

Implementation of Judgments of the European Court of Human Rights: Opportunities and Challenges for the Rule of Law

The wider picture: Reflections on the Committee of Ministers' 2016 Annual Report and
the state of implementation across the Council of Europe

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[please note: graphs and images contained in this presentation have been extracted
from the Committee of Ministers' 2016 Annual Report, although I have highlighted
areas and made occasional comments on slides]

Reflections on the Committee of Ministers' 2016 Annual Report

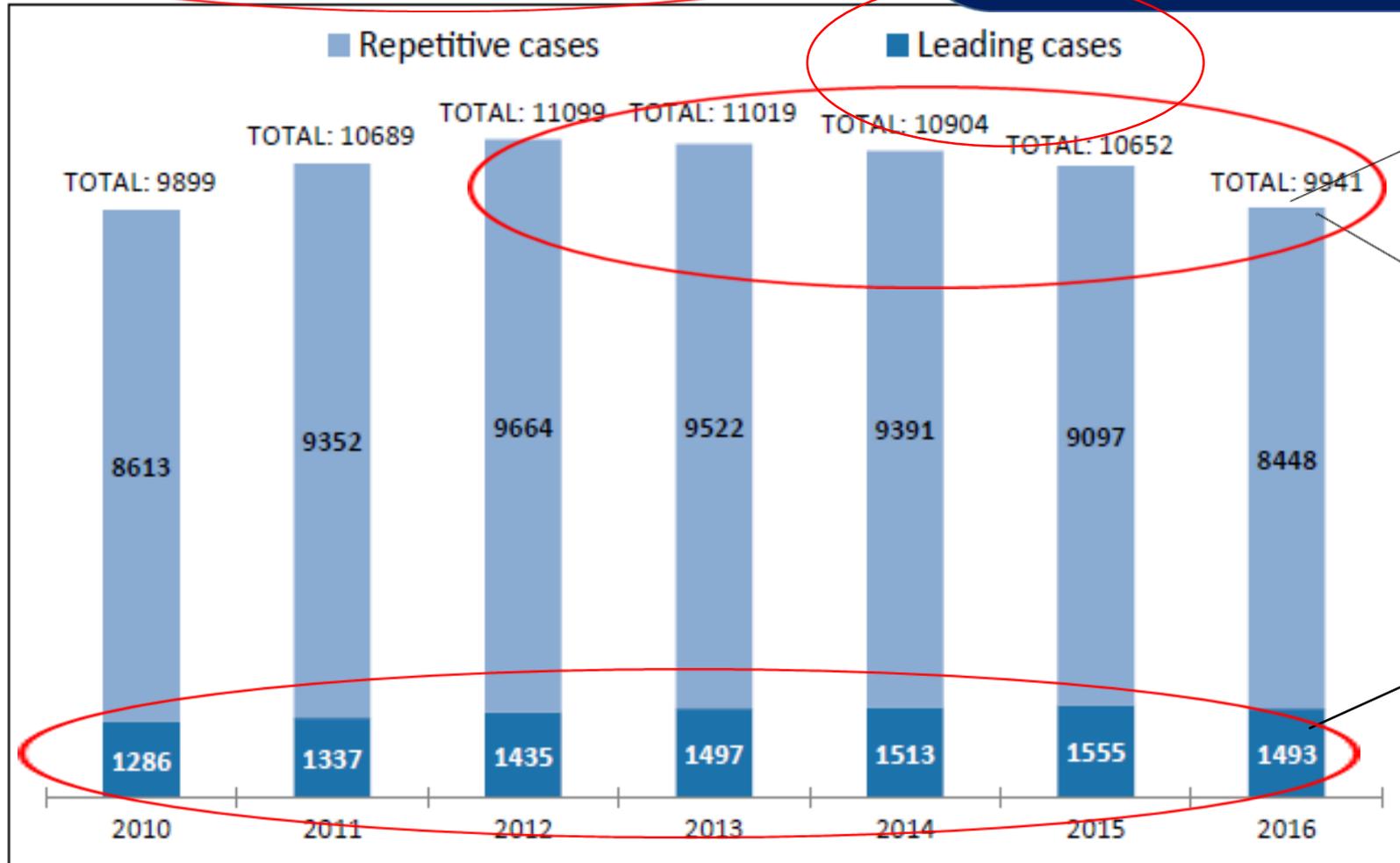
(available at www.coe.int) [308
pages]

Grounds for optimism (slides 3-6)?
Grounds for serious concern [pro-
longed non-implementation crisis?]
(slides 7-13)?
Challenges? Crisis? (slides 14-end)



Leading case – case which has been identified as **revealing new structural and / or systemic problems**, either by the Court directly in its judgment, or by the Committee of Ministers in the course of its supervision of execution. Such a case **requires the adoption of new general measures to prevent similar violations in the future.**

B.2.b. Pending cases at the end of the year

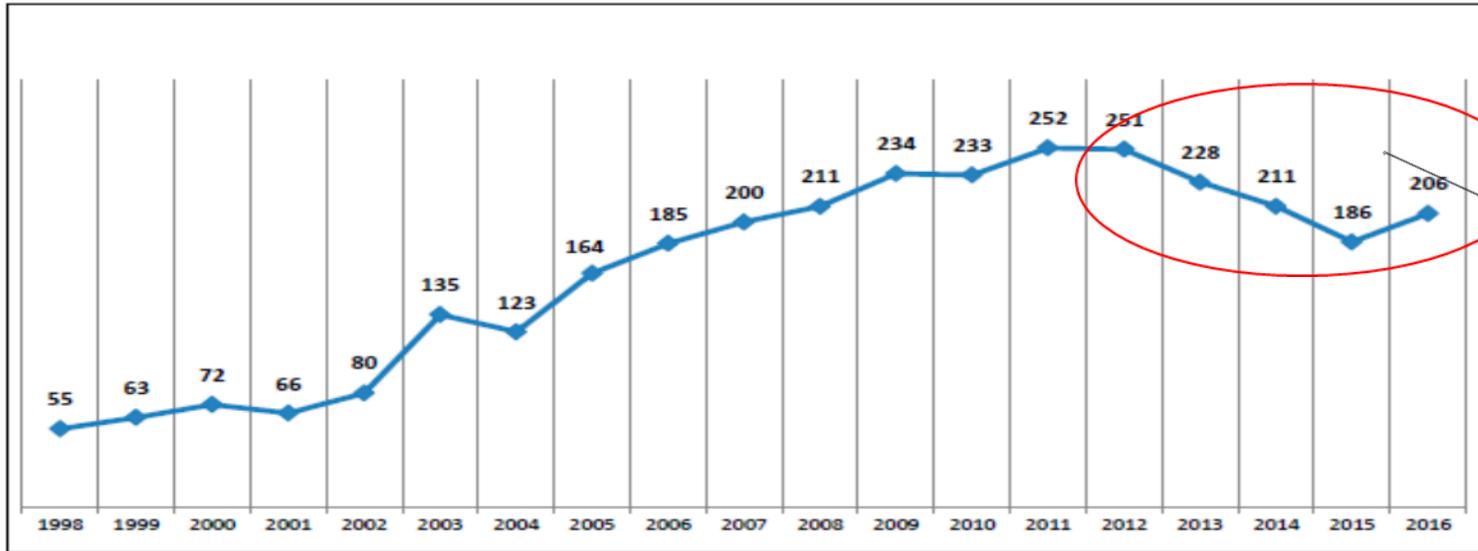


Pending cases falls below 10k

2016:
record number of cases were closed (2 066)

Although note that **'leading cases'** remains similar

A.1.a. New leading cases

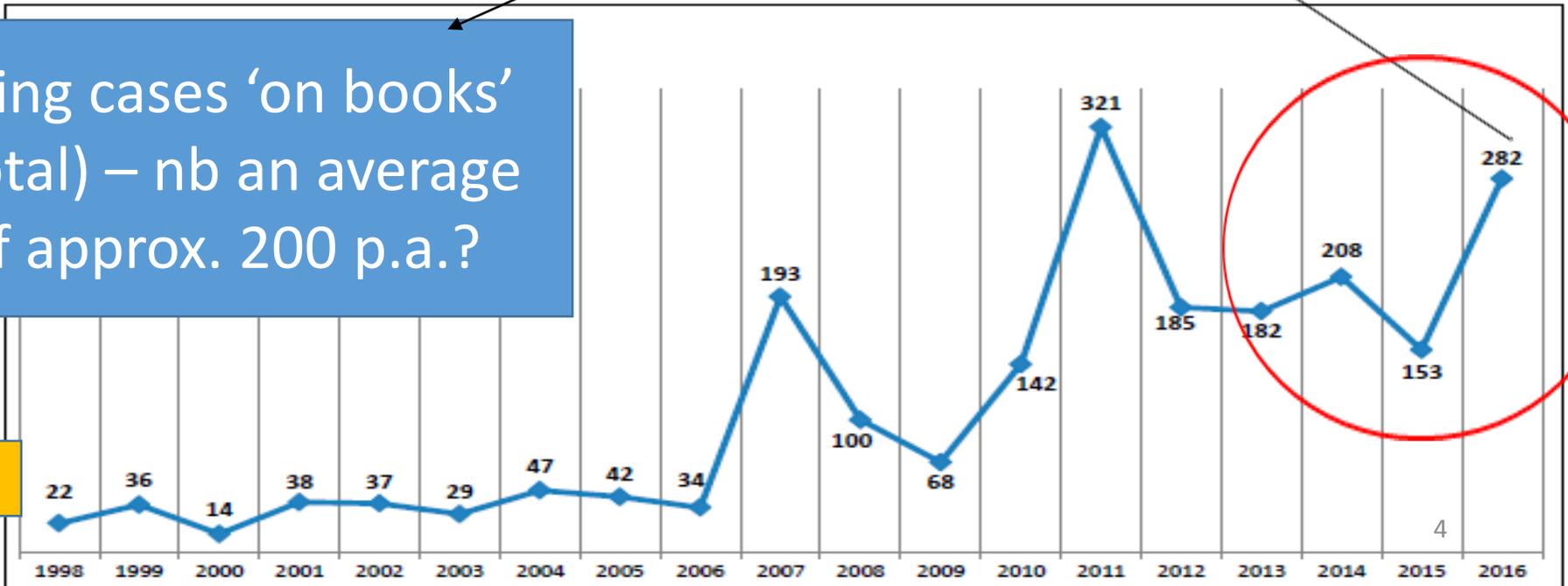


Extracted from Report at p 46

2016: leading cases: less 'in' than out (closed)

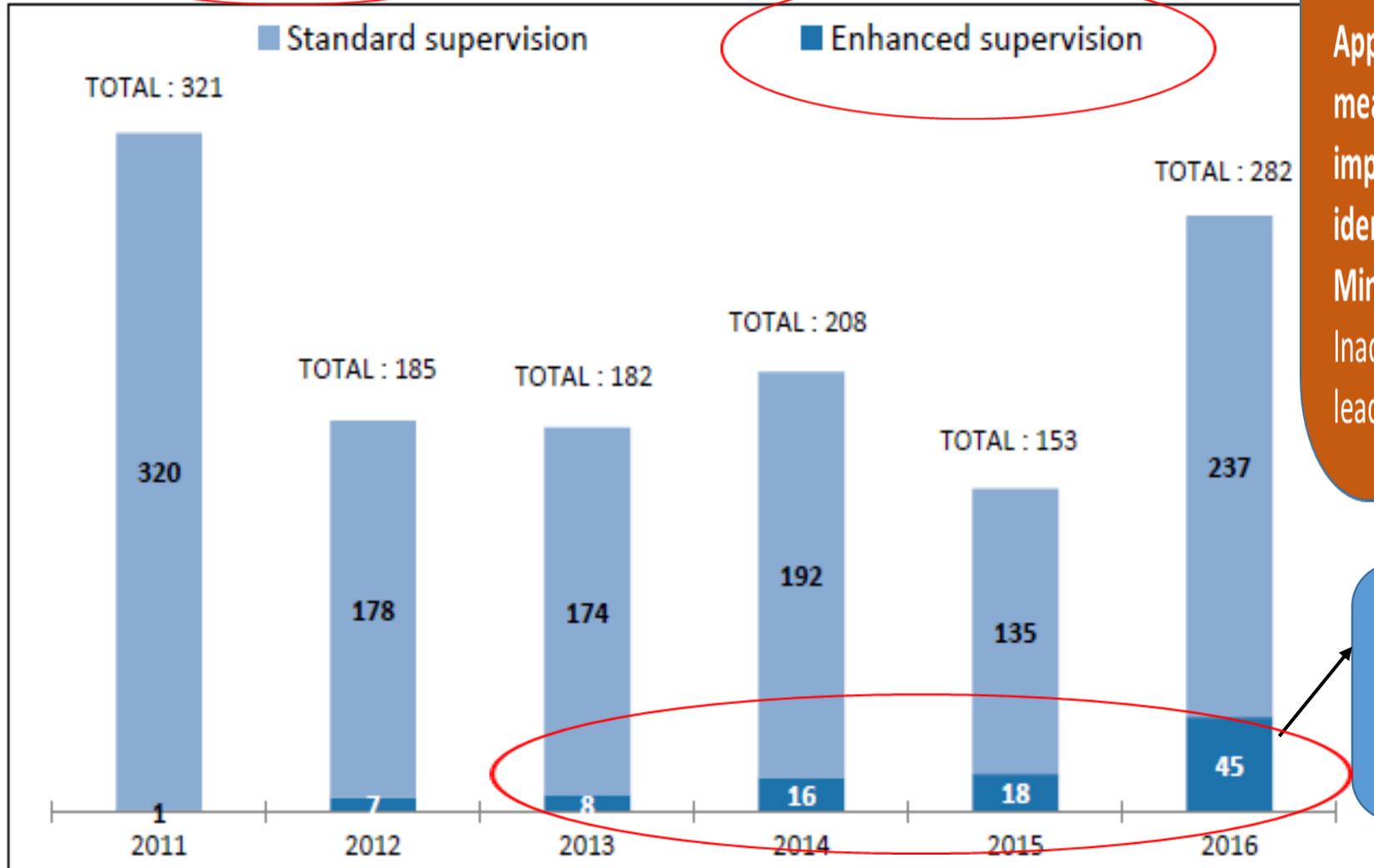
A.3.a. Leading cases closed

BUT: 1493 leading cases 'on books' (out of 9,949 total) – nb an average closure rate of approx. 200 p.a.?



Report p 48.

Leading cases closed



Enhanced supervision

Aim: Committee of Ministers closely follows progress, facilitate exchanges with the national authorities

Applies to: cases requiring urgent individual measures, pilot judgments, judgments revealing important structural and / or complex problems as identified by the Court and / or by the Committee of Ministers, and interstate cases.

Inadequate progress under standard supervision may lead to transfer to enhanced route

increase in the number of leading, enhanced supervision cases closed

Positives... and challenges

- Introduction to Report: “2016 statistics continue to confirm ... positive trends ... and suggest that a number of long-standing and highly complex problems are on the way to being resolved and that the execution of the judgments of the European Court of Human Rights is today functioning well in the large majority of cases”
- Report lists some 250 examples of legal reforms secured (or close to) since around 2010: illustrations that the convention system can work.
- However, Report also refers to ‘challenges’ (p 14) – will come back to this (slide 14)
- Now some figures pointing to the challenges [noting, of course, that the sheer number itself is a challenge]

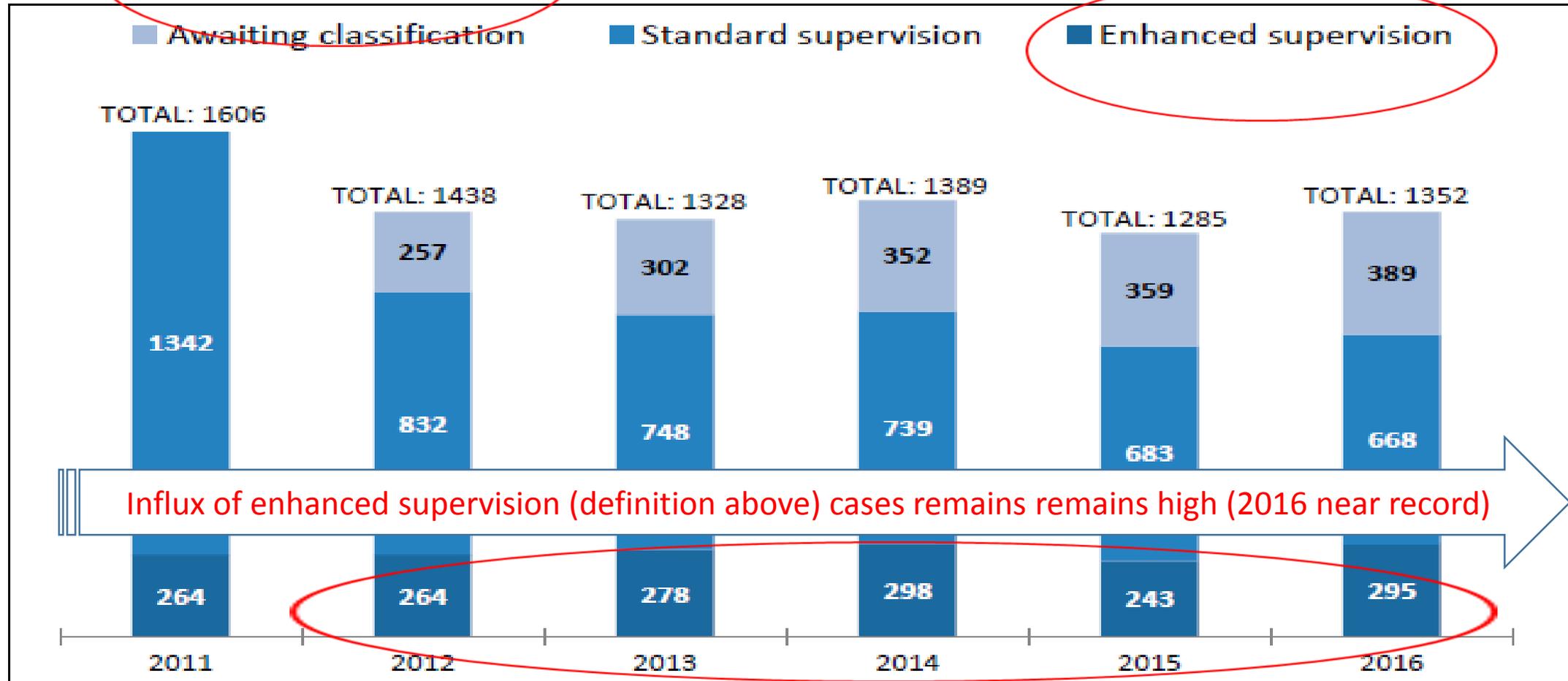
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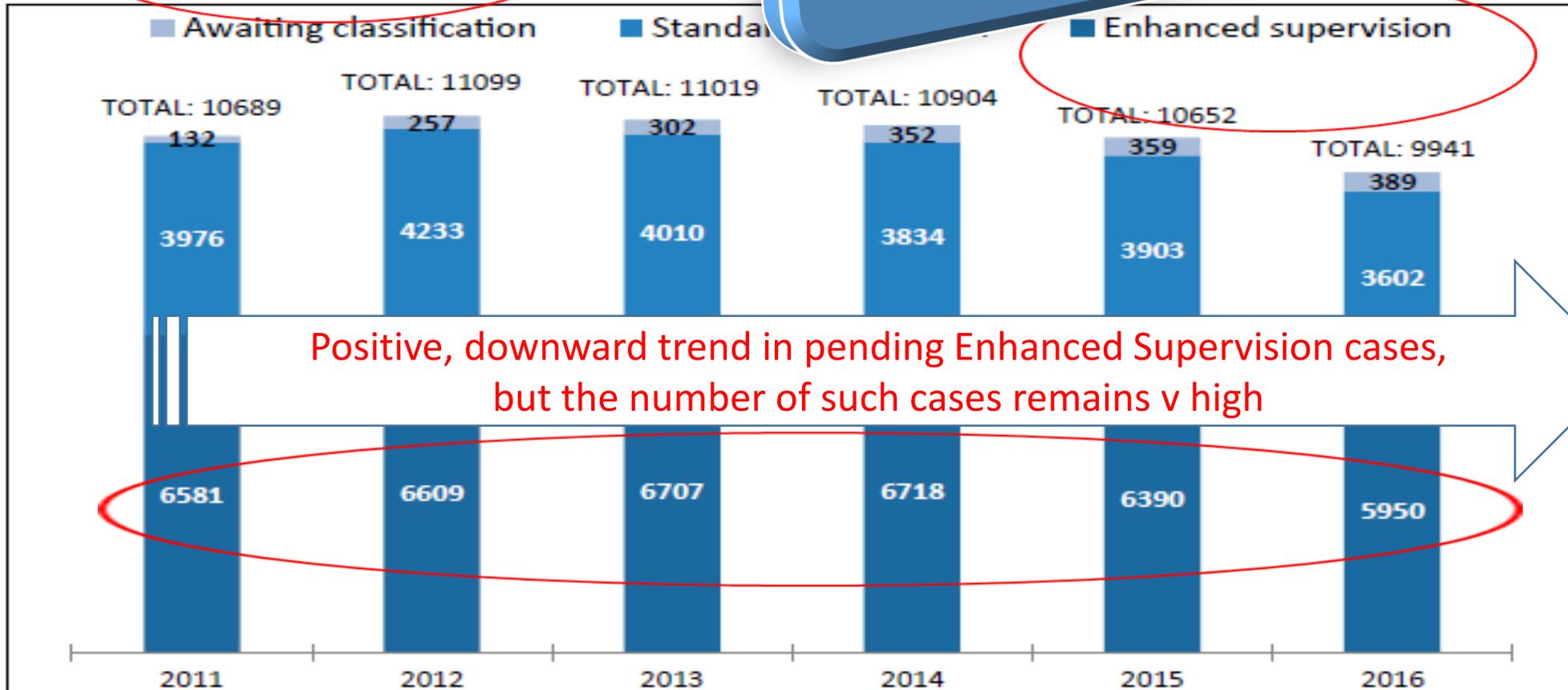
Total of new cases



Total of pending cases

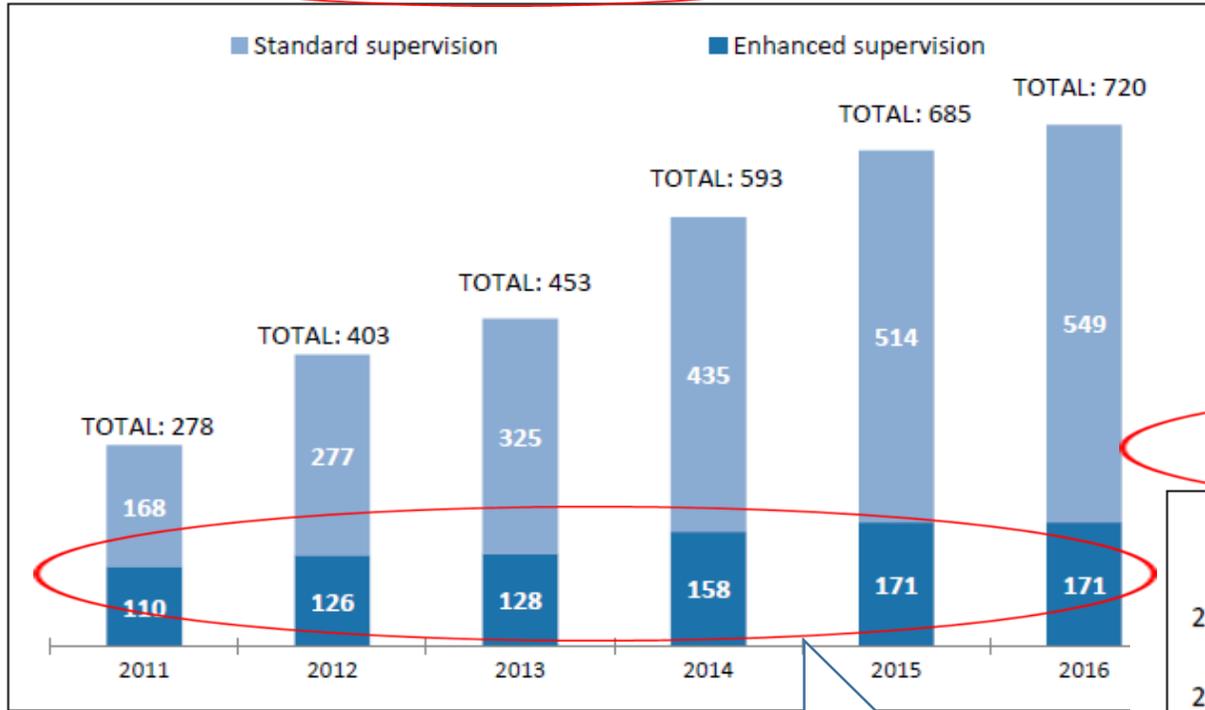
Aim: Commit national authority
Applies to: cases revealing inadequate protection and / or by the route

Recall slide 5: 2016, 45 leading enhanced supervision closed (although 816 non-leading enhanced supervision closed in 2016, see p 51 Report)



Positive, downward trend in pending Enhanced Supervision cases, but the number of such cases remains v high

D.1.a. Leading cases pending for more than five years



Growing number of leading cases (defined in earlier slide) pending > 5 yrs

D.1.b. Length of execution of leading cases pending



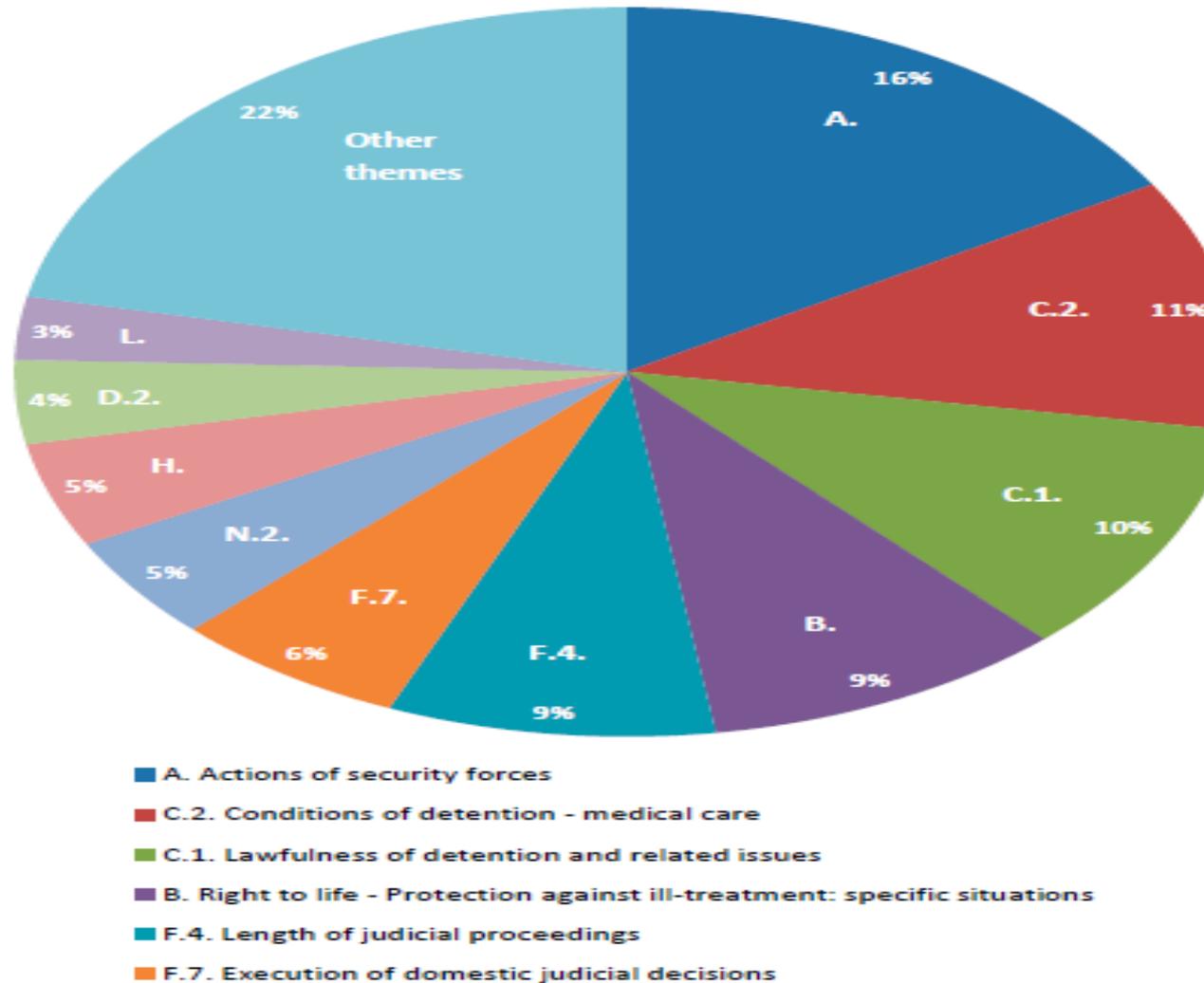
Nearly 50% of leading cases have been pending for > 5 yrs. Note growth of 5 yr 'block' over last 6 yrs [71 cases up to 720: tenfold increase].

Endemic problem of prolonged implementation?

C.1 Main themes under enhanced supervision

(based on leading cases)

The presentation below relates to the main themes under enhanced supervision. The themes correspond to those used in the Thematic Overview.



5950 enhanced supervision cases pending

Main themes raise concern too

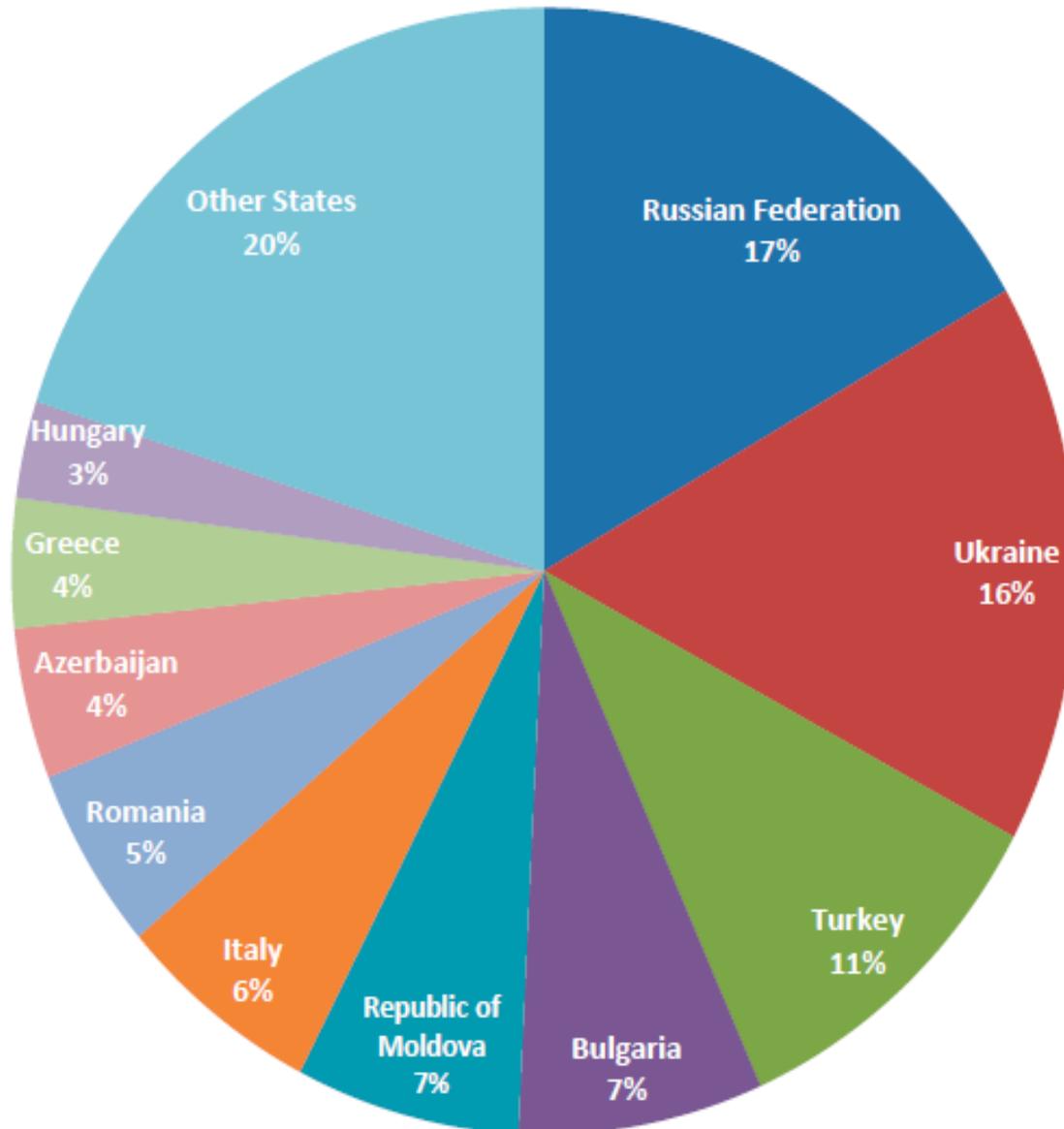
- 16% actions of security forces
- 10% conditions of detention – medical care
- 10% lawfulness of detention/ related
 - 9% right to life
- 9% length of judicial proceedings
- 6% execution of domestic judicial decisions

The Convention and the 'rule of law'?

C.2. Main States with cases under enhanced supervision

(based on leading cases)

Report p 64



5950 enhanced supervision cases pending

Main States under Enhanced Supervision

17% - Russia

16% - Ukraine

11% - Turkey

7% - Bulgaria

7% Moldova

6% - Italy

[top 3 states = 44%]

[these 6 states = 64%]

Other signs for concern: ECHR and ‘the rule of law’

Particular States with long ‘average implementation’ times

Transfers from one supervision procedure to another (p 64, extract)

Transfers to enhanced supervision: ‘In 2016, 18 cases concerning 4 States (Bulgaria, Georgia, Romania, Turkey), were transferred **from standard to enhanced supervision**. In 2015, 6 cases concerning 3 States (Albania, Hungary and Turkey) had been transferred from standard to enhanced supervision’. [There were transfers the other way too: 24 cases concerning 3 States (Greece, Ireland, Turkey)].

‘Reminder Letters’ (p 65, extract)

‘In 2016, 69 reminder letters (56 in 2015) have been addressed to 27 States concerning 93 cases (103 in 2015). For 76 of these cases (90 in 2015), an action plan/report has been sent to the CM before the end of the year’. [**i.e. 17 when no Action Plan/ Report sent in that timescale**]

Just satisfaction payment within deadline (p 10, extract)

‘... decrease in the payment of just satisfaction within the deadlines (the percentage has gone from 71 % in 2015 to 65 % in 2016)’. [**third of payments not w/i deadline?**]

‘state of implementation across the Council of Europe’ - optimism or pessimism?

[PACE Report](#) (and Resolution): Implementation of judgments of the European Court of Human Rights/ 09 September 2015/ Doc. 13864 (Committee on Legal Affairs and Human Rights): Mr Klaas de VRIES

- far less upbeat, more penetrating, and searching critique of [2014] figures – directly critical of nine States (Italy/ Turkey/ Russia/ Ukraine/ Romania/ Greece/ Poland/ Hungary/ Bulgaria), and also UK.

Reflections – ‘challenges’ (2016 Annual Report p 13, extract)

“... The challenges presented by the processes presently under supervision by the Committee of Ministers are notably linked to:

▶▶ Important and complex structural problems causing difficulties to identify necessary reforms, including those required to stop the stream of repetitive cases, and to find the means and resources for the implementation of the reforms;

▶▶ The absence of a common understanding as to the scope of the execution measures required following developments of the Court’s case law, thus, for example, that flowing from an interpretation of the concept of “jurisdiction”

▶▶ **Slow or blocked execution** as a result of disagreement between national institutions, or amongst political parties, as regards the substance of the reforms required and/or the procedure to be followed;

▶▶ A refusal to adopt, notwithstanding strong insistence from the Committee of Ministers, the individual measures required or to pay just satisfaction – **situations which frequently hide more fundamental disagreements with the Court’s conclusions or the requirements of execution”**.



So... today = prolonged implementation crisis:
tomorrow (now?) ‘challenges’ ... to the authority of the
ECtHR?

Council of Europe’s Secretary General, Mr Thorbjørn Jagland

- [Speech](#) (St Petersburg), 23 October 2015
- [Communication to PACE](#), 26 January 2016 (section entitled ‘The Convention under threat’: ‘[forces] who challenge the authority of international institutions... have slipped into the mainstream – and they are gaining traction... When we join the dots, the danger to our ECHR is very real indeed. [Examples]. [such challenges] ‘pull at the very fabric of the Convention, and if it begins to unravel, it will be very difficult to stop”)
- [Speech](#) to Committee of Ministers, 18 May 2016 - ‘we now see [ECtHR] openly challenged... with some invoking supremacy of national constitutions, or Parlt, or public opinion’ – [fear] ‘system beings to unravel’

Commissioner for HR (CoE), Nils Muižnieks, ‘[Non-implementation of the Court’s judgments: our shared responsibility](#)’, 23 August 2016 [section entitled ‘Pitting sovereignty against the ECHR system]

Note re the next slide

- The next slide is provided for information purposes only. It is a visual representation of the execution process as I understand it.
- The text within the boxes has been (mainly) extracted from the glossary section of the [Annual Report 2016](#). (Refer to original sources rather than relying on this summarised document).
- The central image (with arrows) has been extracted from: <http://www.coe.int/en/web/execution/the-supervision-process>

Enhanced supervision

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Document setting out the measures taken and/or envisaged by the respondent State to implement a judgment of the European Court of Human Rights, together with an indicative timetable
six-month deadline for States to submit

Final Action Report proposing the closure of the supervision.
The respondent State considers that *all necessary execution measures have been taken*, such that report is transmitted to the Committee of Ministers by the respondent State setting out all the measures taken to implement a judgment of the European Court and / or the reasons for which no additional measure is required adoption. If a divergence remains, the case is submitted to the committee for consideration



Standard supervision procedure

Applies to: all cases not under enhanced procedure.

Rationale: HCPs are under obligation to comply, so:

- Committee of Ministers can limit its intervention to ensuring adequate action plans / reports presented and verifying adequacy of the measures announced and / or taken at the appropriate time.
- developments closely followed by the Department for the Execution of Judgments

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