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

Seminar
"Binding Force: Institutional Dialogue Between The ECHR and The Committee of Ministers under Article 46 of The European Convention on Human Rights"

Speech by Sandra Lyngdorf,
Deputy to the Permanent Representative of Iceland to the Council of Europe

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Good afternoon - Excellencies, colleagues, friends.

I have been asked to say a few words from a government perspective. I approach this topic as legal advisor at the Permanent Representation of Iceland here in Strasbourg where I am frequently in touch with the person back home overseeing the execution of judgments against Iceland; as a participant in the CMDH meetings - which Iceland recently chaired – examining the execution efforts by member states; and as part of the Icelandic presidency team of the Committee of Ministers where - as you all probably know - we have some important execution issues on the agenda as well.

As was said by Mr. Campos earlier today, we are engaging in institutional dialogue here today and while it might not be as frequent as it should, there is a lot of personal dialogue, we appreciate the good cooperation with the Court, and I honestly wouldn't know what to do without Zoe and Clare.

The rapid and effective execution of the Court's judgments contributes to enhancing the protection of human rights in member States and to the long-term effectiveness of the European human rights protection system as such. The discussions today underline the importance of rapid and effective execution but also highlight the complexities involved.

In the first part of my intervention, I will speak from the point of view of a respondent State.

Iceland is a small country – at least in terms of population – and while we have a relatively small number of cases pending before the Court, in over 69% of the judgments delivered concerning Iceland, the Court has given judgment against the State, finding at least one violation of the Convention.

The Court's judgments have had real and lasting impact in Iceland and have led to various reforms and improvements, relating in particular to lawfulness of detention, fairness of proceedings, freedom of expression and freedom of association.

Until recently, the civil and criminal courts system consisted only of district courts and the Supreme Court. In the context of a general reform of the judicial system, a Court of Appeal was set up in 2018 by the Act on the Judiciary of 2016, to deal with civil and criminal matters. The Court of Appeal has access to recordings of testimony from the proceedings before district courts and can also hear witnesses directly. This reform was a way for Iceland to improve its compliance with international

standards in this field, including standards derived from Article 6 of the Convention and the case-law of this Court.

The responsibility to execute the Court's judgments against Iceland rest with the Prime Minister's Office. The plan is to have a team but so far that team consists of one person – one lawyer - who also has a lot of other responsibilities.

It is up to her to analyse the judgments and assess what measures, if any, need to be taken to fulfil our obligation under Article 46 (1). Her assessment and proposals for action then goes to the Prime Minister for sign off. She is also in charge of the drafting of the action reports and action plans.

The execution process looks very different in other countries but steps such as the identification of the execution measures or the drafting of action reports and plans usually rest with either the Government Agent or the ministry or ministries concerned by the violation.

In the past, *ad hoc* inter-ministerial working groups have been established in Iceland in some particularly difficult cases and often there have been very diverging views within these working group on what measures are needed to execute.

There is a generally a high awareness of the Court in Iceland. New judgments from the Court usually attract a lot of media attention back home and create a lively – and healthy - debate amongst the public, politicians, and in academic circles – and measures taken to execute the judgments also become part of this debate. I guess you could say that we have active domestic accountability institutions which do indeed help move execution along.

From a government perspective, the obligation to take individual measures and provide redress to the applicant has two aspects. Firstly, provide any just satisfaction which the Court may have awarded the applicant under Article 41 of the Convention.

Secondly, depending on the circumstances, take further action to satisfy the basic obligation of achieving, as far as possible, *restitutio in integrum,* as the consequences of a violation for the applicant is not always adequately remedied by the mere award of just satisfaction.

The methodology for the identification of general measures can generally be divided into two phases: identifying the origin and source of the problem and identifying the measures to be taken in order to remedy it. A third phase - monitoring the implementation of these measures – is of course also important to ensure that the measures have the desired impact.

Rapid identification of the origin and source of the issue is a prerequisite for rapid execution and judgments in which the root causes of the violation/violations are clearly identified greatly facilitate the identification of such measures.

For us – and I think for many fellow member States – it is however not always easy to identify in the judgement the precise source or sources of the problematic situation. The origin of the violation is also the first heading under general measures in the action reports that States have to turn in to the Department of Executions. Moreover, the more complex the problem is, the harder it usually is to identify the appropriate general measures and the Court's guidance can help the process along.

As an example, in the case of *Guðmundur Andri Ástráðsson against Iceland* which concerned a violation established on account of the denial of the applicant's right to a "tribunal established by law" due to irregularities in the appointment procedure of one the judges of the newly established Court of Appeal that upheld the applicant's criminal conviction, the exact origin and source of the problem could have been clearer. Was the origin of the violation the legislation as such? Or was the origin of the violation the breaking of the law by the Minister?

Another issue which was later clarified in the Court's Grand Chamber judgment in the case, was how many judges were actually affected by the breaches of domestic law. Only the judge which was the focus of the applicant's complaint in the case, the three other judges that had been added to the Evaluation Committee's proposal by the Minister, or the status of all 15 judges elected at that time to the Court of Appeals?

In the Grand Chamber judgment, it was also made clear that a violation in the present case should not as such be taken as to impose on the respondent State an obligation under the Convention to reopen all similar cases that have since become *res judicata* in accordance with Icelandic law – an issue that was not clear after the Chamber judgment.

Although a request to have the case referred to the Grand Chamber had been made, as soon as the Chamber judgment was rendered, steps were promptly taken to implement the judgment. The Minister immediately resigned from office and the operation of the Court of Appeal was completely suspended for one week.

The four judges in question ceased to participate in cases and when the Court of Appeal resumed operation it did so with only eleven of the fifteen appointed judges. Provisional arrangements were subsequently made to appoint four judges to serve until 30 June 2020 so as to ensure the functioning of the court.

The dialogue with the Department of Executions on identifying the appropriate general measures to prevent similar violations was very helpful for us and just over a year after the Grand Chamber judgment, we were able to close the supervision of the case.

We also have two cases which were communicated in May of last year - *Guðmundur Gunnarsson against Iceland* and *Magnús Davíð Norðdahl against Iceland* – which concern the Icelandic Parliamentary elections of 25 September 2021, in which the applicants, along with fifteen others, lodged separate complaints challenging the lawfulness of the vote count and the election results. These cases – no matter the outcome – are bound to cause debate and the precision of the Court's conclusion will be important.

Another issue – which Zoe touched upon - concerns decisions to strike out an application following a friendly settlement with undertakings – and sometimes these decisions concern very large groups of applications - the reasons do not go into much detail about the facts underlying each case and/or the internal decisions to be enforced - i.e. whether they have been paid late or not paid at all.

This, while on the one hand it meets requirements of speed and clearance of the workload, it on the other hand raises some difficulties in the enforcement phase. In such cases the decision is not self-sufficient, self-explanatory, and self-executing, making it difficult to identify the single case at national level, the state of play, the administrations involved and, consequently, the measures to be put in

place. Thus, inserting a few key details, in addition to make the decision itself clearer, would facilitate a speedier execution.

Ultimately, of course, the respondent State remains free to choose the means by which it will discharge its legal obligation under Article 46 of the Convention to abide by the final judgments of the Court, and a balance has to be struck but lack of clarity regarding the origin of the violation makes it difficult to work out what measures are needed and can in turn cause domestic insecurity and, in the end, risk undermining the Court.

It might be worth mentioning that some national authorities manage to adopt a pro-active approach aimed at anticipating the identification of measures to address a situation at national level and to avoid findings of violations by the Court.

For example, before reaching a friendly settlement in a case with a high probability of a violation, the national authority tries to identify general and individual measures that need to be taken in order to remedy the situation at the national level and prevent similar applications to the Court.

The goal is so to say to execute before the Court delivers the judgment. Although the Court might ultimately find a violation in the given case, the judgment might already have been executed to a large extent, or at least, the execution process has already been initiated.

Now I will turn more to the supervision process in CMDH and CM.

With the Court working hard to reduce its backlog, more and more cases are landing at the desk of the Department for Execution and this in turn will impact the CMDH meetings and most likely also the meetings of the Committee of Ministers. It is important that States to their homework and steps up their efforts in order to reduce the backlog of cases pending execution before the Committee of Ministers in parallel with the Court or the effective functioning of the Convention system will be at risk.

At the moment, the Committee of Ministers receives more cases and closes fewer which is not sustainable in the long run. Deficient execution is not only an issue for the State concerned, or for the Department of Executions, but also leads to an influx of repetitive applications before the Court and we are all aware that a great majority of the Court's docket is composed of applications concerning question in relation to which the Court already has well-established case-law or repetitive cases.

This week the Department for Execution held a briefing on "Reducing the backlog of outstanding unexecuted leading judgments of the European Court of Human Rights" and it was a good opportunity to bring member States together to once again explain how the execution system works and to signal that more needs to be done.

It is also a good opportunity to remind our capitals of the importance of execution – I find that there is often a lot of interest in the Court's judgments across different ministries but much less interest and knowledge in the execution part.

As a member of the CMDH meetings you are of course involved in the supervision process of the implementation of other states of their judgments and here clarity from the Court's side on the origin of the violation/violations and any possible indication on measures is of course helpful.

The CMDH and the CM meetings are political bodies and precision in the judgments leaves less room for political considerations as Judge Bosnjak rightly mentioned earlier.

From the context of the Committee of Ministers, I would like to thank the Court for the support it has expressed to the Committee through the Mammadov and Kavala 46(4) judgments. These were both cases where there was a difference of opinion between the respondent state and the Committee about the measures required, and the Court's Article 46(4) judgments made it entirely clear that the Committee's position was the right one.

In conclusion, I would like to say a few words about our expectations for the 4th Council of Europe Summit of Heads of State and Government to be held in Reykjavik in May. And we take good note of the Court's submissions.

We hope to recognize that the Convention and the Court are the ultimate guarantors of individual rights across our continent and reaffirm the unconditional obligation of member States to abide by the final judgments to which they are Parties. We will also have to deal with the issue of sufficient financial resources, both for the Court and for the executions.

We are looking at strengthening the execution of judgments, in particular through further development of the working methods and tools available in the supervision process, particularly in the CMDH meetings.

We would also like to strengthen the organisation's cooperation architecture, allowing it to work closer with willing member States on practical and tangible actions to support the execution of judgments, creating more opportunities for partnership and progress.

A new idea which is being discussed is the idea of a high representative on the implementation of judgments - preferably a renowned personality at ministerial level - whose task it would be to maintain close dialogue at political level with the authorities of member States, in particular through visits to capitals.

These elements will of course be discussed with the wider membership, but it is indeed important to once again get a reaffirmation by all the member States of their commitment to the Convention system.

I also hope that these institutional dialogues will continue under future presidencies – hint hint to Latvia and Liechtenstein – and it might also be good to include PACE in the dialogue as well.