16 Repetitive Cases before the Strasbourg Court: The Pilot Judgment Procedure at the European Court of Human Rights

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16.1 Introduction

In 2003 (the year before adopting Protocol No. 14, which contained a remarkable package of reform-measures) the European Court of Human Rights adopted 703 judgments (including all the chambers and the Grand Chamber as well), declaring 16,724 applications inadmissible, yet the Court received 38,810 new applications this year.[1] In other words, 96% of the applications that were considered by the Court were deemed inadmissible in 2003. Moreover, almost 60% of the judgments delivered by the Court concerned so-called repetitive cases or routine applications that are well-founded (including cases concerning the length of judicial proceedings before national courts). Protocol No. 14 included at least three elemental reforms: strengthening the Court's capacity to filter applications, adopting a new admissibility criterion (significant disadvantage) and adopting measures for dealing with repetitive cases.[2] The filtering capacity is increased by rendering a single judge competent to declare inadmissible or strike off individual applications. The new admissibility criterion provides the Court with an additional tool which helps it to concentrate on cases which warrant an examination on the merits, by empowering it to declare inadmissible applications where the applicant has not suffered a significant disadvantage. And finally, the competence of the three-judge-committees is extended to cover repetitive cases, including both the admissibility and the merits of the case, if the Court already has a well-established case-law in this respect.

Because of the late ratification by Russia, Protocol No. 14. entered into force only on 1 June 2010, and by 2010 the number of pending cases had risen to 139,650, while the Court's adjudicative capacity remained limited. In 2009 57,100 new applications were

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1 *European Court of Human Rights: Annual Report 2004*, Strasbourg, 2005, p. 116.

2 *Explanatory Report to Protocol No. 14. to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention*, Para. 36.

submitted (almost 150% of the number of applications submitted in 2003), the Court delivered 2,395 judgments (340% of the 703 judgments delivered in 2003), and declared 33.065 applications inadmissible (198% of the 16,724 inadmissible applications in 2003).[3]

In this article I seek to analyze the so-called pilot judgment procedure developed by the European Court of Human Rights in an attempt to tackle the phenomenon of repetitive cases, a procedure that cannot be found in Protocol No 14 (only in Article 61 of the Rules of the Court).

16.2 Repetitive Cases – The Factual Background

Most of the cases before the European Court of Human Rights are in connection with the problem of the excessive length of proceedings before national courts. For example, until 31 December 2012, 43.99% of the Court judgments were in connection with Article 6 (1) (right to a fair trial, including the reasonable time requirement) of the Convention.[4] Some states, especially Russia, Moldova and Ukraine, also have structural problems concerning the protection of human rights in prisons and ill-treatment by law-enforcement officials.[5] After the *Loizidou* judgment,[6] approximately 1,400 similar property cases brought primarily by Greek Cypriots against Turkey (post-*Loizidou* cases) were pending before the Court.

16.3 Legal Background

During the reflection period for Protocol No. 14, the European Court of Human Rights suggested[7] the establishment of a pilot judgment procedure.[8] The Steering Committee for Human Rights (CDDH) rejected the proposal of the Court and decided that it should not be included in Protocol No. 14, however the Committee of Ministers should make appropriate recommendations instead. According to the CDDH's view, it was legally difficult to provide for a general legal obligation of this kind, and 'the pilot judgment procedure could be followed without there being a need to amend the ECHR.'[9]

3 *European Court of Human Rights: Annual Report 2009*, Strasbourg, 2010, 139.
4 *Overview 1959-2012 ECHR*, p. 4, www.echr.coe.int/Documents/Overview_19592012_ENG.pdf.
5 J. Gerards, 'The Pilot Judgment Procedure before the European Court of Human Rights as an Instrument for Dialogue, in M. Claes et al. (Eds.), *Constitutional Conversations in Europe*, Intersentia, Antwerp, 2012, p. 372.
6 ECHR, *Loizidou v. Turkey*, judgment of 23 March 1995 (Appl. No. 15318/89).
7 CDDH(2003)006.
8 ECHR position paper of 12 September 2003, Paras. 43-46.
9 *Guaranteeing the Long-term Effectiveness of the European Court of Human Rights* – Implementation of the Declaration adopted by the Committee of Ministers at its 112th Session (14-15 May 2003). Adopted by the CDDH on 8 April 2004.

In the meantime, the Committee of Ministers adopted Resolution Res(2004)3,[10] in which the Committee of Ministers invited the Court

- to identify, as far as possible, in its judgments, when finding a violation of the Convention, what it considers to be an underlying systemic problem and the source of this problem, in particular when it is likely to give rise to numerous applications, so as to assist states in finding the appropriate solution and the Committee of Ministers in supervising the execution of judgments;
- and to specifically notify any judgment containing indication of the existence of a systemic problem and the source of this problem not only to the state concerned and to the Committee of Ministers, but also to the Parliamentary Assembly, to the Secretary General and to the Council of Europe Commissioner for Human Rights, and to highlight such judgments in an appropriate manner in the database of the Court.

According to the Preamble of this Resolution, the source of this obligation is Article 46 of the Convention, in which the High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties. In my opinion the main question of this procedure is whether the state in question is ready to solve the systemic problem determined by the Court in its judgment – and I am not convinced that the Court (or the Council of Europe itself) has any obligatory legal instrument to enforce this statement of the pilot judgment. Indirectly, this non-obligatory nature follows from Recommendation Rec(2004)6 of the Committee of Ministers,[11] in which the Committee of Ministers suggested that the High Contracting Parties review, following Court judgments which point to structural or general deficiencies in national law or practice, the effectiveness of existing domestic remedies and, where necessary, set up effective remedies, in order to avoid repetitive cases being brought before the Court. In its Recommendation the Committee of Ministers recalled directly the principle of subsidiary, which means that (in accordance with Article 1 of the Convention) the fundamental rights and freedoms guaranteed by the Convention be protected in the first place at national level and applied by national authorities. As I will demonstrate later, the main element of this pilot judgment procedure is that, when the Court chooses one leading case from the repetitive applications, it adjourns the other similar cases, and during this 'adjournment period' (including the examination period of the leading case until the delivery of the final judgment, and a reasonable time-limit determined by the Court in its final pilot judgment) the high contracting parties have the right (or, considering the right to an effective remedy incorporated into Article 13 of the Convention, are obliged) to create a new, effective remedy for the applicants in similar situations. In its partly dissenting opinion in the judgment of *Hutten-Czapska*

10 Resolution Res(2004)3 on judgments revealing an underlying systemic problem.
11 Recommendation Rec(2004)6 on the improvement of domestic remedies.

v. Poland[12] judge Zagrebelsky stated that it is clear that the Court shall take into consideration the above mentioned Recommendations, but it cannot be overlooked that the legal basis of the proposals made by the Court in its judgments was not included in Protocol No. 14.

16.4 *Broniowski* Case: The First Swallow

Following World War II and the fixing of Poland's new borders, the former Polish Eastern provinces (the so-called Borderlands) became part of the Soviet Union (more precisely, Belarus, Ukraine and Lithuania). Between 1944 and 1953 approximately 1.24 million persons were repatriated from this area, and the vast majority of them have been compensated, either by the granting of perpetual use of land, or with land belonging to the State. The applicant's grandmother had been repatriated from Lviv (which city now belongs to the Ukraine) in 1947, and she received a certificate issued by the Polish State Repatriation Office which attested her ownership. The mother of the applicant inherited this entitlement and obtained a partial compensation in the form of a right to perpetual use of a land in Wieliczka in 1981. Jerzy Broniowski inherited the entirety of his mother's property and claims following her death in 1989, and in 1992 he requested to be granted full compensation from the government. His claim was registered but could not be satisfied (the Supreme Administrative Court rejected his complaint). In 2002 the Constitutional Court declared several legal provisions of the Polish compensation mechanism unconstitutional and ordered their amendment.

In 2003 the Polish government calculated the number of claimants and the value of their claims, stating that 4,120 claims were registered (of which 3,910 had been verified), in the value of 3 billion zloty. Additionally, there were 82.740 unverified claims pending registration, and the estimated value of these claims was 10.45 billion zloty.[13] Taking into consideration the Polish government's financial possibilities, some compensation for the loss of the claimant's properties was awarded, but it was established that the amount constituted just 2% of the value of Mr. Broniowski's grandmother's property.

Mr. Broniowski submitted his application to the former European Commission on Human Rights on 12 March 1996, alleging a breach of Article 1 of Protocol No. 1. (protection of property). On 26 March 2002 a chamber of the fourth section relinquished jurisdiction in favor of the Grand Chamber, and the Grand Chamber ordered on the same day that all similar applications pending before the Court be allocated to the fourth section, and their examination be adjourned until the judgment on the merits had been delivered.

12 *Hutten-Czapska v. Poland*, ECHR (2006) Grand Chamber judgment of 19 June 2006 (Appl. No. 35014/97).
13 M. Pia Carazo, '*Broniowski* case', *Max Planck Encyclopedia of Public International Law* (2012), Para. 4. (www.mpepil.com).

The Grand Chamber declared that Article 1 of Protocol No. 1. requires that the amount of compensation should be reasonable, and a much smaller than due compensatory amount could constitute a disproportionate interference with the right to property. Taking into consideration that Mr. Broniowski was only awarded 2% of the whole amount of compensation, the Grand Chamber concluded that Poland violated Article 1 of Protocol No. 1.

Although at that time only 167 similar cases were pending before the Court, the Court realized that after its judgment (in which the violation of the right to property by the Polish Government was declared) 80,000 potential applicants might soon submit their claims. For this reason the Court found that the violation 'originated in a widespread problem which resulted from a malfunctioning of Polish legislation and administrative practice and which has affected and remains capable of affecting a large number of persons.'[14] The Grand Chamber stated that 'general measures should either remove any hindrance to the implementation of the right of the numerous persons affected by the situation found to have been in breach of the ECHR or provide equivalent redress in lieu.'[15] In the operative provisions of the judgment the Grand Chamber held particularly that the respondent state must, through appropriate legal measures and administrative practices, secure the implementation of the property right in question in respect of the remaining claimants or provide them with equivalent redress.[16]

It is not indicated anywhere in the judgment that this would be a pilot judgment, however it contains the most important characteristics of a pilot judgment as follows:

- a finding that the facts of the case disclose the existence, within the relevant legal order of a shortcoming as a consequence of which a whole class of individuals have been or are still denied their ECHR rights;
- a conclusion that these deficiencies in national law and practice may give rise to numerous subsequent well-founded applications;
- recognition that general measures are called for and some guidance as to what such general measures may be;
- an indication that such measures should have retroactive effect;
- a decision to adjourn consideration of all pending applications deriving from the same cause.[17]

The applicant had requested 990,000 zloty in compensation for the loss of his right to property, and a further € 12,000 for the non-pecuniary damage arising out of the state of

14 *Broniowski v. Poland*, ECHR (2004) Grand Chamber judgment of 22 June 2004 (Appl. No. 31443/96), Para. 189.

15 *Broniowski v. Poland*, ECHR (2004), Para. 194.

16 *Broniowski v. Poland*, ECHR, Para. 198.

17 C. Paraskeva, 'Human Rights Protection Begins and Ends at Home: The "Pilot Judgment Procedure" Developed by the European Court of Human Rights', 3 *Human Rights Law Commentary* (2007), p. 9.

uncertainty, stress and frustration from his inability to enjoy his right to property, and requested 125,000 zloty for costs and expenses. The Grand Chamber concluded that it was not ready to take a decision concerning just satisfaction, and invited the parties to submit their written submissions in this respect within six months.

Following the judgment on the merits, the Polish Constitutional Court declared several provisions of the law concerning the compensation adopted in 2003 unconstitutional, and following this the government submitted a new bill to the parliament on the realization of the right to compensation. The new act (adopted by the Parliament in 2005) proposed that claimants should be given 20% of the original value of their property in compensation either by an auction procedure or through cash payment from a special compensation fund. After the adoption of this new act, Mr. Broniowski and the Polish government agreed on a friendly settlement covering the issue of just satisfaction, in which the government accepted to pay 20% of the value of the property as compensation, and Mr. Broniowski agreed not to seek further damages from Poland and waived any further claims in Polish civil courts or any international body.

On 4 December 2007 in its decisions striking off the cases *Wolkenberg and others*[18] and *Witkowska-Tobola*[19] the Court established that the new compensation scheme adopted by the Polish Parliament satisfied the requirements set out in the *Broniowski* judgment. Subsequently, the Court struck off the remaining cases.

16.5 Pilot Judgment in the Rules of the Court

The final declaration of the February 2010 Interlaken Conference requested the Court to 'develop clear and predictable standards for the pilot judgment procedure as regards selection of applications, the procedure to be followed and the treatment of adjourned cases.' In March 2011 (seven years after the *Broniowski* judgment) the Court added a new rule (Rule 61) to its Rules of Court, codifying the rules of the pilot judgment procedure, as the Interlaken Conference requested. The main elements of this new rule are the followings:

- The Court shall consult the applicant and the responding government before starting the pilot judgment procedure;
- The Court shall identify the type of remedial measures the state concerned is required to take at national level, imposing a time-limit on the adoption of these measures, and may adjourn similar pending cases by that time;
- When a state fails to abide by a pilot judgment, the Court will normally resume examination of the adjourned cases.

18 *Wolkenberg and others v. Poland*, ECHR (2012), decision of 12 April 2012 (Appl. No. 50003/99).
19 *Witkowska-Tobola v. Poland*, ECHR (2012), decision of 12 April 2012 (Appl. No. 11208/02).

According to the Court's press release, the pilot procedure has three aims: to help the forty-seven European States which have ratified the European Convention on Human Rights to resolve systemic or structural problems at national level; to provide redress more quickly for the individuals involved; and, to help the European Court of Human Rights deal more efficiently and quickly with its caseload, by reducing the number of similar, usually complex, cases it needs to examine in detail.[20]

The Court bases its pilot judgments not only on Rule 61 of the Rules of Court, but on Article 41 and 46 of the Convention. Article 46 provides that state parties are legally bound 'to abide by the final judgment of the Court in any case to which they are parties.' It is true that traditionally the Court had restricted itself to finding violations and sometimes ordering just satisfaction under Article 41 of the Convention. However, as the Court interpreted Article 46 in the *Broniowski* judgment

> Not just to pay those concerned the sums awarded by way of just satisfaction under Article 41, but also to select, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in their domestic legal order to put an end to the violation found by the Court and to redress so far as possible the effects. Subject to monitoring by the Committee of Ministers, the respondent State remains free to choose the means by which it will discharge its legal obligation under Article 46 of the Convention, provided that such means are compatible with the conclusions set out in the Court's judgment.[21]

Obviously, individual compensation cannot solve the problems of people in comparable situations, and this new interpretation of the above mentioned article follows from the doctrine of living instrument: 'the Convention is a living instrument which … must be interpreted in the light of present-day conditions.'[22]

16.6 Pilot Judgments from the *Broniowski* Case until the End of 2013

Starting with the *Broniowski* case the Strasbourg Court applied the pilot judgment procedure in 18 other cases, and two other cases (one of them launched against Hungary) are in progress.[23] Taking into consideration the relatively small number of cases it is useful to

20 ECHR, Press Release No. 256 issued by the Registrar of the Court, 24 March 2011.

21 *Broniowski v. Poland*, ECHR, Para. 192.

22 *See* e.g., *Tyrer v. the United Kingdom*, ECHR (1978), Judgment of 25 April 1978 (Appl. No. 5856/72), Para. 31.

23 *Factsheet – pilot judgments*, www.echr.coe.int/Documents/FS_Pilot_judgments_ENG.pdf.

tabulate these cases. In my view, pilot judgments are only the cases in which the Court determines some systematic problems and orders special remedial measures to the government in the operative part of the judgment. There are other important cases in which the Court only calls the government's attention to structural problems in the reasoning part of the judgment, these cases, in my opinion, can only be regarded as quasi-pilot judgments.[24]

Case	Structural problem	Order of the Court	Number of similar cases / Following-up
Broniowski v. Poland (22 June 2004, Grand Chamber, Appl. No. 31443/96)	After Poland's eastern border had been redrawn after the World War II, Poland undertook to compensate Polish citizens who had been repatriated. A whole class of individuals (some 80,000 people) had not received the compensatory property or an amount for compensation – *Article 1 of Protocol No. 1 of the Convention*	The Polish Government has to ensure, through appropriate legal and administrative measures, the implementation of a property right in respect of the remaining 'Bug River claimants' or provide them with equivalent redress in lieu	More than 200 similar applications, which had been adjourned. Poland passed a new law in July 2005 providing for financial compensation for properties abandoned beyond the Bug River. The Court found that this new law and the compensation scheme were effective, so the Court struck off all the similar applications[25]
Hutten-Czapska v. Poland (19 June 2006, Grand Chamber, Appl. No. 35014/97)	Deficiencies in the rent-control provisions of the housing legislation (the system imposed a number of restrictions on landlords' rights, in particular setting a ceiling on rent levels, which was so low that landlords could not even recoup their maintenance costs, let alone make a profit) – *Article 1 of Protocol No. 1 of the Convention*	The Polish Government had to secure in the Polish domestic legal order a mechanism maintaining a fair balance between the interests of landlords and the general interest of the community, in accordance with the principles of the protection of property rights under the Convention (without deadline)	18 similar applications (but the Court estimated that about 100,000 landlords were potentially concerned). In March 2011 the Court closed the procedure after Poland had changed its laws in a way that landlords could recover the maintenance costs for their property and make a decent profit
Burdov v. Russia (no. 2.) (15 January 2009, Appl. No. 33509/04)	The Russian State failed to execute judgments (domestic judgments awarding the applicants social benefits) – *Article 6 and 13 of the Convention*	The Russian authorities had to produce within 6 months an effective domestic remedy which would secure adequate and sufficient redress for non- (or delayed)	More than 200 similar cases. Russia adopted a new act which provided that an application could be made to the domestic courts for compensation for delayed enforcement of

24 Sometimes these quasi pilot judgments are mentioned as 'normal' ones. *See* e.g. P. Leach et al. (Eds.), *Responding to Systemic Human Rights Violations. An Analysis of 'Pilot Judgments' of the European Court of Human Rights and their Impact at National Level*, Intersentia, Antwerp-Oxford-Portland, 2010, pp. 24-25.

25 *Wolkenberg and Others v. Poland*, ECHR (2007), inadmissibility decision of 4 December 2007 (Appl. No. 50003/99).

Case	Structural problem	Order of the Court	Number of similar cases / Following-up
		enforcement of domestic judgments	judgments. Applicants shall exhaust this new domestic remedy[26]
Olaru and Others v. Moldova (28 July 2009, Appl. Nos. 476/07, 22539/05, 17911/08 and 13136/07)	Moldovan social housing legislation bestowed privileges on a very wide category of persons, but because of the chronic lack of funds available, final judgments awarding social housing were rarely enforced – *Article 6 and 13 of the Convention*	The Moldovan authorities had to set up an effective domestic remedy for non- (or delayed) enforcement of domestic judgments concerning social housing within six months, and had to grant redress to all victims of non-enforcement in cases lodged with the Court before delivery of this judgment within one year	The number of cases in progress is unknown. All similar cases were adjourned. The Moldovan Government reformed its legislation by introducing a new domestic remedy in July 2011[27]
Yuriy Nikolayevich Ivanov v. Ukraine (15 October 2009, Appl. No. 40450/04)	An army veteran complained of the prolonged non-enforcement of judgments ordering the authorities to pay him retirement payment arrears – *Article 6 and 13 of the Convention*	One or more effective remedies capable of affording adequate and sufficient redress for non- (or delayed) enforcement of domestic judgments within one year	More than 2,000 similar applications pending (1,000 new applications since 1 January 2011). On 21 February 2012 the Court noted that the Ukraine had not adopted the required general measures, therefore, the Court decided to resume the examination of similar applications[28]
Suljagic v. Bosnia and Herzegovina (3 November 2009, Appl. No. 27912/02)	Systemic problem due to deficiencies in the repayment scheme for foreign currency deposited before the dissolution of the Socialist Federal Republic of Yugoslavia – *Article 1 of Protocol No. 1 of the Convention*	The Government of Bosnia and Herzegovina had to ensure that government bonds were issued, outstanding installments and default interest were paid within six months	More than 1,350 similar cases were pending before the Court. The Government of Bosnia and Herzegovina adopted the necessary laws. The examination of this case was closed in 2011[29]
Rumpf v. Germany (2 September 2010, Appl. No. 46344/06)	Excessive length of proceedings before the administrative courts (consistently observed by the Court since	The German Government had to introduce an effective domestic remedy capable of affording redress for	55 similar cases were pending. Germany adopted the necessary modifications

26 *Nagovitsyn and Nalgiyev v. Russia*, ECHR (2010), inadmissibility decision of 24 September 2010 (Appl. Nos. 27451/09 and 60650/09).

27 *Balan v. Moldova*, ECHR (2012), inadmissibility decision of 10 February 2012 (Appl. No. 44746/08).

28 ECHR Press Release 086 (2012), 29 February 2012.

29 Resolution CM/ResDH(2011)44.

Case	Structural problem	Order of the Court	Number of similar cases / Following-up
	2006) – *Article 6 and 13 of the Convention*	excessively long court proceedings before administrative courts within one year	
Maria Atanasiu and Others v. Romania (12 October 2010, Appl. Nos. 30767/05 and 33800/06)	Ineffectiveness of the system of compensation or restitution of property nationalized or confiscated by the Romanian State before 1989. – *Article 1 of Protocol No. 1 of the Convention*	General measures should be put in place to secure effective and rapid protection of the right to restitution within eighteen months	267 similar cases were pending. The Court adjourned all applications stemming from the same problem. The Government requested that the time-limit be extended by 9 months, and the Court decided to grant the request and deferred the deadline until 12 April 2013. A new act was adopted by the Parliament on 22 April 2013
Greens and M.T. v. the United Kingdom (23 November 2010, Appl. Nos. 60041/08 and 60054/08)	UK legislation imposes a blanket ban on voting for convicted prisoners in detention. The United Kingdom had still not amended its legislation five years after *Hirst (No. 2.) judgment*.[30] – *Article 3 of Protocol No. 1 of the Convention*	The Government had to introduce legislative proposals for bringing electoral law into line with the *Hirst (No. 2.) judgment* within six months	The Court received almost 2,500 similar applications, these were adjourned. The deadline given to the United Kingdom authorities to introduce legislative proposals expired on 11 October 2011, but was extended until 22 November 2012. The Court decided to resume the examination of the 2,281 similar applications against the United Kingdom on 23 October 2013[31]
Athanasiou and Others v. Greece (21 December 2010, Appl. No. 50973/08)	Excessive length of proceedings before the administrative courts and the lack of a remedy in this respect (between 1999 and 2009 the Court had delivered about 300 similar judgments) – *Article 6 and 13 of the Convention*	The Greek Government had to introduce an effective remedy capable of affording adequate and sufficient redress where the length of proceedings before the administrative courts had exceeded a reasonable time within one year	The number of cases in progress is unknown. A law on fair proceedings without a reasonable time entered into force in April 2012, which introduced two effective and accessible remedies.[32]

30 *Hirst (No. 2) v. the United Kingdom*, ECHR (2005), Grand Chamber judgment of 6 October 2005 (Appl. No. 74025/01).

31 *See* the Court's letter of 23 October 2013 addressed to the Committee DH-DD(2013)1151.

32 *Techniki Olympiaki A.E. v. Greece*, ECHR (2013), inadmissibility decision of 1 October 2013 (Appl. No. 40547/10).

Case	Structural problem	Order of the Court	Number of similar cases / Following-up
Dimitrov and Hamanov v. Bulgaria (10 May 2011, Appl. Nos. 48059/06, and 2708/09) and *Finger v. Bulgaria* (10 May 2011, Appl. No. 37346/05)	Deficiencies in the justice system – excessive length of civil and criminal proceedings and the lack of a remedy in this respect – *Article 6 and 13 of the Convention*	The Bulgarian Government had to introduce an effective remedy in respect of unreasonably long criminal proceedings and a compensatory remedy in respect of unreasonably long criminal and civil proceedings within 12 months	The number of cases in progress is unknown. The judiciary act of 2007 and the state and municipalities liability for damage act of 1988 were amended to introduce two new compensatory remedies (one administrative and one judicial). These remedies could be regarded as effective[33]
Ananyev and Others v. Russia (10 January 2012, Appl. Nos. 42525/07 and 60800/08)	Disfunction in the prison system, inadequate conditions of detention (acute lack of personal space in the cells, shortage of sleeping areas, limited access to light and fresh air, non-existent privacy when using the sanitary facilities) – *Article 3 and 13 of the Convention*	The Russian authorities had to produce within 6 months a binding time frame for implementing preventive and compensatory measures in respect of the allegations of violations of Article 3	Over 250 similar cases pending (the Court has not adjourned them, because of the fundamental nature of the right not to be treated inhumanly or degradingly), and more than 80 similar judgments since 2002
Ümmühan Kaplan v. Turkey (20 March 2012, Appl. No. 24240/07)	Length of court proceedings (in administrative, civil, criminal and commercial cases and before the employment and land tribunals) was excessive. The present case had been started in 1970 by the applicant's father before the land tribunal – *Article 6 and 13 of the Convention*	The Turkish Government had to put in place an effective remedy affording adequate and sufficient redress within one year – but only with regard to the applications pending before the Court and lodged by 22 September 2012 (from this date the right of individual petition to the Turkish Constitutional Court would take effect)	330 pending applications already communicated to the Government, and 2,373 pending applications not yet communicated. The Turkish Grand National Assembly enacted Law no. 6384 on the settlement (by a compensation award) of a length of proceedings applications. The Court declared this remedy as effective and accessible[34]
Michelioudakis v. Greece (2 April 2012, Appl. No. 54447/10)	Deficiencies in the justice system at the root of excessive length of proceedings (since 2007 more than 40 judg-	The Greek Government had to institute a domestic remedy in respect of the length of proceedings before the	More than 250 applications pending (50 of them are cases concerning the length of criminal proceedings). The Court froze its examina-

33 *Valcheva and Abrashev v. Bulgaria*, ECHR (2013), inadmissibility decision of 18 June 2013 (Appl. Nos. 6194/11 and 34887/11).

34 *Müdür Turgut and Others v. Turkey*, ECHR (2013), inadmissibility decision of 26 March 2013 (Appl. No. 4860/09).

Case	Structural problem	Order of the Court	Number of similar cases / Following-up
	ments found violations of Article 6 on account of the length of proceedings before the criminal courts) – *Article 6 and 13 of the Convention*	criminal courts within one year	tion of similar cases for one year. On 18 June 2013 the Court granted a request for an extension of about 7 months (until 30 January 2014)
Kuric and Others v. Slovenia (26 June 2012, Grand Chamber, Appl. No. 26828/06)	The Slovenian authorities had failed to remedy comprehensively and with the requisite promptness the situation of the 'erased' (a group of former nationals of the Socialist Federal Republic of Yugoslavia who lost their status after Slovenia's independence, because they had not applied for Slovenian citizenship or their request had not been granted). – *Article 8 of the Convention*	The Slovenian Government had to set up a compensation scheme for the 'erased' in Slovenia within one year	In 2009, 13,426 of the 'erased' still had no regulated status in Slovenia. The number of cases before the Court is unknown. The Court decided it would adjourn examination of all similar applications before the Court. The Slovenian authorities requested the extension of the deadline until 26 June 2014, however the Court decided not to grant this request. (The Slovenian Parliament adopted a new act on 21 November 2013)
Manushaqe Puto and Others v. Albania (31 July 2012, Appl. Nos. 604/07, 34770/09, 43628/07 and 46684/07)	Non-enforcement of administrative decisions awarding compensation for property confiscated under the communist regime in Albania. – *Article 1 of Protocol No. 1 of the Convention*	Albania has to take general measures in order to effectively secure the right to compensation within 18 months. (The Court urged the authorities to start making use of other alternative forms of compensation as provided for under Albanian legislation in 2004, instead of relying heavily on financial compensation)	There were 80 similar cases pending before the Court. In December 2013 the Committee of Ministers welcomed the political will and the commitment of the newly elected Government to adopt all necessary measures to set up a compensation mechanism within the deadline set by the Court
Glykantzi v. Greece (30 October 2012, Appl. on No. 40150/09)	Deficiencies in the Greek legal system at the root of excessive length of proceedings in the civil courts (from 1999 to 2009 the Court delivered about 300 judgments finding the duration of judicial proceedings excessive) – *Article 6 and 13 of the Convention*	The Greek Government had to put in place an effective remedy that could provide appropriate and sufficient redress in such cases of excessively lengthy proceedings within one year	Over 250 applications against Greece (including 70 that specifically concern civil cases) are pending. The Court adjourned the examination of all cases which solely relate to the length of civil proceedings in the Greek courts

Case	Structural problem	Order of the Court	Number of similar cases / Following-up
Torreggiani and Others v. Italy (8 January 2013, Appl. Nos. 43517/09, 35315/10, 37818/10, 46882/09, 55400/09, 57875/09 and 61535/09)	Overcrowding of prisons / conditions of detention – *Article 3 of the Convention*	The Italian Government must put in place within one year an effective domestic remedy and adequate and sufficient redress	Hundreds of applications pending, the examination of these applications dealing solely with overcrowding in prisons would be adjourned
Alisic and Others v. Bosnia and Herzegovina, Croatia, Former Yugoslav Republic of Macedonia, Serbia and Slovenia (hearing of the Grand Chamber on 18 March 2013, Appl. No. 60642/08)	The applicants were unable to recover their 'old' foreign-currency savings (deposited with two banks in what is now Bosnia and Herzegovina) following the dissolution of the former Socialist Federal Republic of Yugoslavia – *Article 1 of Protocol No. 1 of the Convention*	Slovenia and Serbia should undertake all necessary measures in order to allow the applicants and all others in their position to be paid back their 'old' foreign currency savings under the same conditions as those who had such savings in domestic branches of Slovenian and Serbian banks within 6 months	More than 1,650 similar applications, involving more than 8,000 applicants. The Court adjourned the examination of all similar cases. The case was referred to the Grand Chamber at the request of the Governments of Serbia and Slovenia. The Grand Chamber held a hearing on 10 July 2013 (no Grand Chamber judgment has been brought as of yet)
M.C. and Others v. Italy (3 September 2013, Appl. No. 5376/11)	It was impossible for 162 Italian nationals (who were all contaminated by viruses as a result of blood transfusions or the administration of blood derivatives) to obtain an annual adjustment of the supplementary part of a compensation allowance paid to them following accidental contamination as a result of blood transfusions or the administration of blood derivatives. – *Article 6, 14 and Article 1 of Protocol No. 1 of the Convention*	Italy had to set a specific time-limit within which it undertook to secure the effective and expeditious realization of the entitlements in question, and had to pay compensation for every person affected within 6 months	The number of similar cases is unknown. All similar applications were adjourned for a period of one year
Hungarian pension cases *(in progress)*	See below – *Article 1 of Protocol No. 1. and Article 14 of the Convention*	In progress	More than 8,000 applications

It is interesting that at the moment there is a pilot judgment procedure in progress against Hungary, as the press release of the Court dated 11 January 2012 stated.[35] Since mid-

35 ECHR Press Release 009 (2011), 11 January 2012.

December 2011, the Court has received almost 8,000 individual applications against Hungary relating to the pension rights of former law enforcement officers (policemen, etc.) who benefited from early retirement. The common legal background of these applications was Act No. CLXVII of 2011 on the Termination of Old-Age Pension before Retirement Age, on Benefit Prior to Retirement Age and on Service Allowance, the act prescribing that the applicants' retirement pensions are taxable by 16% income tax (previously no pensions in Hungary were subject to income tax). According to the applicants, this act constituted a violation of their right to peaceful enjoyment of their possessions and it is also discriminatory in comparison with other groups (Article 1 of Protocol No. 1 and Article 14 of the Convention). According to the press release, the Court will identify one or more applications as leading cases, and will examine these cases while it will not take any procedural steps in relation to the other applications. At the moment there is no information available about any procedural steps taken in these cases, although these applications were submitted 2 years ago.

16.7 Commentary of the Past Period of Cases on Pilot Judgments of the European Court of Human Rights

Leo Zwaak has argued that human rights violations first of all should be redressed at the domestic level and the Strasbourg Court should only be used as an *ultimum remedium*.[36] The pilot judgment procedure is based on the assumption that once a judgment pointing to a structural or systemic problem has been delivered, and where numerous applications raising the same problem are pending or likely to be brought before the Strasbourg Court, the respondent state should ensure that applicants, actual or potential, have an effective remedy that will enable them to bring their case before a competent national authority.[37] A very important impact of this procedure is that the case-load of the European Court of Human Rights can also be reduced if domestic remedy is available to other individuals who are also affected by the systemic problem determined by the Court in its pilot judgment. Luzius Wildhaber (former president of the Court) emphasized that 'if the national authorities are in the position to apply ECHR case-law to the questions before it, then much, if not all, of the Strasbourg Court's work done.'[38] The Group of Wise Persons in their report to the Committee of Ministers encouraged the Court to use the pilot judgment

36 L. Zwaak, *Overview of the European Experience in Giving Effect to the Protections in European Human Rights Instruments*, Working Session on the Implementation of International Human Rights Protections, at p. 14. Available at: http://internationaljusticeproject.org/pdfs/Zwaak-speech.pdf.

37 Paraskeva *op. cit*., p. 14.

38 L. Wildhaber, 'The Role of the European Court of Human Rights: An Evaluation', 8 *Mediterranean Journal of Human Rights* (2004), p. 12.

procedure as far as possible in the future.[39] As of today only a couple of pilot judgment procedures have been finalized, but there are some common points in these procedures. Luzius Wildhaber determined eight characteristics of this procedure in 2009 as follows:

- the finding of a violation by the Grand Chamber which reveals that within the state concerned there is a problem which affects an entire group of individuals;
- a connected conclusion that that problem has given rise to or may give rise to many other applications to be lodged in Strasbourg;
- giving guidance to the state on the general measures that need to be taken to solve the problem;
- indication that such domestic measures work retroactively in order to deal with existing comparable cases;
- adjourning of all pending cases on the same issue by the Court;
- using the operative part of the pilot judgment to reinforce the obligation to take legal and administrative measures;
- deferring any decision on the issue of just satisfaction until the state undertakes action;
- informing the main Council of Europe organs (Committee of Ministers, the Parliamentary Assembly, and the Human Rights Commissioner) on the progress in the pilot case.[40]

Four years later we can state that considering the case-law there are only four pilot judgments delivered by the Grand Chamber (more precisely, after the first two pilot judgments were delivered by the Grand Chamber, there are only two from the total of 19 cases, and in one of them the respondent government asked the referral of the case to the Grand Chamber). It is true that most of the pilot judgment cases are in connection with Article 6 of the Convention (length of the procedure before national courts), but taking into consideration the great importance of this procedure, it would be worth considering to secure the right to apply the pilot judgment procedure only to the Grand Chamber – as Wildhaber suggested. It seems that there is no formal mechanism for selecting pilot judgments (including the question of which will be the leading case after the Court decided to apply the pilot judgment procedure).

Moreover, considering the case-law it when applying the pilot judgment procedure, is not necessary for a great number of similar applications to be already pending before the Court. For example, in the case of *Hutten-Czapska* there were only 18 comparable cases pending – although it is true that the issue affected around 100,000 landlords in similar situations. It depends on the systematic problem (and the right affected) whether the Court

39 Report of the Group of Wise Persons to the Committee of Ministers, 15 November 2006, CM (2006) p. 203.

40 *See* L. Wildhaber, 'Pilot Judgments in Cases of Structural or Systemic Problems on the National Level', in R. Wolfrum and U. Deutsch (Eds.), *The European Court of Human Right Overwhelmed by Applications: Problems and Possible Solution,* Springer Verlag, Berlin, 2009, p. 71.

adjourns similar pending cases or not: for example, in the *Ananyev and others* case (inadequate prison conditions) the Strasbourg Court did not adjourn the pending 250 similar cases, because of the fundamental nature of the right not to be treated inhumanly or degradingly. Taking into consideration that many pilot judgments are in connection with the length of procedure before national courts, freezing an application at the international level could be at least be qualified as ironic.[41]

It is very important that the Court not only identifies the systemic problem in the operative part of the judgment and gives explicit guidance to the respondent state, but most of the pilot judgments include a time limit within which the state has to effect domestic changes. At the moment there are only two cases in which the respondent state missed the deadline (*Yuriy Nikolayevich Ivanov v. Ukraine* and *Greens and M.T. v. the United Kingdom*), and in these cases we can see the Court's possibilities if the respondent state does not want to follow the Strasbourg Court's strong suggestions: in both of the above mentioned cases the Strasbourg Court decided to resume the examination of the adjourned pending applications after the deadline elapsed. According to Article 30 of the Draft Articles on Responsibility of States for Internationally Wrongful Acts, the State responsible for the internationally wrongful act is under an obligation to offer appropriate guarantees of non-repetition. Although the system of responsibility established by the European Convention of Human Rights can be regarded as *lex specialis*, we can state that the pilot judgment procedure is in accordance with the provisions of the *lex generalis* Draft Articles, changing the possible role of the European Court of Human Rights.

41 A. Buyse, 'The Pilot Judgment Procedure at the European Court of Human Rights: Possibilities and Challenges. A Tribute to Fifty Years of the European Court of Human Rights', *Nomiko Vima* (The Greek Law Journal), Athens Bar Association (2010), p. 90.