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

International Conference
"Application of the European Convention on Human Rights and Fundamental Freedoms on national level and the role of national judges"

Baku, 24-25 October 2014

Opening Remarks[1]

Dean Spielmann
President of the European Court of Human Rights

Mr President of the Supreme Court,
Ladies and gentlemen,

This Conference will be dealing with subjects which I consider fundamental and which concern, **first of all**, anticipation of violations, **secondly**, enforcement of the Court's judgments, and **lastly** dialogue between judges within the Convention system. I am glad to see that the participants here today include representatives of the highest courts of many member States, given that the subjects which I have just mentioned are central to a theme which is dear to my heart and which we all have in common, namely shared responsibility.

Let us begin with anticipation of violations. This necessitates applying the European Convention on Human Rights properly at the domestic level, drawing on Article 1 of the Convention, which provides "*the High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention*". This essential provision confers on each individual the right to rely on the Convention before the domestic courts. It is therefore a founding provision of the system which is of equal importance to the Court and the national courts.

Every day, in most member States, the Convention is invoked before the supreme courts (and also the ordinary courts) and applied by them. The national courts can and must provide their own remedy to the violations complained of. Sometimes they anticipate the development of Strasbourg case-law by applying the Convention even before our Court has ruled on the relevant matter. Some national courts, for instance, proceed by analogy and use our case-law to advance their own jurisprudence. I might add that many countries are increasingly seeking to forestall possible findings of violations in Strasbourg, which means that, at least by implication, the authority of our judgments also influences States which are not parties to proceedings.

If that is to be the case, people have to know about our judgments. We must accordingly ensure the dissemination of our case-law among legal professionals. That is why legal training, which will be considered during this morning's session, is so important. I might add that over the last few years, in an effort to promote knowledge of the Convention and its case-law, the Court has been considerably expanding its website, its HUDOC search engine and all the documents, such as factsheets on specific themes, which are now accessible to a wide audience.

[1] The author would like to extend his sincere thanks to Mr Patrick Titiun, *magistrat*, Head of the President's Private Office, for his extensive help in preparing these opening remarks.

Your afternoon session will be devoted to the **enforcement of the Court's judgments.** Right from the outset the Convention entrusted the task of supervising the execution of judgments to the Committee of Ministers rather than the Court itself, and despite the major increase in the number of Court judgments, the Committee has acquitted itself well, for which it deserves the highest praise. As you know, States which have been found in breach of the Convention must enforce the Court's decision. They may have to pay the applicant a sum of money in the event of a finding of a violation, if the Court so decides. This is what the Convention refers to as just satisfaction. In some cases enforcing the judgment involves *restitutio in integrum*, where this is possible. Sometimes the Court judgment may necessitate a change in legislation or case-law. It is not unusual for States to have to modify their domestic legal system in order to comply with a Court judgment and prevent the recurrence of the human rights violation found by the Court.

Nevertheless, the authority of the Court's judgments has its limits because they only constitute *res judicata* and lack *erga omnes* effect, as only the States found to have violated the Convention are bound, at least in law, by the decision given. Yet the legislation of specific States may sometimes be similar to that which gave rise to a finding of a violation against another State. Theoretically, because of the lack of *erga omnes* effect, States which are not directly concerned by judgments are not obliged to comply with them. Nonetheless, and this is an increasing trend, there is nothing to prevent a State from amending its legislation following a finding against a different State. This is where the supreme courts, which are well versed in our case-law, can play a very positive role in its implementation. Some of the numerous examples will undoubtedly be presented during the working sessions.

Among the means used by our Court itself to ensure proper enforcement of its judgments, I would highlight the pilot judgment system. When the Court finds what is known as a "structural" violation, it can give a pilot judgment asking the respondent State to afford redress for the damage suffered by all potential applicants by adopting measures of a general nature. This means that it does not have to adjudicate on each individual case. It is a highly effective mechanism.

If we consider the situation of the Court from the statistical angle, it is clear that in recent years the backlog has been drastically reduced, and I think I can say that by 2015, as regards decisions given by single judges, the backlog will have been eliminated. That having been said, as regards cases which cannot be dealt with by a single judge and which are, by definition, the most serious cases, the situation is more worrying, and we will need more time to address the problems. This is particularly true of the very many repetitive cases, for which a solution must be found, primarily at State level. In fact, this large volume of cases is often linked to the failure to enforce our judgments, which undermines the credibility not only of the Court but also of the Committee of Ministers.

Tomorrow morning, the third and last session of this conference will deal with **dialogue between judges within the Convention system**. Such dialogue often takes the form of encounters either in Strasbourg or in the relevant individual country. We are always very pleased to receive these judicial delegations, which attend our hearings and meet with judges and members of the Court Registry. Over the years genuine dialogue has built up between the national and European judges. Such dialogue is vital and must and will go from strength to strength.

As you know, the recently adopted Protocol No. 16 is geared to establishing a new mode of dialogue between your supreme courts and our European Court. This is, in fact, why I like to refer to it as the "Dialogue Protocol". This treaty, which has already been signed by fifteen States and which will come into force after ten ratifications, will enable the highest courts of member States to forward to the Court requests for advisory opinions on questions of

principle relating to the interpretation or application of the rights and freedoms set out in the Convention. These requests can be submitted in the context of cases pending before the national court. The advisory opinions issued by our Court will be accompanied by reasons and will be non-binding. These opinions constitute an additional element in the judicial dialogue between the Court and the domestic courts and will have the effect of enlightening the national courts without being in any way compulsory. I am sincerely convinced that the authority of any courts opting to adjudicate in compliance with these advisory opinions will be reinforced to the benefit of all. This system will enable cases to be settled at the domestic level rather than being brought before the Court, although this possibility will still be there for parties after the final domestic decision. It will institutionalise a mode of dialogue which has already been going on between us for a very long time. The most important issues submitted to us will thus be considered within an enlarged judicial forum. Protocol No. 16 will provide a normative basis for our dialogue, thus making good an omission in the system. It will also, I am sure, ultimately promote the *erga omnes* effect of our Court's interpretation of the Convention.

The agenda for this conference comprises a wide range of items. I am convinced that thanks to the fruitful discussions which you will be having, this encounter will help reinforce dialogue among judges and accordingly bolster the authority of the Court's case-law.

Ladies and gentlemen,

I cannot close my address, and I am simply expressing my own personal position here, without voicing my extreme concern and alarm at the recent developments in matters of human rights protection in the country hosting our conference. While I am glad to be meeting today with representatives of the highest courts of the member States, my presence here must not be understood as meaning that, from the Court's point of view, human rights standards are properly respected in Azerbaijan. Everyone here knows of my strong attachment to the concept of dialogue. However, dialogue is only genuinely meaningful if all opinions can be expressed.

Our Court speaks through its judgments. Its judgments, and especially their execution, must constitute the bedrock of the progress of fundamental rights and the rule of law in Azerbaijan. I wanted to end my contribution on this positive note of hope, shored up by dialogue.

Thank you.