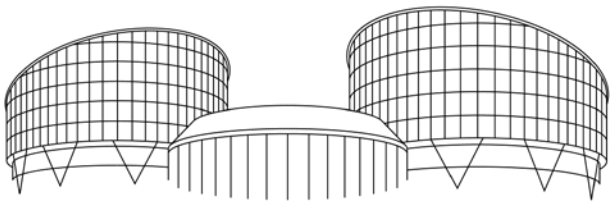

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

20 October 2014

Response of the Court to the "CDDH report containing conclusions and possible proposals for action on ways to resolve the large numbers of applications arising from systemic issues identified by the Court"

1. At its 1178th meeting (17-18 September 2013), the Committee of Ministers invited the Court to respond to the proposals addressed to it by the CDDH in its report "containing conclusions and possible proposals for action on ways to resolve the large numbers of applications arising from systemic issues identified by the Court"[1].

2. In the present document the Court will: (i) update the Committee of Ministers on the current situation regarding repetitive applications, since the CDDH report refers to data now more than a year old and (ii) offer its response to certain points addressed to it in the report.

I. The present situation of the Court

3. In the time since the CDDH drafted its report, there have been significant developments in relation to repetitive applications that merit mention. To begin with, the overall number of repetitive cases, which under the Court's prioritisation policy are allocated to category V, has declined considerably since the CDDH report, the figure falling from 45,970 to 38,775 on 1 October 2014.

4. The decrease can be attributed in part to the steps taken by certain States to address systemic problems identified in pilot or leading judgments. This is the case for Romania, where the measures introduced in execution of the *Maria Athanasiu* pilot judgment[2] were found to be adequate (see the recent *Preda* case[3], rejecting all but one of the applications on the ground of non-exhaustion). After *Preda*, the Court was able to reject some 2,600 similar applications, mainly by decision of the single judge. There remains a significant number of cases – about 700 – concerning the expropriation problem in Romania (for the reasons set out at paragraphs 124 and 130 of the *Preda* judgment), meaning that further measures of execution are required. However, the progress achieved thus far in executing the pilot judgment deserves to be highlighted.

[1] CM(2013)93 add6, 28 June 2013.
[2] *Maria Atanasiu and Others v. Romania*, nos. 30767/05 and 33800/06, 12 October 2010.
[3] *Preda and Others v. Romania*, nos. 9584/02, 33514/02, 38052/02, 25821/03, 29652/03, 3736/03, 17750/03 and 28688/04, judgment of 29 April 2014.

5. There have been significant developments regarding Turkey as well in the past year. The CDDH took note of two decisions of the Court finding that two new remedies – the creation of a constitutional complaint procedure[4] and the establishment of a compensation commission dealing with complaints of excessive length of judicial proceedings[5] – had to be exhausted before applicants could have their complaints examined by the Court. Regarding the compensation commission, the *Turgut* decision led to the rejection of almost 4,000 applications for non-exhaustion of domestic remedies. The compensation commission's remit was broadened in March 2014 so as to allow it to deal with some of the other repetitive complaints originating from Turkey, as indicated in the recent *Yildiz and Yanak* decision[6]. In holding that the applicants must bring their complaints to the compensation commission, the Court said:

> *"33. It thus notes with interest that the respondent State, in accordance with the recommendations issued by the Committee of Ministers of the Council of Europe and the declarations adopted at the Interlaken, İzmir and Brighton Conferences, is fulfilling its role in the Convention system by resolving problems of this kind at national level, thereby securing to the persons concerned the Convention rights and freedoms as required by Article 1 of the Convention, offering them more rapid redress and, at the same time, easing the burden on the Court, which would otherwise have to take to judgment large numbers of applications similar in substance."*

6. As regards the constitutional remedy, the Court recently rejected a complaint of length of proceedings that the applicant had already raised before the Constitutional Court, which had acknowledged the violation and awarded a certain amount of compensation. In light of this, the applicant was found to no longer have victim status and the case was declared inadmissible[7].

7. As for the numerous cases against Serbia concerning the non-payment of *per diem* allowances to former soldiers, noted by the CDDH, the Court found in the *Vučković* case that domestic remedies had not been exhausted[8]. In consequence, over 5,400 such applications were declared inadmissible on this ground.

8. Regarding Ukraine, the most common cause of complaint remains non-enforcement of judgments. Despite the Court's efforts, described in the CDDH report, it did not succeed in reducing the number of such cases, with new applications reaching the Court in much greater numbers. In the month of April 2014 alone, about 2,000 new cases of this sort were registered. The Court informed the Committee of Ministers at that point that it was suspending its examination of these cases for a period of six months[9]. The Court will revert to the situation in due course.

9. To complete the overview of pending applications arising out of systemic problems, reference is made to cases relating to very poor conditions of detention and prison overcrowding. Since these applications concern Article 3 of the Convention, they are classified as high priority (category III). In 2014, their number increased substantially, totalling more than 5,000 on 1 September, the majority of which concern Italy. In 2013 the Court applied the pilot judgment procedure to the issue – the *Torreggiani* case[10]. It indicated to the Italian authorities that they must introduce preventive and compensatory measures to deal with the problem of severe overcrowding, and do so within a year of the judgment

[4] See *Hasan Uzun v. Turkey* (dec.), no. 10755/13, 30 April 2013.
[5] *Müdür Turgut and Others v. Turkey* (dec.), no. 4860/09, 26 March 2013.
[6] *Yildiz and Yanak v. Turkey* (dec.), no. 44013/07, 27 May 2014.
[7] *Koç v. Turkey* (dec.), no. 8362/14, 24 June 2014.
[8] *Vučković and Others v. Serbia* [GC], no. 17153/11, 25 March 2014.
[9] See letter from the Registrar of the Fifth Section to the Secretary of the Committee of Ministers, dated 14 April 2014.
[10] *Torreggiani and Others v. Italy*, nos. 43517/09, 46882/09, 55400/09, 57875/09, 61535/09, 35315/10 and 37818/10, 8 January 2013 (available only in French; an English summary is to be found in HUDOC, as well as an Italian translation).

becoming final[11]. In a case that has just been decided, the Court found that the remedies introduced in Italy were such that they had to be exhausted by applicants[12]. This finding will affect approximately 3,500 similar pending cases.

10. Faced with the challenge of dealing efficiently with this type of case, the Court has developed a strategy which includes the designation of a Registry co-ordinator to ensure that these applications are processed speedily and in a consistent manner. Since these are mostly repetitive cases that come within well-established case-law, they lend themselves to the WECL procedure, i.e. adjudication by three-judge committees. Using the methods that have proven their effectiveness in filtering applications, and supported by new IT tools, the Court expects to increase its output and to reduce the time taken to decide such cases. It is also intended to relieve some of the pressure on the Chambers, so that they may concentrate further on other priority cases.

II. Points addressed to the Court in the CDDH report

11. The Court will comment on the points relevant to it that appear in the final part of the report. The most specific suggestion is that Article 27 be construed so as to allow single judges to strike out cases in which the respondent State has made an acceptable unilateral declaration. The Court acknowledges the intention behind this novel idea, which is to further simplify this aspect of proceedings. However, it is a suggestion that would require further detailed reflection, both as to its legality and its likely effectiveness.

12. More generally, the report encourages the Court to explore possible new forms of practical co-operation with States with the aim of "simplifying and accelerating the administrative process leading to unilateral declarations and strike-out decisions". Likewise it encourages States to co-operate fully with the Court through appropriate procedural solutions, notably friendly settlements and unilateral declarations. The Court appreciates the general thrust of these remarks, and the information provided above as well as examples given by the CDDH itself show that certain States are displaying real determination to cooperate with the Court as it deals with repetitive cases.

13. Another point addressed to the Court takes the form of an invitation to keep the Committee of Ministers fully informed of developments relating to already-identified systemic issues. The Court would first observe that in its interactions with the Committee of Ministers, the respective roles of the two Convention institutions, with their distinct functions, must remain clearly demarcated. That said, communications between the two bodies have, in the Court's view, intensified during the reform process, taking place at different levels and via different channels. An example of the developing practice is a meeting that took place recently between one of the Court's Sections and members of the Execution Department. This permitted a detailed exchange between judges, Registry lawyers and staff of the Department regarding both the progress achieved and the difficulties encountered with the execution of judgments.

14. The Court's dialogue with the Committee of Ministers is one element of a wider interaction with what may be termed other stakeholders in the Convention, and above all with national courts, which are represented at a high level at the judicial seminar each January, and with whom there are meetings and contacts throughout the year. Here too dialogue has intensified in the years since the Interlaken Conference, there being strong interest on both sides. On a more practical level, the Court and the Registry maintains contact with Government Agents as well as those who represent applicants (the CCBE, civil society organisations). In all of these contexts, the issue of systemic problems has featured in discussions. It is also relevant to recall that, regarding some pilot procedures, Court representatives have

[11] The judgment became final on 27 May 2013.
[12] *Stella v. Italy*, no. 49169/09, decision of 16 September 2014.

travelled to the State concerned in order to meet with the authorities and other relevant interlocutors and to discuss with them the modalities for achieving compliance with the Convention.

15. Paragraph 47 of the report sets out a series of points, rather diverse in nature, which in the opinion of the CDDH the Court ought to respect in the further development of procedures for repetitive applications. It is not clear to the Court why it was thought necessary to issue a reminder of the importance of impartiality. Nor is there any doubt that friendly settlements and unilateral declarations are wholly voluntary acts. The Court can only share the CDDH's attachment to fair procedures and the proper administration of justice, with which all of the steps taken to improve efficiency must be consistent. As to the remark that account should be taken of the respondent State's "reasonable financial capacities", the Court understands this to refer to *administrative* capacity, a consideration that it does not disregard. The Court will be continuing its dialogue with Government agents and concerned parties regarding the way in which repetitive cases are examined efficiently. What must not be forgotten, though, is that cases arising out of systemic issues continue to absorb too much of the Court's resources, and that it is incumbent on the Court as well as on States to correct this.

Concluding comment

16. The present reply has been written as the preparations for the next high-level reform conference are beginning. The Court looks forward to this next milestone event, and welcomes the fact that it will have as its major theme the implementation of the Convention at national level. After several years in which the focus has been on the European mechanism, including amendments to the Convention, it is time to bring the same intensity of review and determined spirit to the other side of the notion of shared responsibility. Addressing the phenomenon of repetitive cases with systemic causes will be an important part of that. The Court stands ready to contribute to the reflection and discussion of the issue, with a view to further strengthening of the European human rights regime.