

Report

Focal Points Forum of the Superior Courts Network

8 June 2018

I. INTRODUCTION

The second Forum ([Agenda](#)) of the SCN Focal Points took place at the European Court of Human Rights on Friday 8 June 2018, with the participation of representatives from 59 courts, members of the Network, from 33 countries ([List of participants](#)).¹

Françoise Elens-Passos, Deputy Registrar, and Anna Austin, Deputy Jurisconsult of the Court, chaired the morning and afternoon sessions respectively.

The morning session was divided into three parts, with discussions in between: introductory speeches, presentations on developments over the past year and the Protocol No. 16 panel.

Guido Raimondi, the Court's President, welcomed all the participants, and in particular the 15 courts which had joined the Network since the last Forum. In his [speech](#), the President highlighted the entry into force of Protocol No. 16, which heralded a significant development in the European system of human rights protection, together with the reinforced relevance of the Network in that context.

Roderick Liddell, the Court's Registrar, commended the Network's expansion. Pointing out that its members had wished to add multilateral aspects to the information exchanges, he mentioned the aspects thus developed over the past year. He also referred to the Court's "Knowledge Sharing" ("KS") project. It is envisaged that this recently launched project, which consisted of an in-house portal (one-stop access point) for knowledge of the Court's case-law, would in the near future be extended for use outside the Court, by the SCN.

Both the President and the Registrar emphasised the importance of the contributions by the member courts to the Court's comparative law work.

Mikhail Lobov, Head of the Human Rights Policy and Co-operation Department, in the Council of Europe's Directorate General Human Rights and Rule of Law (DG1), informed members about two projects of his department which had particular relevance for the Network and highlighted the importance of mutual support between the Convention actors.

An information session was led by Onur Andreotti, the Network's coordinator, about the key developments over the past year as regards the content and form of the exchanges and the methods used. A presentation of the new structure of the secured site, including of the improved search function, was made by Rodica Gonta, the Network's administrative assistant and webmaster.

The theme for the third part of the morning was the practical implementation of Protocol No. 16, which was due to enter into force on 1 August 2018. Tim Eicke, Judge elected in respect of the United Kingdom, chaired the panel, in which two Deputy Registrars of the Grand Chamber, Johan Callewaert and Søren Prebensen, were present. The [Guidelines](#) for the implementation of the advisory opinion procedure under Protocol No. 16 to the Convention formed the basis of the discussions.

¹ Compared to 44 member courts from 28 countries last year

Many questions were put to the panel, followed by a lively discussion, in particular on points to be clarified as and when the procedure would be put into practice.

The lunch, in which about twenty ECHR judges participated, was followed by free time for bilateral discussions.

The afternoon session, chaired by Anna Austin, began with a brief presentation of recent significant cases referring to comparative law, by Stefano Piedimonte Bodini, head of the Research and Library Division.

The presentation was followed by division into five working groups, which had been prepared beforehand through a detailed questionnaire. The Network's members met in the Court's five deliberation rooms in order to discuss the future of the SCN. The conclusions of each discussion were reported back to the plenary by five rapporteurs at the end of the day.

The day's proceedings were closed by Lawrence Early, Jurisconsult, who thanked the rapporteurs and all the Network's members for their active participation. He emphasised that the Network's success could be measured simply by looking at the pertinence and usefulness of the exchanges on Convention law and case-law. He encouraged the Focal Points to take advantage of all the means and methods of exchange provided by the Network.

The Jurisconsult also emphasised the importance of the Focal Points, whose role was not confined to providing access to the Network's exchange platform. The Focal Points were custodians of the corpus of knowledge shared within the Network and were thus responsible for monitoring its adaptation (translating, selecting, summarising, etc.) and for the dissemination of that knowledge to ensure its best possible use within their domestic courts and systems.

Referring to the presentation on comparative law in the Court's recent cases, the Jurisconsult reiterated the importance of the member courts' contributions in that connection and expressed his gratitude to them.

The Jurisconsult lastly highlighted the complementarity of the exchanges within the Network with those expected in the future with the entry into force of Protocol No. 16. He thus took the view that any requests (formal and informal) to the Network about the Court's case-law could assist the superior courts concerned in making sure that they had all the necessary knowledge of existing case-law before seeking an advisory opinion on the interpretation or application of the Convention rights.

II. CURRENT DEVELOPMENT OF THE NETWORK

It could already be noted that achievements over the past year had generally addressed the wishes expressed at the first Forum. Only the question of the French interface of the secured website remains an area in which no progress had been made in view of the lack of available resources ([Annual Report 2017](#)).

Content enrichment, especially through additional analytical work on the Court's case-law, will be developed through the in-house "Knowledge Sharing" project. The idea of privileged access to this knowledge base for SCN members had been kept in mind from the outset, and it is hoped that the first results will be seen in 2019.

As to the quality of the exchanges, they are now much more fluid; a common understanding of the Network's *raison d'être* and operation had been strengthened, with the building up of a professional community.

The past year, being marked by the careful adaptation of practices based on experience and working together, had been fruitful for the Network's development.

A set of Practical Guidelines had thus been drafted, subject to future updating and collaborative input, as an instrument to complement and clarify the Network's operational rules. The clarification of practice in two potential conflict-of-interest situations, having been reported by member courts, was a good illustration.

The Focal Points Forum had already become an annual gathering that was looked forward to by all. Its format and content would evolve based on the ideas and active participation of its members.

The main points raised in the discussions at this year's Forum could be summed up as follows.

A. Dissemination of regularly shared information:

According to the feedback from members, the case-law information regularly shared by the Court is being distributed with increasing efficiency, in various ways, by the member courts. The language barrier, however, remained an obstacle for a certain number of member courts in terms of the effective sharing of information within a given country.

Good practice in such matters was not discussed in detail at the Forum because of the time constraints.

B. Requests for contribution to comparative law work:

The Court had reduced the number of such requests, following the wishes of Network members. Only two contribution requests had been sent in the first half of 2018. The clarity and precision of the questions, to obtain focused responses, could only be improved through good relations between the Focal Points. While it was not possible to give the reference to the case for which the comparative law work was being carried out, the members all knew that they could put any relevant questions to their counterpart in the Registry, to be able to adapt their response.

As to the difficulties in terms of time constraints, especially for those courts which had to translate the questions and answers, some flexibility was called for as far as possible. Member courts would now announce at the outset how long they needed to reply, this being of great help to the organisation of the Court's work.

The compilation and sharing of contributions, with the reference to the judgment for which the comparative law work had been carried out, was a much appreciated innovation.

C. Formal requests addressed to the Jurisconsult's Directorate:

As in the case of domestic law questions put to the member courts, any questions on the Court's case-law might require some preliminary work on the wording to ensure that the most specific response would be obtained.

Courts which had already made formal requests expressed their satisfaction with the added value of the answers received, which at least allowed them to verify whether their own research was complete. In addition, the selective and structured nature of the case-law lists prepared by way of reply often helped to identify the Convention issues better.

Expectations as to a more "analytical" type of answer could not be satisfied since such an approach would render the answer tantamount to an interpretation or opinion, thus falling outside the Network's objective of information exchange. Nevertheless, the process of dialogue between the requesting court and the Court, in the formulation of the questions, helped to fine-tune and adjust the result of that exchange.

To date, an answer had been given in response to each of the 12 formal requests during the first half of 2018. The sharing of questions and answers within the Network was regarded as a very useful practice.

D. Other forms of exchange

1. On-line training:

The possibility of asking for remote HUDOC training was greeted enthusiastically. However, for the time being, only the Dutch courts had benefited from this in the context of the SCN. The feedback from participants had been highly positive. Other interested members could make their request to their Focal Point in the Registry and would receive the technical and practical information before a date was scheduled for the training.

The possibility of seeking theme-based training sessions by videoconference on the Court's case-law was also received with enthusiasm. Proposals for content varied, including: Article by Article; transversal themes of the Convention; autonomous concepts in the case-law and Court's reasoning structure. In any event, members were informed that all proposals would be considered in so far as the resources were available, including in national languages other than French and English. Again, it would be sufficient to submit a request for such training to the Registry's Focal Point.

Tailored training requests would enable the Court to develop, from experience, useful modules for a large number of courts, and thus to streamline its training resources.

2. SCN secondments: The practical formalities and content of the secondments of national judges in the context of the Network remained to be determined. The offer was generally received positively, except by those courts which were lacking human resources.

3. Study visits to the Strasbourg Court: A number of member courts expressed the wish to obtain more information on the Court's functioning, and in particular on the work of the Directorate of the Jurisconsult, to attend the Court's hearings and to receive training on how to best use HUDOC and the SCN secure site, and to receive theme-based legal training in addition to the annual Forum. Those requests would be dealt with depending on the available resources.

E. 2019 Forum

There was a consensus as to the need to increase the length of the annual Forum mainly to include more substantial exchanges (seminars, colloquia) and more legal themes.

In terms of length, a Forum lasting a day and a half seemed to be a good compromise.

The members wished to be involved upstream in the choice of theme and format. A reflection is under way to take fully into account that wish for the organisation of the 2019 Forum.

While all Network members wished to have more substantial legal exchanges, in particular during the Forum, one of the member courts (Mr Guyomar, French *Conseil d'État*) underlined the need for reflection on the "dual nature of the Focal Points" (judges or other profiles). According to Mr Guyomar, a distinction would have to be made between the time reserved for discussion of the more practical subjects related to the functioning of the Network and sessions dealing with legal subjects, of a more strategic significance (such as the discussion on the practical implementation of Protocol No. 16).

III. THE FUTURE

The Strasbourg Court would engage in reflection on all the points raised above, to ensure the continuing relevance and usefulness of the Network. It would consider both the constant tailoring of exchanges to the needs of Network members and optimise its own resources. Members would be kept informed and asked to take part in this reflection.

A significant and positive momentum now sustains the Superior Courts Network. We can be confident that it will bear fruit and make the Network a useful means for the implementation of the Convention at domestic level.