and to the Law on the Status of Judges aimed at securing the independence of the judiciary, and noted in this respect with satisfaction the Venice Commission's conclusions that the fundamental provisions of both drafts are in line with the European standards and are a clear improvement compared to the present situation;
3. strongly encouraged the competent Ukrainian authorities to rapidly adopt the draft amendments at the second reading, taking into account observations and proposals made by the Venice Commission to the mentioned draft laws;
4. noted that the adoption of other measures complementing this legislative reform, such as training of judges, awareness raising, and other legislative measures are being examined under the Salov group of cases;
5. decided to resume consideration of these cases at their 1020th meeting (4-6 March 2008) (DH), in the light of information to be provided on payment of the just satisfaction, if necessary, and at latest at their 1028 meeting (3-5 June 2008) (DH), in the light of information to be provided on individual and general measures and possibly on the basis of a draft final resolution.

1007 (October 2007)

- **Cases concerning inhuman and/or degrading treatment in detention resulting from overcrowding, unsatisfactory hygiene and sanitation conditions or inadequate medical care, as well as lack of an effective remedy**

54825/00 Nevmerzhitsky, judgment of 05/04/2005
72277/01 Dvoynykh, judgment of 12/10/2006
65550/01 Koval, judgment of 19/10/2006
The cases concern inhuman or degrading treatment inflicted on the applicants while detained on remand during various periods between 1997 and 2000, particularly in the Kyiv Region Temporary Investigative Isolation Unit (SIZO No. 1), the Simferopol Detention Centre, the Security Service Investigative Isolation Unit and SIZO No. 13. The violations resulted from unacceptable detention conditions including:
- overcrowding
- inadequate medical care (in all cases except that of Dvoynykh),
- an insanitary environment and failure to respect basic hygiene in all cases
- force-feeding of the applicant while on hunger strike in the Nevmerzhitsky case (involving the use of handcuffs, a mouth-widener and a special rubber tube inserted into the oesophagus),
- absence of ventilation, daily outdoor walks, access to natural light and air and inadequate size of the cell in the Dvoynykh case (violations of Article 3).

The cases (except the Nevmerzhitsky case) also concern the lack of an effective and accessible remedy under domestic law in respect of the applicants' complaints concerning the treatment in detention and detention conditions (violations of Article 13).
The Nevmerzhitsky case also concerns the unlawful pre-trial detention of the applicant, in particular in view of the lack of judicial control of this detention and the fact that it exceeded the maximum statutory duration for detention on remand (violations of Articles 5§3 and 5§1(c))
Under Article 5§1, the European Court found in the Nevmerzhitsky case that the applicant had been detained without lawful grounds between 1/10/1997 and 1/11/1999, as the decisions ordering the extension of his detention had been taken by prosecutors, and not based on a court order. Moreover, the applicant's detention between 16/02 and 23/02/2000 was also unlawful since it exceeded the maximum statutory period of detention.
On the ground of Article 5§3, the European Court first noted that the applicant's detention was reviewed by a judge only three times, on 28/05/1997, 1/11/1999 and 16/12/1999, stating that it could not be accepted that it had been necessary to detain the applicant for so long in pre-trial detention without either prompt or regular judicial supervision.
Furthermore, it indicated that the relevant provisions of the Code of Criminal Procedure (Article 156) were in themselves contrary to the principle of legal certainty enshrined in Article 5, since the time allowed for the applicant to familiarise himself with the case-file was not regulated by domestic law

with sufficient precision and was not taken into account when calculating the overall period of the applicant's pre-trial detention.
Moreover, bearing in mind the applicant's state of health, the conditions of detention and the fact that no alternative preventive measures were considered by the authorities, the Court concluded that the applicant's continued detention on remand for more than two years and five months was not based on relevant and sufficient reasons, while mentioning *inter alia* that no factual circumstances were indicated by the domestic authorities in support of the conclusion that the preventive measures should be maintained.
The Nevmerzhitsky case finally concerns shortcomings in the response by the Ukrainian authorities to their obligation under the Convention to furnish all necessary facilities to the Court in its task of establishing the facts (violation of Article 38§1(a)). In this respect, the European Court found that the respondent government fell short of its obligation under Article 38§1(a) of the Convention to furnish all necessary facilities to the Court in its task of establishing the facts, by failing to comment on particular questions, or failing to provide relevant documents and medical reports.
Individual Measures: The applicants were released in the Nevmerzhitsky and Dvoynykh cases. No reliable information is available in the Koval case.
General Measures:
1) Violation of Article 3: The case presents similarities to the Kuznetsov group of cases (see below) in which the Committee is examining measures taken by the Ukrainian authorities to ensure that the living and medical conditions of remand detention facilities meet the standards of Article 3 of the Convention.
• *Detention conditions:*
- Overcrowding and size of cell: On 30/07/2007, the Ukrainian authorities informed the Committee in the context of the *Kuznetsov* case (See below) that the State Programme for the improvement of conditions of detention of convicts and persons taken into custody for 2006-2010 had been approved on 03/08/2006. The Committee was informed that a number of detention units, including investigation detention units were being overhauled and new buildings constructed.
Information is awaited on further progress in implementing this Programme, as well as on improvements made in the detention centres named above.
It is noted that the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment (CPT) in its report on Ukraine (document CPT/Inf(2007)22 dated 20/06/2007) indicated that the Code on the Execution of Sentences which entered into force in January 2004 still provides ~~for~~ an inadequate norm of living space of 3 m^2 per prisoner in colonies.
Draft law amending the Criminal Code was prepared in 2005 with a view to a more differentiated approach to sentencing and a broader range of non-custodial measures as well as replacing certain custodial sentences with alternative measures.
• *Information is awaited on the further progress of legislative reform, in particular with regard to the Code on the Execution of Sentences and the Criminal Code.* In this context, the authorities' attention is drawn to Committee of Ministers' Recommendations R(80) 11 concerning custody pending trial (replaced by Rec(2006)13 on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse), Rec(99)22 concerning prison overcrowding and prison population inflation and Rec(2003) 22 on conditional release (parole).
- Sanitation/hygiene in detention units: On 30/07/2007, the authorities informed the Committee in the context of the *Kuznetsov* case (See above) of progress related to cleaning and bathing facilities in detention units. In particular, on 11/10/2006, Order No. 193 approving a regulation on provision of laundry and bath service to prisoners and detainees was adopted. According to this regulation, prisoners shall have access to a bath not less than once a week with obligatory change of linen and clothing. More frequent hygienic bathing may be allowed by the head of the institution following a physician's findings. For personal hygienic needs prisoners and detainees shall shower not less than twice a week.
• *Information is awaited on the first experience of implementation in practice of this regulation.*
- Force-feeding: It is noted that the European Court qualified as “torture” the procedure prescribed in the Decree of the Ministry of Internal Affairs of 4/03/1992 No. 122, concerning specifically the issue of force-feeding of detained persons who go on hunger strike.
Amendments to provisions of the Code of Criminal Procedure, Code of Criminal Execution and other legislative acts dealing with the matter of forced-feedings are planned by the Ukrainian authorities. A special working group, established in April 2006, is finalising a draft law providing for a new procedure for force-feeding. The group concluded that the procedure should be unified for all confined persons and the decision ordering force-feeding should only be taken by courts. The draft law was to be

submitted to the government by the end of November 2006 and, once approved, to the Ukrainian Parliament.
• *Information is awaited on further developments in this respect, and, in particular, the draft law in question. Information is also expected on whether the impugned provisions of the Decree of the Ministry of Internal Affairs of 4/03/1992 No. 122 are still in force.*
• *Medical treatment and assistance:* The State Programme above-mentioned provides in particular the improvement of medical conditions in penitentiary institutions. On 30/07/2007, the authorities informed the Committee, in the context of the Kuznetsov case of a number of construction works and repairs, including medical units and sanitary zones.
• *Information is awaited on progress in implementation of the Programme and other measures taken to improve medical treatment and assistance in detention centres.*
2) Violation of Article 13:
• *Information is awaited on measures taken or envisaged to introduce an effective legal remedy in respect of the detainees' complaints concerning the treatment in detention and detention conditions.*
3) Violations of Article 5§1 and 5§3: As from 2001 the Ukrainian Constitution provides that detention on remand must be based on substantiated court decisions.
• *Clarification is awaited on the legislative provisions currently governing the procedure of ordering and prolonging detention on remand, as well as on measures envisaged to ensure that the legal provisions concerning the maximum period for detention on remand are respected in practice.*
• *Information is also awaited on measures envisaged by the Ukrainian authorities in response to the European Court's criticism of the provision included in Article 156 of the code of criminal procedure (see above), and on measures to ensure that court decisions ordering extension of detention on remand are duly reasoned and explicitly indicate the factual and legal grounds.*
4) Violation of Article 38§1(a): Given the particular importance of the principle embodied in Article 38§1a, the authorities' attention must be drawn to the Committee's Resolution ResDH(2001)66 stressing that the principle of co-operation with the Court embodied in the Convention is of fundamental importance for the proper and effective functioning of the Convention system and calling upon the governments of the contracting states to ensure that all relevant authorities comply strictly with this obligation. The publication and wide dissemination of the judgment, together with the Resolution mentioned above and accompanied by a circular letter, to courts, prosecutors and penitentiary authorities would also be helpful to prevent new, similar violations.
The authorities' attention was also drawn to the Memorandum on the failure to co-operate with the organs of the Convention (Article 38, paragraph 1 of the Convention) prepared by the Secretariat for the 960th meeting (CM/Inf/DH(2006)20).
• *An action plan has been awaited since February 2006 (letter sent on 12/12/2005) on legislative or other measures envisaged to ensure that the state authorities fully co-operate with the European Court in the process of establishing the facts of the cases brought before it.*

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

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- cases concerning the failure or substantial delay by the administration or state companies in abiding by final domestic judgments
(See Appendix for the list of cases in the Zhovner group <http://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/OJ/DH(2007)1013&Sector=secCM&Language=lanEnglish&Ver=prel0004&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75>)
CM/Inf/DH(2007)30 (revised in English only) and CM/Inf/DH(2007)33

All these cases concern violations of the applicants' right to effective judicial protection due to the administration's failure or substantial delay in abiding by final judicial decisions in the applicants' favour (violations of Article 6§1).
In some of these cases the European Court also found consequent violations of the applicants' right to the peaceful enjoyment of their possessions (violations of Article 1 of Protocol No. 1) and/or violations of Article 13 due to the lack of an effective remedy allowing redress for damage created by delays in enforcement.
Individual measures: Urgent measures are necessary to ensure enforcement of the domestic judgments in the cases where this has not yet been done. It is noted as well that the new amendment to the Law on Enforcement Proceedings entered into force on 14/03/2007. The amendment adopted

provides for closure of domestic enforcement proceedings once a national court decision has been enforced in implementation of the European Court's judgment (amendments to Article 37).
• *Information is required on the outstanding individual measures*.
General measures:

a) Law on Pre-Trial and Trial Proceedings as well as Enforcement of Court Decisions within Reasonable Time:

Following to a decision taken by the working group in charge, the 2005 draft law *on pre-trial proceedings as well as enforcement of court decisions within reasonable time* was modified and renamed "on amendments to certain legal acts of Ukraine (on the protection of the right to pre-trial and trial proceedings and enforcement of court decisions within reasonable time)". The modified draft envisages amendments to the Code of Administrative Procedure and the Law on the Status of Judges and provides a new remedy making it possible to apply to the administrative court with a claim about violation of the right to proceedings within reasonable time. It includes compensation for delays and sanctions against those responsible. The amended version was submitted to the Government of Ukraine in February 2007. In addition to this special draft law, amendments are as well under way with regard to the Administrative Offences Code and the Customs Code.
• *Assessment: Pending the adoption of the above draft law and amendments, it seems feasible to encourage the judicial authorities to award compensation for delays in enforcement of domestic judicial decisions on the basis of the Convention's provisions pursuant to the new Law on Enforcement of Judgments and the Application of the Case-Law of the European Court. Guidance by the Supreme Court to lower courts would be useful in this respect.*
• *Information is awaited on the time-table envisaged for the adoption of the draft law and amendments, possibly with a copy of the last modified version thereof, as well as on possibility for the Supreme Court to issue an interim guidance in this respect pending the adoption of the draft law.*

b) Amendments to the Bankruptcy and Moratorium Laws and problems with attachment of the budgetary funds.

Given the fact that in a large number of these judgments the violations occurred in relation with bankruptcy proceedings, which interfered with the enforcement of judgments ordering the payment of salary arrears, the Ukrainian authorities are finalising draft amendments to the Bankruptcy Law. In particular, the draft amendment to the Bankruptcy Law envisages abolishing the present moratorium with regard to the salary arrears under execution writs as well as with regard to certain other payments.
On 23/05/2007 the draft law abolishing the moratorium on the forced sale of property in companies has been submitted to the Government for consideration. It is noted that at present it is impossible to attach proprety of any company where the state holdings exceed 25%.
• *Information is awaited on the timetable envisaged for adoption of amendments to the Bankruptcy and Moratorium Laws.*
Further, pursuant to the Enforcement Act, the Government was in charge since 2003 to regulate attachment on budgetary funds, which should be executed by the State Budget. However, the Government failed to adopt the appropriate secondary legislation. For this reason, the State Execution Services continued to deal with enforcement of the judgments rendered against the state. Further, pursuant to the Budgetary Code it is impossible to attach any state funds on the account of some budgetary beneficiary if they are not intended for the specific purpose of satisfying a particular court award. Also, the situations occur where a number of applicants are willing to attach the funds of a particular state entity when there are funds for some of them but not for all. In such situation, the State Budget writes off the funds from a special account and deem the respective court decision satisfied and make a note thereon on the writ of execution. However, the Enforcement Act provided for order of satisfying claims and state enforcement agents very often must direct those funds for satisfaction of the prior writs of executions and not for those written of by the State Budget.
• *Information required on action taken or envisaged to avoid any legislative lacuna and confusion in this area.*
The authorities informed the Committee of Ministers at its 1007th meeting (October 2007) that the Government submitted draft law amending various legislative acts relating to enforcement procedures.
• *Information is further required on the progress of the above draft law.*

c) *Inappropriate enforcement procedures.* Procedural deadlines in the Enforcement Act, provide the debtors in practice with sufficient time to hide their funds and they often do so.
• *Information required on action taken or envisaged to possibly change the legislation in this area to prevent future underlying violations.*

d) Enhancing criminal, material and other responsibility: A number of criminal proceedings have been opened against the top management of companies willfully delaying the payment of salaries or against officials involved in the execution procedures.

• *Information is required on the outcome of the criminal proceedings concerned.*

e) Sector-specific measures: A number of sector-specific measures are taken or are underway in education sector, state mining sector, Atomspetsbud and other state companies. The particularly pressing problem remain to be resolved in the Atomspetsbud company, which had carried out construction works within the Chernobyl zone and thus had its assets contaminated. Due to unacceptable radiation level, it is prohibited under Ukrainian law to attach any such property. Also, the problem still persist in state mining companies under administration, bankruptcy or liquidation. Further, since 25/12/2005 the special legislation imposed a moratorium on seizure and attachment of funds pertaining to the fuel and energy companies, the registration of such companies with the special register established by the Ministry of Fuel and Energy is implemented.

• *Latest information provided by the authorities:* The authorities informed the Committee of Ministers at its 1007th meeting (October 2007) that the parliamentary committee in charge currently considers draft law whereby the whole amount of debts owed to Atomspetsbud employees totalling to roughly 1 million Euro will be appropriated in the 2008 State Budget.

• *Detailed information is awaited on measures taken or envisaged to remedy special sector-specific problems in enforcement of court judgments awarding pay and/or work-related benefits, in particular in the case of Atomspetsbud and state mining companies. Also, the information is awaited on the moratorium imposed on attachment of funds pertaining to the fuel and energy companies.*

f) Memorandum on the non-enforcement of domestic judicial decisions in Ukraine (CM/Inf/DH(2007)30rev)

This document was prepared by the Secretariat to assist the Committee of Ministers and the Ukrainian authorities in reflection on the underlying problems. The Memorandum was issued and declassified at the 997th meeting (June 2007). It revealed several important structural problems requiring urgent solution and proposed possible avenues to resolve the problems, including based on comparable experience of other countries.

▪ *Information is awaited on specific issues raised in the Memorandum.*

***g) Multilateral Round Table in Strasbourg*:**

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

• *Information is awaited on the follow up given by the Ukrainian authorities to the Conclusions of the Round Table.*

The Deputies,

1. recalled that these judgments revealed an important structural problem affecting the legal system of Ukraine and causing a growing number of applications before the European Court;
2. expressed concern that despite a number of legislative initiatives repeatedly brought to the attention of the Committee of Ministers, no substantial progress had been made so far in setting up or improving domestic procedures or the legislative framework;
3. therefore urged the Ukrainian authorities rapidly to adopt the draft laws previously announced before the Committee of Ministers, in particular the law on “the right to pre-trial and trial proceedings as well as enforcement of court decisions within a reasonable time”;
4. noted however with particular interest the rapid measures taken in the educational sector to resolve the indebtedness problem so as to allow the honouring of outstanding debts, thus contributing to eliminating the need to lodge complaints to the European Court, and encouraged the Ukrainian authorities to take similar measures also in other sectors concerned;
5. expressed appreciation of information provided by the Ukrainian authorities regarding measures taken to implement the Conclusions of the Round Table held in June 2007 in Strasbourg (CM/Inf/DH(2007)33);
6. noted that further information on other aspects raised in the Conclusions as well as on issues raised in the Memorandum (CM/Inf/DH(2007)30 revised) and, in particular, with regard to further developments and the outcome of the sector-specific measures would be welcomed;
7. decided to resume consideration of these items at their 1020th meeting (4-6 March 2008) (DH), in the light of information to be provided on payment of the just satisfaction, if necessary, on individual measures as well

as on the progress in the adoption of general measures, possibly on the basis of a draft interim resolution, together with an updated version of the Memorandum mentioned above, taking stock of progress achieved and identifying outstanding issues.

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61406/00 Gurepka, judgment of 06/09/2005
The case concerns the fact that the applicant had no means of appeal against a decision of the Supreme Court of the Autonomous Republic of Crimea ordering seven days' administrative detention against the applicant for contempt of court in civil defamation proceedings brought against him. According to Article 297 of the Code of Administrative Offences, in force at the relevant time, only a prosecutor or the president of a higher court could introduce such an appeal. The European Court accordingly found that, given that this procedure was not directly accessible to a party to the proceedings and did not depend on his or her motion and arguments, it was not a sufficiently effective remedy for the purposes of the Convention (violation of Article 2 of Protocol No. 7).
Individual measures: The applicant served the sentence from 25 to 31/12/1998. The European Court granted the applicant just satisfaction in respect of the non-pecuniary damage sustained.
The Secretariat wrote to the Ukrainian authorities on 15/12/2006 concerning the applicant's complaints, received on 20/11/2006, that it was still impossible in judicial proceedings to challenge the lawfulness of the domestic court's decision of 01/12/1998. On 13/04/2007 the Ukrainian authorities indicated that on 19/03/2007 the Supreme Court had considered the administrative case against the applicant and quashed the decision of 01/12/1998 ordering seven days' administrative detention. The proceedings have been discontinued as there is no longer any point to them under administrative law.
General measures:
• *Information provided by the Ukrainian authorities (received in September 2006 and April 2007)*: The Ministry of Justice has prepared a draft Law on Amendments to the Code of Administrative Offences of Ukraine, which provides a remedy directly accessible to a party to administrative proceedings, in particular, an appeal procedure against the courts' judgments in administrative matters. The draft law was submitted to the Ukrainian Parliament on 07/12/2006 (registration No. 2700).
• *Information is awaited on further developments in this respect and in particular on the time-table for adoption of the draft law.*

The Deputies decided to resume consideration of this item at latest at their 1st DH meeting in 2008, in the light of further information to be provided concerning general measures, if necessary, in particular on the adoption of the amendments to the Code of Administrative Offences.

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63134/00 Kechko, judgment 08/11/2005
This case concerns the violation of the applicant's right to the peaceful enjoyment of his possessions by the domestic courts in proceedings he brought in April 1999 concerning his entitlement to benefits, provided under the Education Act 1996, for the period between 1/01 and 23/06/1999. While the applicant, a teacher, satisfied the objective criteria set forth by the law, the domestic courts rejected his claim on the ground that these provisions had been suspended by the Secondary Education Act adopted in May 1999.
The European Court noted that this only entered into only on 23/06/1999 and contained no retroactive provision. The authorities' denial concerning the period at issue was therefore arbitrary and not based on the law (violation of Article 1 of Protocol No. 1).
Individual measures: The European Court awarded the applicant just satisfaction in respect of pecuniary and non-pecuniary damages sustained.
General measures:
• *Information is awaited on the situation of persons in a position similar to that of the applicant. It would be useful to receive information on the payment of other types of benefits based on more subjective criteria (such as performance assessment) provided for by the Law of 1996 and suspended for budgetary reasons. The European Court recalled in this respect that a lack of funds was not an excuse for a State not to honour its obligations (§26 of the judgment).*
• *Information is also requested concerning the publication of the European Court's judgment and its dissemination, possibly through a circular letter, to all courts and competent authorities, in particular the Ministry of Education, with a view to drawing the attention of its local offices to their responsibility under the Convention, so as to prevent new, similar violations.*

The Deputies,
1. urged the Ukrainian authorities to provide the requested information;
2. decided to resume consideration of this item at the latest at their 1028th meeting (3-5 June 2008) (DH), in light of an action plan and implementation timetable on general measures.

1013 (December 2007)
- **Cases concerning structural problems regarding judicial independence and impartiality as well as the breach of legal certainty in criminal proceedings (application of the supervisory review procedure)**

65518/01 Salov, judgment of 06/09/2005
6965/02 Savinskiy, judgment of 28/02/2006
Both of these cases concern the unfairness of certain criminal proceedings due to application of supervisory review procedure (violations of Article 6§1). In this respect, the European Court found in particular:
- the lack of impartiality of the judges hearing the cases due to the insufficient legislative and financial guarantees against outside pressure on them;
- the breach of the principle of equality of arms since the applicants were not provided with copies of the *protest* lodged by the Prosecutor, nor with the resolution of the Presidium of the Regional Court and were thus deprived of the opportunity to prepare their defence in advance of the trial;
- the lack of motivation of the courts' judgments, which hindered the applicants' right of appeal;
- the breach of the principle of legal certainty due to the quashing of decisions by means of the supervisory review procedure.
The Salov case also concerns a violation of the applicant's right to be brought promptly before a judge following his arrest to ascertain the lawfulness of detention. The applicant remained in detention for 16 days, from 1/11/99 to 17/11/99, before being brought before a judge (violation of Article 5§3).
The Salov case also concerns a violation of the applicant's right to freedom of expression. In this respect the Court found that the applicant's sentence to 5 years' imprisonment for disseminating a forged newspaper announcing the President Kuchma's death was manifestly disproportionate to the legitimate aim pursued (violation of Article 10).
Individual measures: It appears from the Salov judgment that the applicant's conviction has been struck out of his criminal record and the legal effects of his conviction were thus annulled (§32 of the judgment). He has in addition been awarded just satisfaction in respect of pecuniary and non-pecuniary damages. The Ukrainian authorities also reported that under domestic law the applicant in the Savinskiy case is regarded as having no conviction at all (see Article 88§3 of the Criminal Code of 05/04/2001 and §18 of the judgment).
General measures:
1) Violations of Article 6§1:
• *Summary of the shortcomings identified by the Court:* The European Court pointed out in its judgments a number of structural problems at the basis of these violations, in particular:
- the financial influence exerted on courts by the reduced expenditure from the state budget on the courts' resulting from Cabinet Resolution No. 432 (§ 49 of the judgment);
- the lack of clear criteria and procedures in domestic law concerning the promotion, disciplinary liability, appraisal and career development of judges or limits to the discretionary powers vested in the presidents of the higher courts and qualifications commissions in that regard (§ 83);
- the lack of guarantees against possible pressure from the Presidents of Regional Courts and the binding nature of the instructions given by the Presidia of Regional Courts under Article 395 of the Code of Criminal Procedure of 1960 then in force (§§ 44, 86).
• *General framework established by the authorities for the reforms:* The Ukrainian authorities set out the action needed to enhance the independence of judiciary in the following policy papers:
(i) The Action Plan for the Honouring by Ukraine of its Obligations and Commitments to the Council of Europe;
(ii) The Concept for the Improvement of the Judiciary and Ensuring Fair Trial in Ukraine in line with European Standards,
(iii) The Action Plan for the Improvement of the Judicial System and Ensuring Fair Trial in Ukraine in Line with European Standards in 2006.
• *Reforms under way:* On 27/12/2006, a draft Law on the Status of Judges and a draft Law on the Judiciary were submitted to Parliament.
On 20/03/2007 the Venice Commission issued an Opinion No. 401/2006 on these draft laws (www.venice.coe.int/site/dynamics/N_Opinion_ef.asp?L=E&OID=401). This Opinion states that the

fundamental provisions of both drafts are in line with European standards and that they are a clear improvement compared with both the present situation and previous drafts. However, it suggested that the two bills should be merged into a single draft and recommended that a number of issues should be addressed, concerning *inter alia*

(i) judges' independence and immunity;
(ii) establishment of courts and unification of judicial practice,
(iii) judicial appointments;
(iv) disciplinary procedures;
(v) judicial self-administration;
(vi) budget of the judiciary and judges' remuneration.

The Venice Commission recommended that the reform of the judiciary in Ukraine should be pursued on the basis of the draft laws and welcomed the fact that the Parliamentary Committee on the Judiciary intends to merge the two drafts into a single law.

• *Information is awaited on the progress of these measures, and in particular on the timetable envisaged for adoption of the single draft law, as well as a copy thereof.*

2) Violation of Article 6§1 due to the supervisory review procedure: The Ukrainian authorities have informed the Committee that supervisory review had been abolished in criminal procedure in June 2001. Similar issues with regard to civil proceedings had already been raised in the case of Sovtransavto against Ukraine (Section 4.3), in which the Committee is supervising the adoption of general measures.

3) Violation of Article 5 §3: The Ukrainian authorities have informed the Committee that, following the amendments of 21/06/01 to the Code of Criminal Procedure the power remand in custody has been transferred from prosecutor's offices to the courts.

4) Violation of Article 10: In the light of the Convention's requirement that the authorities should ensure that sanctions imposed in similar circumstances are proportionate to the gravity of impugned acts, it appears appropriate to publish the European Court's judgment and disseminate it widely to all courts and prosecutor's offices (see measures below).

5) Translation and dissemination of the judgments: The Ukrainian translation of both judgments was placed on the Ministry of Justice's official website. The judgments were published in the *Official Herald of Ukraine*, No. 7 (2006) (Salov) and No. 45/2006 (Savinskiy). Summary of the Salov judgment was also published in the *Herald of the Supreme Court of Ukraine*, No. 2, 2006, which was distributed to all Ukrainian courts. The Government of Ukraine also drew the Supreme Court's attention to the violation found by the Court in the Salov case.

The Deputies,
1. welcomed the adoption, at first reading, of the draft amendments to the Law on the Judicial System of Ukraine and to the Law on the Status of Judges aimed at securing the independence of the judiciary, and noted in this respect with satisfaction the Venice Commission's conclusions that the fundamental provisions of both drafts are in line with the European standards and are a clear improvement compared to the present situation;
2. strongly encouraged the competent Ukrainian authorities to rapidly adopt the draft amendments at the second reading, taking into account observations and proposals made by the Venice Commission to the mentioned draft laws;
3. called upon the Ukrainian authorities to pursue efforts for the adoption of further, particularly legislative, measures necessary to prevent similar violations;
4. decided to resume consideration of these cases at the latest at their 1028th meeting (3-5 June 2008) (DH), in the light of the information to be provided on progress in the adoption of the measures.

1007 (October 2007)

- **Cases of length of criminal proceedings and absence of an effective remedy**

66561/01 Merit, judgment of 30/03/2004
14183/02 Antonenkov and others, judgment of 22/11/2005
7324/02 Kobtsev, judgment of 04/04/2006
14809/03 Mazurenko, judgment of 11/01/2007
11336/02 Yurtayev, judgment of 31/01/2006

These cases concern the excessive length of criminal proceedings (violations of Article 6§1).
The Merit case also concerns the absence of an effective remedy against the excessive length of criminal proceedings (violation of Article 13).

Individual measures:

***1) Merit case*:** the Ukrainian authorities were invited to provide information on measures adopted or under way to accelerate these proceedings and bring them to an end. The applicant on several occasions complained (most recently on 27/04/2006) that the Ukrainian authorities had not complied with the judgment of the European Court. In particular, he stated that, because of the pending criminal proceedings, he has been unable to claim the property and documents seized during the prosecution. The authorities indicated that the General Prosecutor's Office is supervising the conduct of proceedings. They also specified that the Tchernovtsi Regional Court suspended the criminal investigation due to the applicant's failure to appear and issued a warrant for him to be brought before the investigation authorities. The Ukrainian authorities noted that a key problem affecting the length of criminal proceedings against the applicant resulted from the fact that his co-accused could not be brought before the domestic courts. Thus, following the European Court's suggestion, they disjoined the proceedings. On 17/02/2005 the proceedings against the applicant were suspended due to the failure to find the applicant, who is currently abroad.
• *<u>Additional measure required</u>: The authorities are invited to consider possible solutions with a view to bringing the proceedings to an end despite the non-appearance of the applicant.*

2) Antonenkov and others case: The proceedings were closed on 07/12/2006 due to the prescription of criminal liability.

<u>General measures</u>:

***1) Violation of Article 6§1*:** Since the amendment of 21/06/2001, Article 234 of the Code of Criminal Procedure provides the possibility to complain to the courts about decisions of an investigating officer/prosecutor which violate parties' rights in the course of an administrative hearing or of the consideration of a case on the merits. In accordance with Articles 6 and 31 of the Law on Status of Judges, disciplinary proceedings may be instituted against a judge failing to perform his or her duties in compliance with the Constitution or the legislation on time-limits for administrating justice. The Ukrainian authorities also referred to the Law on Enforcement of the Judgments of the European Court of Human Rights, which establishes a clear procedure for their enforcement. Thus, in addition to the rules on the adoption of individual and general measures, it also provides the possibility to bring action against those who contributed to the violation found by the Court.
• *Given the number of similar applications pending before the Court, <u>the Ukrainian authorities are invited to inform the Deputies</u> of any additional measures envisaged to ensure the reasonable length of criminal investigation and court proceedings*.
In this respect, it may be recalled the Committee's position that the setting up of domestic remedies (see below) does not dispense States from their general obligation to solve the structural problems underlying the violation (see for example Interim Resolution ResDH(2005)114).

***2) Violation of Article 13*:** The Ukrainian authorities transmitted to the Secretariat a draft law on Pre-trial and Trial Proceedings and Enforcement of judgments within reasonable time setting forth a new remedy allowing to request from a higher court to order particular procedural actions within a certain time-limit and/or award compensation for delays, totalling up to fifteen minimum wages. The draft also specifies that such a decision should be dispatched to the competent authority to decide on disciplinary action against the persons responsible for the delay.
On 11/01/2007 the Secretariat wrote to the Ukrainian authorities stressing the importance of adopting appropriate general measures related to repeated violations of Article 6§1 and Article 13. On 07/06/2007, the draft law on Amendments to Certain Legal Acts of Ukraine (as to the protection of a person's right to pre-trial and trial proceedings as well as enforcement of court decisions within reasonable time) was submitted to the Parliament (registration No. 3252).
• *<u>Information is awaited</u> on further developments in this respect, and, in particular on the timetable to adopt the draft law.*

***3) Publication of judgments*:** The judgment of the European Court concerning the Merit case was translated and published in the *Official Bulletin* of 13/08/2004. The official Ukrainian translation of the judgment has also been published in the specialised law publications, namely *Legal Bulletin of Ukraine* (n°24, June 2004), *Bulletin of the Supreme Court of Ukraine* (n° 7, 2004), *Law of Ukraine* and the *Legal Newspaper* (n° 9, May 2004). All the judgments can be found on the web site of the Ministry of Justice (www.minjust.gov.ua <http://www.minjust.gov.ua/>).

The Deputies decided to resume consideration of these items:
1. at their 1013th meeting 3-5 December 2007) (DH), in the light of further information to be provided concerning payment of the just satisfaction awarded in the Antonenkov case, if necessary;
2. at the latest at their 1st DH meeting in 2008, in the light of further information to be provided concerning general measures, including in particular the establishment of an effective remedy against the excessive length of proceedings, and individual measures, if necessary.

1013 (December 2007)
67531/01 **Gorshkov, judgment of 08/11/2003**

The case concerns the fact that the applicant was prevented from contesting the lawfulness of his ongoing psychiatric detention, such appeal being open only to doctors or to the psychiatric institution concerned (violation of Article 5§4).
Individual measures: The applicant was released from the hospital on 08/11/2001, almost two years after his health had improved.
General measures: While the Court noted that the Psychiatric Medical Assistance Act and the Code of Criminal Procedure provided several safeguards (regular examination of the detainee by a commission of psychiatrists and courts at least every 6 months, the possibility for the medial director of the institution to apply to a court, etc), it however found that their existence did not eliminate the need for an independent right of individual application by the patient (§45 of the judgment). It therefore appears appropriate to introduce legislation to this effect.
• *Information provided by the Ukrainian authorities (letter of 23/01/2007*): The following measures have been undertaken:
1) Legislative reform: The Government of Ukraine has drawn up a draft law "on Amendments to Certain Legislative Acts of Ukraine on Change or Cancellation of Forced Medical Treatment". This draft law gives those subject to compulsory medical treatment a right to initiate reconsideration of the legality of the measures applied, or their cancellation. The authorities informed the Committee of Ministers on 01/11/2007 that this law is in the final stage of drafting and that it will be submitted to the government for consideration.
Information is awaited on the progress with this draft law, including a timetable for its adoption; a copy of the text would also be helpful.
2) Translation, publication and dissemination of the judgment of the European Court: It has been translated into Ukrainian and placed on the Ministry of Justice's official website. It was published in the *Official Herald* of Ukraine, No. 45 (2006). By letter of 21/11/2006, the attention of the Supreme Court of Ukraine and the Office of the Prosecutor General was drawn to the European Court's conclusions.

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 the adoption of new legislation intended to ensure that persons detained in psychiatric hospitals may contest the lawfulness of their detention before a court.

1007 (October 2007)
2286/01 Melnik, judgment of 28/03/2006, final on 28/06/2006
The case concerns poor conditions of the applicant's detention after conviction between September 2000 and March 2006 in three different prisons in Ukraine (Vinnytsia Prison No.1, Arbuzynsk Penitentiary No. 316/83, Snigurivska Penitentiary No. 5). The Court found that the overcrowding (1-2.5 m² per inmate), inadequate medical care (failure to diagnose and cure the applicant's tuberculosis) and unsatisfactory conditions of hygiene and sanitation, taken together with the duration of the applicant's detention, amounted to degrading treatment (violation of Article 3).
The Court also found a violation of Article 13 on account of the lack of an effective and accessible remedy under domestic law for the applicant's complaints in respect of his treatment in and conditions of detention.
Individual measures: The applicant was detained when the European Court rendered its judgment. At the 976th meeting (October 2006), the Ukrainian authorities indicated in writing that the applicant had already served his sentence and been freed.
General measures: Presentation of an action plan was requested in a letter of the Secretariat dated 23/10/2006.
1) Violation of Article 3: The issue of unsatisfactory detention conditions has also arisen with regard to pre-trial detention (see Nevmerzhitsky case) and life imprisonment (Kuznetsov case).
The Ukrainian authorities have already allocated funds for the improvement of prisoners' detention conditions and the implementation of the Code of Criminal Execution.
In order to bring detention conditions into line with European standards the government of Ukraine approved in August 2006 the State Programme for the improvement of detention conditions of convicted and detained persons for 2006-2010. On 30/07/2007 the authorities provided information on a number of construction works and repairs completed or under way to improve prison facilities and

related buildings, including medical units and sanitary zones. For further information on measures please see notes on the Kuznetsov case (Section 4.2, below).
The State Department of the Execution of Sentences has completed the Programme of Complex Measures for Resistance to Tuberculosis in the Institutions of Execution of Sentences for 2002-2005. A complete chemoprophylaxis was carried out among the personnel and convicts in prisons with high tuberculosis rates, and fluorography of all detainees was carried out. Appropriations from the state budget for medical protection in penitentiary institutions are constantly increasing. . On 08/02/2007, the Parliament adopted the Law on Approval of the National Programme for Fight against Tuberculosis for 2007-2011.
As regards the problem of medical treatment, in February 2006 Decree No. 132/2006 of the President of Ukraine was adopted, relating to measures to increase effectiveness of the fight against dangerous infectious diseases. In line with it, temporary infectious isolation wards were established for treatment of tubercular population among prisoners. During 2006, more than 2,600 persons were treated in such wards.
• *Further information and clarification on these measures are expected. The authorities are also invited to provide information about other measures taken or envisaged to prevent new, similar violations.*

2) Violation of Article 13:

• *Information is awaited on measures envisaged by the authorities to ensure that an appropriate remedy enabling the complaints in respect of the treatment in and conditions of detention is available.*

3) Publication and dissemination: The judgment of the European Court has been translated. It will be placed on the official internet site of the Ministry of Justice and published. The Department for Execution of Sentences and its territorial divisions have been informed in writing about the judgment. To prevent further violations, the Department initiated a study of the Convention and the Court's case-law during the professional training for personnel of the State Service for Execution of Sentences.

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

1007 (October 2007)

803/02 Intersplav, judgment of 09/01/2007

The case concerns the violation of the applicant company's right to the peaceful enjoyment of its possessions due to systematic delays, from 1998 onwards, in payment of VAT refunds. The Sverdlovsk Town Tax Administration failed to confirm the amounts involved and to issue certificates for VAT refunds in due time. In addition, compensation for delayed refund of VAT was denied to the applicant company in more than 140 sets of proceedings brought before the Lugansk Commercial Court (violation of Article 1 of Protocol No. 1).
The European Court found that the constant delays in refunding VAT and the absence of compensation, taken in conjunction with the lack of effective remedies to prevent or put an end to such administrative practice, as well as the state of uncertainty as to when its funds would be returned, constituted an interference with the fair balance between the requirements of the public interest and the protection of the applicant's property rights, and interference of which the applicant company is still suffering the consequences (see §40 of the judgment).
Individual measures: The European Court noted that the applicant company's recourse to court did not prevent the tax authorities from continuing the practice of delaying payment of VAT refunds, even after court decisions have been given in the applicant's favour (see §39 of the judgment). The European Court further considered that in the circumstances of the present case the most appropriate form of redress would in principle be the elimination of this administrative practice found contrary to Article 1 of Protocol No. 1 (§48 of the judgment).
• *Information is thus awaited on measures taken to eliminate the administrative practice of delaying VAT refunds to the applicant.*
The European Court awarded the applicant just satisfaction in respect of pecuniary damage.
General measures:
• *Information is awaited on an action plan on possible legislative or other measures to eliminate the administrative practice at issue and to ensure effective compensation provided by national law in case of delay, in accordance with the European Court's case-law.*
• *Information is also awaited on publication and dissemination of the judgment, including a targeted dissemination with an explanatory note on the violation found by the European Court to all competent authorities, including those involved in this case, namely the Sverdlovsk Town Tax Administration,*

Lugansk Regional Tax Administration, State Tax Administration, Sverdlovsk Prosecutor, General Prosecutor's Office and Lugansk Commercial Court.

The Deputies decided to resume consideration of this case:
1. at their 1013th meeting (3-5 December 2007) (DH), in the light of information to be provided on the payment of just satisfaction, if necessary;
2. at the latest at their first DH meeting in 2008, in the light of information to be provided concerning individual measures to eliminate the administrative practice of delaying the refund of VAT in respect of the applicant company, and general measures.

1007 (October 2007)

*__7577/02 Bochan, judgment of 03/05/2007__**
The case concerns the violation of the applicant's right to a fair hearing by an independent and impartial tribunal in civil proceedings conducted between 1997and 2002 brought by the applicant to establish her title to a property.
The European Court found that the applicant's doubts as to impartiality might be considered objectively justified in that the Supreme court, having openly expressed its disagreement with the decisions adopted by the lower courts, repeatedly ordered reassignment of the case to courts in a different jurisdictional districts, without motivating its decisions and without permitting the applicant to express herself on the matter.
The Court also found that the courts which judged the matter in last resort had dismissed the applicant's arguments without giving any reason and had failed to act upon her request to subpoena a number of witnesses in her interest, in violation of the principle of equality of arms (violation of Article 6§1) (§§81, 83 and 84).
Individual measures: The applicant is entitled under Ukrainian law to request a re-hearing of her case in the light of the Court's finding that the domestic courts did not comply with Article 6 in her case (§97).
The European Court awarded the applicant just satisfaction in respect of non-pecuniary damage.
General measures:
1) Reassignment of cases to other jurisdictional districts
• *Information is awaited on the rules and practice governing reassignment of court cases, in particular by the Supreme Court, including on procedural decisions to reassign, the requirement of reasoned decisions, provision to litigants of information and the opportunity to comment on the matter; as well as on any measure taken or envisaged to prevent new, similar violations.*
2) Provision of reasoned judicial decisions and equality of arms
• *Information is awaited on the rules governing the reasoning of court decisions in general and on the principle of equality of arms as well as on any measure taken or envisaged to prevent new, similar violations.*
3) Publication and dissemination of the European Court's judgment
• *Information is also awaited on publication of the European court's judgement and its dissemination, including targeted dissemination with an explanatory note from the Government Agent on the courts' obligations under the Convention as interpreted by the judgment to all competent authorities, including those involved in this case, namely the Supreme Court, Khmelnytsk Regional Court, Ternopil Regional Court, Ternopil Town Court and Chemerovetsk Town Court.*

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

1007 (October 2007)

17707/02 Melnychenko, judgment of 19/10/2004
The case concerns the refusal by the Central Electoral Commission ("CEC"), upheld by the Supreme Court, to register the applicant as a candidate for the 2002 parliamentary elections, on the basis that he had provided incorrect information concerning his place of residence during the 5 preceding years. The European Court found that this refusal was contrary to the Convention, taking into account the fact that the applicant only indicated his official residence in Ukraine, which was still valid and recorded in his internal passport (*propiska*). The Court noted in this respect that the domestic law did not specify

if the requirement to have a residence in Ukraine concerned the "habitual" residence or the "legal" residence. Furthermore this requirement was not absolute in law and the authorities were under an obligation to take each candidate's individual situation into consideration. In this context the applicant, who had fled Ukraine in 2000 having been implicated in a political scandal involving the murder of a journalist, and had been granted political refugee status in the United States of America, should have had the right to put forward the reasons for which he had left the national territory (violation of Article 3 of Protocol No. 1).
Individual measures: The European Court awarded the applicant just satisfaction in respect of the non-pecuniary damage sustained as a result of being prevented from standing in the elections. The Court considered, however, that no causal link had been established between the violation found and the alleged damage related to the loss of any salary the applicant would have received if he had been elected.
The applicant is requesting the restoration of his right to stand as a candidate in the parliamentary elections (*restitutio in integrum*). In his opinion that should be achieved by re-inscribing him on the lists of the candidates for the 2002 elections. For this purpose he requested the CEC to cancel its 2002 decision which was called into question in the European Court's judgment. The CEC dismissed this request on the ground that national law does not allow the reopening of proceedings before a non-jurisdictional body following a judgment of the European Court.
On 14/07/2005, the Supreme Court set this decision aside and sent the case back to the CEC indicating that it must examine the applicant's request, taking into account the judgment of the European Court. At the end of August 2005, the CEC requested the Supreme Court to annul its own decision of 2002 which confirmed the refusal to register the applicant on the electoral lists, even though the Supreme Court had indicated that the decision in question was not an obstacle for the examination of the applicant's request by the CEC.
On 28/10/2005 the CEC rejected the applicant's request to be registered as a candidate on the 2002 lists on the ground that national law does not allow such a possibility. On 15/11/2005 the Supreme Court annulled its decision of 2002 challenged in this judgment. Finally, on 05/12/2005 the CEC annulled the part of its decision of 2002 concerning the refusal to register the applicant on the 2002 electoral lists.
• *Assessment of the present situation and of the measures to be taken:* It appears that the consequences of the violation found in this case have been erased as far as possible. That should avoid the applicant's exclusion from future elections on grounds already challenged in the judgment of the European Court.
General measures: The new law on parliamentary elections which entered into force on 01/10/2005 contains no more indication concerning the eligibility requirement related to candidates' residence than the law in force at the material time. It is not clear in particular whether this condition relates to the "legal" residence or the "habitual" residence of candidates and how this is to be established. Consequently, it would be useful to adopt general measures to clarify this eligibility condition, to prevent new, similar violations. The authorities indicated in this respect that the provisions of the new law on parliamentary elections concerning the determination of the place of residence of voters may be applied by analogy to the determination of the place of residence of candidates (Article 39§11). These provisions refer to the official residence (the former *propiska*) as defined by the law on freedom of movement and free choice of residence.
• *Information provided by the Ukrainian authorities* (23/01/2007) The government of Ukraine plans to prepare a draft law to solve the problem at the origin of the violation in this case. It will be submitted to the government for consideration by the end of 2007.
• *Information would also be appreciated* on the application of the new law during the recent elections in Ukraine, which took place in March 2006, in particular concerning the establishment of eligibility requirement related to candidates' residence and on the draft legislation related to this issue.
The judgment of the European Court was published on the website of the Ministry of Justice www.minjust.gov.ua <http://www.minjust.gov.ua> and in the *Official Journal*, issue No. 21/2005. A copy of the judgment has been sent to the CEC and to the Supreme Court.

The Deputies decided to resume consideration of this item:
1. at their 1013th meeting (3-5 December 2007) (DH), in the light of further information to be provided on the payment of just satisfaction, if need be;
2. at the latest at their 1st DH meeting in 2008, in the light of further information to be provided concerning general measures, namely the amendment of the legislation with a view to clarifying the eligibility requirement related to election candidates' residence.

1013 (December 2007)

23543/02 Volokhy, judgment of 02/11/06
The case concerns the violation of the applicants' right to respect for their correspondence in that in 1997 an order for interception and seizure of their postal and telegraphic correspondence was issued, when the two applicants' son and brother respectively who was under investigation for tax evasion, failed to appear for interrogation at the police station.
The European Court found that the Ukrainian law did not indicate with sufficient clarity the scope and conditions of exercise of the authorities' discretionary power in the area under consideration and did not provide sufficient safeguards against abuse of that surveillance system (see §54 of the judgment) (violation of Article 8).
The case concerns also the lack of effective domestic remedies to seek redress for the unlawful interference with the applicants' correspondence (violation of Article 13).
Individual measures: The interception order was cancelled on 28/05/1999. The European Court awarded just satisfaction on account of the non-pecuniary damage suffered by both applicants.
The first applicant having died in the meantime, the government informed the second applicant by letter of 12/03/2007 of the possibility to apply for reopening of the proceedings. The second applicant did apply to the Supreme Court for reopening of the proceedings. On 09/01/2007 the Supreme Court decided to admit the second applicant's request and reopen the proceedings. On 25/05/2007, the Supreme Court, partly recognising the second applicant's claim, quashed the judgment of the Leninskiy District Court of 11/10/2001, the decision of the Court of Appeal of Poltava Region of 08/01/2002 and decision of the Panel of Judges in Civil Cases of the Supreme Court of 09/02/2004 concerning the compensation of non-pecuniary damage caused by ordering the interception of their correspondence. The Supreme Court remitted the case for fresh consideration to the court of first instance.
General measures:
1) Violation of Article 8: Article 187 of the Code of Criminal Procedure concerning the interception of correspondence was substantially reworded in June 2001, i.e. after the events in this case. The provision determines the ground and the procedure for interception of correspondence, clarifying the scope and conditions of exercise of the authorities' power in this respect.
2) Violation of Article 13: The authorities also announced on 31/10/2007, that the Ukrainian Law “on the procedure compensating damage caused to the citizen by the unlawful actions of bodies of inquiry, pre-trial investigation, prosecutors and courts” was amended in December 2005, i.e. after events in this case. Under the new wording, persons other than the accused may initiate proceeding before a court in case of unlawful procedural actions restricting or infringing their rights and freedoms in the context of criminal proceedings against a third person.
The European Court's judgment has been translated into Ukrainian and placed on the Ministry of Justice's official web-site. It has also been published in the *Official Herald of Ukraine*, No. 23 of 10/04/2007. A summary of the Court's judgment in Ukrainian was published in the *Government's Currier*, No. 48 of 17/03/2007. By letter of 28/04/2007, the attention of the Supreme Court of Ukraine was drawn to the European Court's conclusion. By letters of 28/04/2007, the attention of the Ministry of Internal Affairs, General Prosecutor's Office, State Security Service and the State Tax Administration was drawn to the European Court's conclusions. In the information supplied on 31/10/2007, authorities further indicated that the Supreme Court had sent out letters concerning the European Court's conclusions in the present case to the Heads of Courts of Appeal. The Office of the Prosecutor General had ordered the Ministry of the Interior to dissemination the judgment among investigators, to prevent further similar violations. Finally, the local investigation departments of the State Tax Administration have been ordered to provide training dealing with the European Court's conclusions in the present case and with the Convention in general.
• *The Secretariat is assessing whether the rules currently in force meet the Convention requirements and will contribute to prevent new similar violations*.

The Deputies decided to resume consideration of this item at their 1020th meeting (4-6 March 2008) (DH), in the light of information provided on individual and general measures.

987 (February 2007)

32478/02 Shevchenko, judgment of 04/04/2006

The case concerns the failure to conduct an effective and independent investigation into the death of the applicant's son in October 2000 while he was posted as a guard in a military unit (procedural violation of Article 2).
The European Court noted certain important inconsistencies and deficiencies in the investigation. It also observed that the inquiry had not satisfied the minimum requirements of independence as it was biased by the emphasis placed on the suicide theory by a senior officer and the fact that the independence of the investigators from the Military Prosecutor's Office was not ensured since they were servicemen, subject to military discipline. The European Court also pointed out the lack of exemplary diligence, since no reconstruction of events was attempted and no forensic examination of the hands of the deceased was conducted as regards possible gunshot residue. Finally, the investigation did not ensure sufficient public accountability or scrutiny or safeguard the interests of the next-of-kin since the applicant, contrary to the usual practice under national law, was excluded from the proceedings by the refusal to grant him victim status.
Individual measures: According to the European Court's judgment, a final report of the investigation into the death of the applicant's son, supporting the suicide theory and closing the case, was drew up on 29/04/02.
On 15/11/2006 the General Prosecutor of Ukraine quashed this decision and the case has been transmitted for further investigation to the Military Prosecutor's Office of the Western Region of Ukraine.
• *Information is awaited on the progress of the investigation.*
General measures (No examination envisaged):
The problem of the failure to conduct an effective investigation has already been raised before the Committee of Ministers in the context of the procedural violation of Article 2 (see Gongadze, 976th meeting, October 2006, Volume I) and Article 3 (see e.g. Afanasyev, 976th meeting, Volume I). The Shevchenko case concerns a new issue relating to the failure to conduct an effective and independent investigation into the death of a military serviceman while on duty.
On 23/10/2006 the Secretariat has written to the Ukrainian authorities inviting them to present an action plan for the execution of this judgment.
• *The Ukrainian authorities are invited to provide information on measures taken or envisaged to remedy the shortcomings identified by the European Court, relating in particular to the independence of the investigation, exemplary diligence and promptness and public scrutiny in the army. Such measures may require changes in the legal and regulatory framework governing this kind of investigation. Appropriate training and awareness-raising measures would also appear necessary.*
• *The publication and dissemination of the Court's judgment among the relevant authorities and domestic courts is also expected, possibly together with circulars or explanatory notes stressing the problems identified by the European Court.*

The Deputies decided to resume consideration of this item
1. at their 992nd meeting (3-4 April 2007) (DH), in the light of further information to be provided concerning payment of the just satisfaction, if necessary;
2. at the latest at their 1007th meeting (16-17 October 2007) (DH), in the light of further information to be provided concerning general measures and, if appropriate, individual measures.

1013 (December 2007)

33949/02 Belukha, judgment of 09/11/06
The case concerns a violation of the applicant's right to an impartial tribunal in that in 1997 the President of the Artemivsk Court, who sat alone as first-instance judge in the applicant's case, and whose decision was upheld by the higher courts, asked for and received free of charge certain products from the company which was the applicant's adversary (violation of Article 6§1).
The European Court noted that in such circumstances the applicant's fears that the President lacked impartiality could be held to be objectively justified (§54 of judgment).
Individual measures: The European Court stated that finding a violation constituted in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant. On 12/03/2007, the government of Ukraine wrote to the applicant informing her of the possibility provided by the law in force to apply under exceptional circumstances for review of the proceedings at issue. On 31/05/2007 the applicant lodged an application for reopening with the Supreme Court which on 25/07/2007, set aside the application to give applicant more time to rectify defects in the application, until 30/07/2007. The Supreme Court set aside the application once again and granted the applicant further time to rectify the defects, until 25/10/2007.
General measures:

• *Information provided by the Ukrainian authorities:* Regarding the impartiality of courts, a comprehensive draft for legislative reform is under way. This programme is being followed in the Salov case (Section 5.1) in the context of criminal proceedings. In particular, the authorities provided information on the following developments:
(i) Parliament decided to merge the draft Law on the Judiciary and draft Law on the Status of Judges into a single law as suggested by the Venice Commission (www.venice.coe.int/site/dynamics/N_Opinion_ef.asp?L=E&OID=401 <http://www.venice.coe.int/site/dynamics/N_Opinion_ef.asp?L=E&OID=401>). .
(ii) The draft Law on Temporary Order of Financing of Judiciary in Ukraine (registration No. 0902 of 25/05/2006) was approved at first reading by Parliament to improve the financing of the judiciary.
(iii) The draft law on Court Fees (registration No. 2378 of 19/10/2006), which replaces fees payable to the state by court fees, was approved at first reading.
(iv) The government approved the State Programme for Provision of Courts with Appropriate Premises for 2006-2010.
The judgment has been translated into Ukrainian. A summary of the Court's judgment in Ukrainian was published in the *Government Currier*, No. 48 of 17/03/2007. By letter of 12/03/2007, the attention of the Supreme Court was drawn to the European Court's conclusions so that Ukrainian courts may make use of them.

The Deputies decided to resume consideration of this item at latest at their 1028th meeting (3-5 June 2008) (DH), and to join it with the Salov group, in the light of information to be submitted concerning general measures, in particular developments relating to the draft legislation on the judiciary.

1013 (December meeting)

34056/02 Gongadze, judgment of 08/11/2005
The case concerns the disappearance and murder of the applicant's husband, Mr Gongadze, a political journalist, in September 2000.
The European Court found that in spite of Mr Gongadze's writing to the Prosecutor General complaining about being subject to surveillance by unknown people and the inexplicable interest in him shown by law-enforcement officers, the authorities failed to take any step to verify this information or to protect his life (violation of Article 2). The Court further found that the investigation into his disappearance had suffered a series of delays and deficiencies (procedural violation of Article 2).
The Court also found that the investigation authorities' attitude to the applicant and her family, in particular the uncertainty resulting from numerous contradictory statements about the fate of the applicant's husband and their constant refusal to grant her full access to the case-file, caused her serious suffering amounting to degrading treatment (violation of Article 3).
Finally, the Court considered that the lack of any effective investigation for more than 4 years and the impossibility to seek compensation through civil proceedings pending criminal investigation constituted a denial of an effective remedy (violation of Article 13).
Individual measures: The judgment states that the investigation had been completed and the case was about to be sent to court (§ 143). The European Court also noted that the report on the murder of Mr Gongadze submitted to the Parliament of Ukraine on 20/09/2005 by the *ad hoc* investigating committee specifically named several state officials involved in his kidnap and murder (§ 146).
• *Information provided by the Ukrainian authorities (25/07/2007)*: Criminal proceedings against four Interior Ministry officers are being considered on the merits by the Kyiv Court of Appeal. The Office of the Prosecutor General was investigating other alleged perpetrators and, following an offer of assistance from Parliamentary Assembly of the Council of Europe, the Prosecutor General had asked the Assembly to select a group experts to help with the analysis of certain audio recordings.
• *Information is awaited on the progress and outcome of the proceedings and the investigation, in particular the results of the examination of the recordings.*
General measures: It appears that the violations were due to the particular political context in Ukraine at the material time.
On 16/01/2007 the Ukrainian authorities provided information on the rules governing investigation procedures, in particular with regard to the independence of investigators, the promptness of investigation and the right of the aggrieved party to adequate access to the file during the investigation.
1) Independence of investigation: In response to numerous encouragements by the Parliamentary Assembly to reform the public prosecution system in Ukraine (see most recently, Recommendation 1722(2005), §2.4.3), the President of Ukraine issued Decree No. 39 of 20/01/2006,

approving the “Action Plan for honouring by Ukraine of its obligations and commitments to the Council of Europe”. This document proposed among other things a draft Constitutional amendment and a draft law on the public prosecution service (§ 6). Both drafts were submitted to the Venice Commission which, in its opinion (see document CDL(2004)060) stated that the draft law did not provide adequate guarantees for the independence of the prosecution service, which appeared still to be too much associated with the executive branch. The Commission also considered that the draft did not comply with the terms of Committee of Ministers' Recommendation Rec(2000)19 on the role of public prosecution in the criminal justice system.
As regards the proposed amendment to the Constitution, the Venice Commission welcomed the draft as an important step in the right direction, in particular, in making the Prosecutor General's Office more independent from political pressure, defining the public prosecution service as part of the judicial power and better protecting the Prosecutor General against unjustified dismissal. The Venice Commission stressed that, to ensure the independence of the Prosecutor General, he or she must be appointed by independent means, the grounds for dismissal must be set out in the Constitution, the office should be opened to qualified persons with experience outside the prosecution service and the Prosecutor General should be appointed for a single term only.
• *Information is awaited*: *on progress in adopting these drafts.*

2) Remedies against the excessive length of investigations: In the context of the examination of the Merit case (1007th meeting, October 2007, Section 4.2), the Ukrainian authorities transmitted to the Secretariat a draft law on pre-trial and trial procedures and enforcement of judgments within reasonable time. This draft proposes a new remedy, making it possible to apply to a higher court to order particular procedural actions within a certain time-limit and/or award compensation for delays. Such compensation could be for an amount up the equivalent of fifteen times the minimum wage. The draft also specifies that such a decision should be dispatched to the competent authority in order to decide on disciplinary action against the persons responsible for the delay. The draft has been submitted to the Cabinet and should be considered by Parliament by the end of this year.
• *Information is awaited*: *on the adoption of this draft law.*

3) Access to the file during the investigation: According to the Ukrainian law, an aggrieved party, a civil plaintiff or a civil defendant may be granted full access to the case files only once the pre-trial investigation is completed.
• *Information is awaited*: *on measures taken or envisaged in this respect.*

4) Publication and dissemination: The judgment of the European Court has been translated and published.
• *Information is awaited concerning the dissemination of the judgment.*

The Deputies, having examined the information provided by the Ukrainian authorities,
1. noted with regret that the criminal proceedings against three officers who allegedly executed the kidnapping and murder of Mr Gongadze had been and are still pending before the Kyiv City Court of Appeal since January 2006, 2. took note of the information provided on the progress of the ongoing investigation aiming at the identification of the persons who had ordered the kidnapping and murder of Mr Gongadze, in particular of the measures taken to speed up this investigation; 3. in this respect, noted that information is still awaited on the possible follow-up given to the report of the *ad hoc* investigating committee submitted to the Parliament of Ukraine on 20 September 2005 on the murder of Mr Gongadze in which several state officials were specifically designated as having been involved in the kidnapping and murder of the journalist; 4. called upon the Ukrainian authorities to take rapidly necessary measures in order to bring the aforementioned court and investigating proceedings to a close in line with the Convention requirements; 5. decided to resume consideration of this case at their 1020th meeting (4-6 March 2008) (DH) in the light of new information to be provided on the progress of individual and general measures, if necessary, in the light of a draft interim resolution to be prepared by the Secretariat.

1013 (December 2007)

38722/02 Afanasyev, judgment of 05/04/05
The case concerns the inhuman and degrading treatment inflicted on the applicant while in custody in March 2000 at a district police station in Kharkiv, where he was allegedly beaten by police officers in order to obtain a confession. A subsequent medical examination confirmed that the injuries had been sustained during the period of the applicant's detention violation of Article 3).
The case also concerns a violation of the right to an effective remedy following the serious shortcomings of the investigation, such as the one-year delay before opening it, the late interrogation

of witnesses, and the fact that certain witnesses were not called. The Court also found that any claim for compensation would have been futile without criminal proceedings to establish the facts and identify the perpetrators (violation of Article 13).
Individual measures: The domestic courts have twice remitted the case for additional examination. The criminal proceedings against the police officers, identified by the applicant, were again discontinued on 30/03/2004, while another investigation concerning the bodily harm is still pending because the offender has not yet been found. On 31/05/2006 the prosecution office discontinued the investigation concerning the applicant's complains due to lack of *corpus delicti*. On 11/07/2006 this decision was quashed and the case was transmitted to Charkov Public Prosecutor for further investigation. The investigation is pending. In the meantime, the investigation identified another 9 people who were held with the applicant in the cell and the investigative authority is taking measures to establish their whereabouts. The pre-trial investigation began again on 13/07/2007. The authorities informed the Committee of Ministers on 31/10/2007 that disciplinary proceedings had been instituted against the investigation officers responsible the prolonged delay in disclosing the offences.
• *Details are awaited on the progress of the investigation and the disciplinary proceedings.*
General measures:
1) Important problems to be resolved: The problem of the authorities' failure to conduct an effective investigation into alleged ill-treatment in a prison has been raised within the Committee of Ministers in the context of Poltoratskiy and Kuznetsov cases. The Afanasyev case concerns a problem in the context of police custody. The authorities informed the Committee of Ministers on 31/10/2007 of the existence of a number of statutory provisions to guarantee the rights of detainees, including Articles 8, 29 and 55 of the Constitution, Article 127 of the Criminal Code, Article 5 of the Law on the Police, Article 110 of the Code of Criminal Procedure, Article 12 of the Law on Prosecution Offices, and Article 14 of the Law on Operative and Investigative Activity.
• *An action plan is awaited on comprehensive measures to combat abuses in police custody.*
Given the nature and complexity of the issues involved, the Secretariat is preparing a memorandum summarising the experience of the other countries in this field in order to allow the Ukrainian authorities to deal in greater depth with the issues raised by the present judgment.
2) Measures taken by the Ukrainian authorities: On 25/12/2005, the Public Council on Ensuring Human Rights, a body attached to the Ministry of Internal Affairs, was created. The activities of the council encompass three strategic directions: (a) observance of the civil and political rights; (b) guaranteeing human rights while in detention or during the inquiry; (c) securing the rights of the internal affairs staff. The authorities further informed the Committee of Ministers on 31/10/2007 that the Council has a 32-strong staff and, as of October 2007 created public councils for respect of human rights at regional level. In addition, the Ministry of Internal Affairs drew attention of the regional heads to the obligation to co-operate with the Council and its regional divisions. Mobile human rights compliance monitoring groups are organised with the participation of members of the Ministry of Internal Affairs and community representatives. Such groups have made 35 joint visits to detention centres in 11 regions. Since its foundation, the Public Council has held 6 meetings and have launched pilot projects in the province.
3) Publication and dissemination: The judgment of the European Court was translated into Ukrainian and published in a specialised quarterly journal, *Case-Law of the European Court of Human Rights. Judgments. Comments,* together with comments of the Government Agent relating to its interpretation and application in legal proceedings. The journal is distributed to all courts and other relevant authorities. It was also placed on the website of the Ministry of Justice.
The problems highlighted in the Afanasyev case have been raised during training for judges and law-enforcement bodies organised by the Office of the Government Agent and NGOs and at the Academy of Prosecution of Ukraine.

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 individual and general measures.

1013 (December 2007)

29458/04 Sokurenko and Strygun, judgment of 20/07/2006
The case concerns the violation of the applicants' right to a fair hearing before the Supreme Court in proceedings concerning a commercial matter. In 2004, after having quashed a judgment by the Higher Commercial Court, the Supreme Court upheld a judicial decision delivered by the court of appeal in 2003 even though this course of action was not provided in the Code of Commercial Procedure or other regulations. The European Court found that having overstepped the limits of its jurisdiction,

which were clearly laid down in the Code of Commercial Procedure, the Supreme Court could not be considered a "tribunal established by law" (violation of Article 6§1).
Individual measures: According to the amended Code of Civil Procedure, a case may be reopened and re-examined on the ground of "exceptional circumstances", *inter alia*, decisions of "international bodies whose jurisdiction was accepted by Ukraine" establishing violation of international obligations of Ukraine in relation to the case at issue (Article 347-2). It is thus open to the applicants under Ukrainian law to request a fresh examination of the case.
By letter dated 28/12/2006, the Government of Ukraine informed the applicants about the possibility, provided by the legislation in force, to apply for the review of the decision at issue under exceptional circumstances. According to information available, the applicants have not lodged such an application.
Finally, it is noted that the Court awarded to both applicants just satisfaction in respect of non-pecuniary damage sustained.
General measures:
• *Information provided by the Ukrainian authorities (letters of 23/01/2007 26/04/2007 and 01/11/2007)*:
1) Legislative changes: An amendment to the Code of Commercial Procedure was approved by Parliament at first reading (registration number 2566 of 16/11/2006). The draft law is aimed at reforming the existing procedure for review of High Commercial Court judgments by the Supreme Court of Ukraine (the so-called "double cassation") and introduces procedure for review of judgments under exceptional circumstances. The draft provides no power of the Supreme Court to review judgments of the High Commercial Court of Ukraine, except review under exceptional circumstances.
• *Information is awaited on progress in drafting amendments to the Code of Commercial Procedure, a copy of which is also requested.*
2) Translation, publication and dissemination: The judgment has been translated into Ukrainian and placed on the Ministry of Justice's official website. It was published in the *Official Herald* of Ukraine, No. 1 of 19/01/2007. A summary was published in the *Government's Currier* No. 6 of 13/01/2007.
The Government Agent before the European Court held a meeting with judges of the Supreme Court of Ukraine devoted to this case and in particular to the measures needed to amend the relevant legislation to avoid similar violations in the future. The Government Agent has also drawn attention to this judgment in the course of a number of seminars and training sessions for judges.

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 amendments to the Code of Commercial Procedure.

1007 (October 2007)

31111/04 Hunt, judgment of 07/12/06
The case concerns a violation of the applicant's right to respect for his family life in that in 2003 the applicant, a U.S. national divorced from his Ukrainian wife, was prohibited from entering Ukraine and thus from participating in civil proceedings concerning relations with his family. This resulted in the applicant's being deprived of his parental rights with regard to his son, a minor born in 2000 who resides in Ukraine with his mother.
The Court found that "the applicant was not involved in the decision-making process to an extent necessary to protect his interests and that the national authorities overstepped their margin of appreciation and failed to strike a fair balance between the interests of the applicant and those of other persons" (see §60 of judgment) (violation of Article 8).
Individual measures: The European Court awarded the applicant just satisfaction in respect of the non-pecuniary damage sustained. On 27/03/2007, the government of Ukraine wrote to the applicant informing him of the possibility, provided by the legislation in force, to apply under exceptional circumstances for review of the proceedings at issue. The applicant did not apply for review of the proceedings at issue.
General measures:
• *Clarification is awaited on how the rights of persons in situations similar to the applicant's will be ensured in future.*
The European Court's judgment has been translated into Ukrainian and published in the *Official Herald of Ukraine*, No. 23 of 10/04/2007. A summary of the judgment in Ukrainian was published in the *Government's Currier*, No. 59 of 03/04/2007. By letter of 27/03/2007, the attention of the Supreme Court of Ukraine and Ministry of Internal Affairs was drawn to the European Court's conclusion in the judgment at issue.

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

Interim Resolutions

Interim Resolution ResDH(2004)14
concerning the judgment of the European Court of Human Rights
of 25 July 2002 (final on 6 November 2002)
in the case of Sovtransavto Holding against Ukraine

(Adopted by the Committee of Ministers on 11 February 2004
at the 871st 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 25 July 2002 in the Sovtransavto Holding case transmitted to the Committee of Ministers once it had become final under Article 44 of the Convention;
Recalling that the case originated in an application (No. 48553/99) against Ukraine, lodged with the Court on 11 May 1999 under Article 34 of the Convention by Sovtransavto Holding, a Russian company, and that the Court declared admissible the complaints relating,
- first, to a violation of its right to a fair trial before an impartial and independent tribunal due to repeated attempts by the Ukrainian authorities, including the President of Ukraine, to influence the domestic court decisions, to the application of the "*protest*" procedure ("supervisory review procedure" – allowing the quashing of final judicial decisions without any limitations) and to the refusal by the courts to examine the applicant company's arguments on the merits in a public hearing and to the absence of adequate motivation of the judicial decisions and
- secondly to a violation of the effective enjoyment of its right of property due to the manner in which these proceedings were conducted and ended, and to the uncertainty in which the applicant company was left;
Whereas in its judgment of 15 July 2002 the Court held:
- unanimously that there had been a violation of Article, 6 paragraph 1, of the Convention;
- by six votes to one that there had been a violation of Article 1 of Protocol 1 to the Convention;
- unanimously that it was not necessary to decide whether the applicant was a victim of discrimination on the basis of its nationality;
- unanimously that the question of application of Article 41 was not ready for decision, and consequently, reserved it and postponed it for a later stage;

Stressing the obligation of every state, under Article 46, paragraph 1, of the Convention, to abide by the judgments of the Court;
Recalling that this obligation implies the adoption of individual measures putting an end to the violations found and removing as far as possible their effects for the applicant, as well as general measures preventing new violations of the Convention similar to those found in the Court's judgments including, where appropriate, making available effective domestic remedies pending the entry into effect of the necessary changes;
Stressing that the adoption of general measures is particularly pressing in cases where a judgment reveals structural problems which may give rise to a large number of new, similar violations of the Convention;
Having invited Ukraine to inform it of the measures adopted or being taken in consequence of the judgment in this case;
Having examined the information provided by the Ukrainian authorities concerning the measures adopted or being planned to abide by the judgment (as it appears in the Appendix to this resolution);
Noting with interest, as regards the applicant company's situation, that on 19 August 2003 the Ukrainian Supreme Court ordered the reopening of the impugned proceedings and emphasising the need to guarantee that these new proceedings are conducted in full respect of the Convention and of the case-law of the European Court in this case;

Noting also that European Court, on 2 October 2003, delivered its judgment under Article 41 on just satisfaction, which will become final in accordance with the terms of Article 44, paragraph 2 of the Convention;
Welcoming, as regards the general measures, the fact that, prior to the Court's judgment, the procedure for supervisory review (*protest*), which was one of the main structural problems at the basis of the violations found, was abolished through a comprehensive judicial reform of 21 June 2001 and stressing the importance of ensuring that prosecutors do not retain powers similar to that of "protest" in civil cases under other legal provisions;
Further welcoming the reforms adopted in 2002 aimed at reinforcing the independence of the judiciary's, in particular the establishment of the State Judicial Administration and the new arrangements by which the courts are financed from the central state budget instead of from the budgets of local authorities;
Welcoming the order made by the President of Ukraine on 12 July 2003 aiming at ensuring the unconditional implementation of all legal norms, including the Convention, protecting the independence of the judiciary, the adoption of any further legislation deemed necessary for this purpose and the enhancement of training measures in co-operation with the Council of Europe and the European Union to ensure that the administration of justice conforms with the legislation in force and international law, including the Convention;
Stressing the importance of rapid and efficient action to give effect to this order so as to ward off attempts to influence the administration of justice, and to ensure that adequate sanctions are imposed on the authors of any such attempts and other appropriate measures are taken to enhance the independence of the judiciary;
Emphasising in this connection the responsibility of the authorities to provide adequate training and awareness-raising, not least concerning the case-law of the European Court, for judges, prosecutors and other public officials;
Noting the importance of the training of Ukrainian judges in particular on the Convention conducted within the Joint Programme of co-operation between the European Commission and the Council of Europe to strengthen democratic stability in Ukraine;
Noting with interest the establishment by the Decree of the President of Ukraine of October 2002 of the Judges' Academy of Ukraine the main task of which is the initial and in-service training of judges including training courses on the Convention;
Welcoming the practice of publishing of the European Court's judgements, including the judgment in the present case, in Ukrainian in the Official Journal and in the Bulletin of the Ministry of Justice of Ukraine;

ENCOURAGES the Ukrainian authorities rapidly to ensure that the necessary measures are taken to guarantee that each and every state authority fully respects the independence of the judiciary, in particular by ensuring:

- that effective sanctions are imposed on officials who in any way interfere, or attempt to interfere, with pending court proceedings;
- that all necessary measures to implement the President's order of 12 July 2003 are taken so as to guarantee the respect of the Constitution and the Convention;
- that it is no longer possible for public prosecutors to question the final character of court judgments in civil cases;

CALLS ON the competent authorities to continue the training on the Convention, including the case-law of the European Court, during the initial and in-service training of judges and prosecutors and to ensure that the latter have ready access to such case-law;

ENCOURAGES the further development of the training of Ukrainian judges, in particular in co-operation with the Council of Europe institutions;

URGES the Ukrainian authorities to ensure the wide dissemination of the present resolution in Ukrainian translation to the Government ministries, General prosecutor's office, local authorities and courts;

EXPECTS to receive further information soon on additional measures planned to execute the judgment in this case and,

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

Appendix to Interim Resolution ResDH(2004)14

Information provided by the Government of Ukraine
during the examination of the Sovtransavto Holding case
by the Committee of Ministers

As regards individual measures

The applicant company's request for reopening of the impugned proceedings with a view to obtaining redress for the violations of the Convention was granted by the Supreme Court on 19 August 2003. The case was referred to the court of first instance for a new hearing (the Economic Court of Lougansk, former "arbitration court"). The outcome of these proceedings is awaited.

As regards general measures

The following general measures have so far been taken by the Ukrainian authorities:

- the procedure for supervisory review (*protest*) was abolished in Ukrainian law by the judicial reform of 21 June 2001;

- the Law on the Judiciary, adopted in February 2002, sets up the State Judicial Administration, which is a specialised institution, independent from the executive, responsible for organising the management of the national judiciary; the law also provides that all Ukrainian courts are henceforth financed from the central budget and that the budget assigned to the courts is administered by the country's supreme courts;

- in order to give effect to the judgment, the President of Ukraine, on 12 July 2003, instructed:

  - the Prime Minister to ensure, with the participation of the General Prosecutor's Office, the unconditional implementation of the provisions of Ukrainian law and of the Convention (which has the force of law in Ukraine) concerning the inadmissibility of any form of interference in the independence of the judiciary, whether in pending proceedings or otherwise, in order to influence courts or judges;

  - the Ministry of Justice to analyse the legislation of Ukraine concerning the guarantees of independence of judiciary with a view to submitting, if necessary, proposals on improvement of legislation and appropriate administrative and financial measures and as well as design and implement, together with the Ministry of Foreign Affairs and in co-operation with the Council of Europe and the European Union, the training measures necessary to ensure that the Ukrainian administration of justice conforms with the legislation in force and international treaties, including the Convention;

- on 26 August 2003, the Cabinet of Ministers ordered ministries and other central or regional bodies having executive power in Ukraine to take all necessary measures to implement the President's above-mentioned order;

- as a result of systematic training of Ukrainian judges between 2001 and 2003 in the framework of the Council of Europe/European Commission Joint Programme (consisting of one-day training on the Convention for all judges, two "train-the-trainers" seminars in Kiev, and 73 seminars in different regions of Ukraine), domestic courts apply the Convention and the case-law of the European Court more frequently (as evidenced by a number of decisions notably from the Constitutional Court - decision n°9-zp of 25/12/97, dec. n°6-rp/99 of 24/06/99, dec. n°11-rp/99 of 29/12/99, opinion n°2-v/2000 of 11/07/00, dec. n°11-rp/2000 of 18/10/00, dec. n°13-rp/2001 of 10/10/01 and dec. n°15-rp/2001 of 14/11/01).

- the European Court's judgment was translated and published in the Official Journal of Ukraine, issue n°44/2003, in the Bulletin of the Ministry of Justice, issue n°9/2003, on the Ministry of Justice Internet site www.minjust.gov.ua and in the journal *Case-law of the ECHR,* issue n°3/2002 and has been sent out to the authorities directly concerned, i.e. to the Supreme Court and the Supreme Commercial Court of Ukraine (letters of the Ministry of Justice of Ukraine of 6 August 2002, n° 44-5/793 and 44-5/794) and to the Government ministries, General prosecutor’s office, local authorities and courts.

The Ukrainian Government stresses Ukraine’s commitment to abide fully by the European Court's judgment in this, as indeed in all other cases, and the authorities will pursue the adoption of the measures required to prevent new similar violations of the Convention. In this connection, the Government, in particular, encourages the courts, prosecutors and other authorities to develop further the direct effect of the Convention and of the