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

Conference on the Role of the Judiciary in Execution of Judgments of the European Court of Human Rights:

Execution of ECHR judgments and the Rule of Law

Speech by Síofra O'Leary

Riga, 21 September 2023

President Laviņš,
President Strupišs,
Dear Judges,
Ladies and Gentlemen,

It gives me real pleasure to represent the European Court of Human Rights here today.

Let me begin by thanking the Latvian presidency for including the important and, at times, complex issue of execution amongst the priorities of its presidency[1] and for organising this conference.

I don't need to remind this audience that the European Convention on Human Rights, which entered into force over 70 years ago, represents the most advanced supranational system for the protection of human rights, giving individuals the right to take a case before an international court. High Contracting Parties for their part assume the obligation to effectively protect the rights and freedoms enshrined in the Convention, accepting international monitoring by the Court, while respecting its authority, independence and autonomy, as well as the binding legal force of its judgments and decisions. Both this obligation and acceptance of the Court's jurisdiction flow inexorably from Articles 1, 19, 32, 34 and 46 of the Convention; a point ignored of late in certain quarters when it comes both to judgments of the Court and interim measures.

As the Court recalled in its Memorandum for the Reykjavik Summit, over a million applications have been processed in more than sixty years of its existence, resulting in over 26,000 judgments. Those judgments and decisions have rendered major services to the development and consolidation of the standards necessary to guarantee that our democracies are and remain underpinned by respect for the rule of law.

[1] Committee of Ministers, Priorities of the Latvian Presidency of the Committee of Ministers of the Council of Europe (17 May–15 November 2023).

The latter is one of the three pillars on which the Council of Europe was founded and which it was designed to safeguard, as transpires from the preamble of the Council of Europe Statute and from the requirements for membership enshrined in Article 3 thereof. Respect for the rule of law is a precondition for the accession of States to the organisation and repeated failure by a member State to uphold the rule of law may trigger suspension of rights or cessation of membership in accordance with Article 8 in the face of serious or systemic violations.

According to the father of Athenian democracy, Solon, "society is well governed when its people obey the magistrates, and the magistrates obey the law".

When Court judgments and decisions are not executed it is the integrity and functioning of the whole system – whether national or European - which is undermined. And let us be clear, the challenges facing the Convention system at present are particularly concerning, with the values held dear by European pluralist democracies squeezed between the hammer of external threats and the anvil of internal democratic erosion.

In a State governed by the rule of law, final and binding judgments of national courts must be executed without exception and in a timely manner.

The same requirement applies to the judgments issued by the Strasbourg Court in relation to respondent States. Failure by High Contracting Parties to execute the Court's judgments undermines the authority and credibility of the Convention system to which they have sovereignly subscribed.

The implementation of the Court's judgments is complex and multi-faceted. The Court finds a wide range of different violations in relation to different Convention articles. One size does not fit all. In addition, as regards the Contracting Parties, there is no single model of implementation but, instead, a wide variance depending on how the Convention is incorporated in the national legal order and whether one or a plurality of actors, such as the government, the judiciary, local authoritites or even the legislative branch need to be implicated.[2]

In the time available this morning, I'll set out some of the recurring obstacles to loyal and timely execution (1), further illustrate how deficient execution undermines the Convention system from both a legal and practical perspective (2), briefly explore how it also impacts the broader European rule of law context (3) and finally look at how to respond to deficient execution both at Strasbourg and domestic levels (4).

1. Obstacles to execution of the Court's judgments

According to the 2022 Annual Report on the Supervision of the Execution of Judgments and Decisions, the Committee of Ministers closed the supervision of execution of 880 cases last year, including 200 leading cases[3], following the adoption by respondent States of individual and/or general measures.

Although failure to execute remains an intractable problem, which is why we are gathered here in Riga, it is important to remember that the great majority of judgments in relation to the majority of States are executed satisfactorily. Latvia is a good case in point, with five cases closed in

[2] See further H. Keller and C. Marti, "Reconceptualising Implementation: The Judicialisation of the Execution of the ECtHR's Judgments" (2015) 26 EJIL 829-850, 830.

[3] Committee of Ministers, 16th Annual Report on the supervision of the execution of judgments and decisions of the European Court of Human Rights (2022) 12.

2022 and generally around 94% of cases transmitted to the Committee of Ministers having been closed in the past.[4]

Although 2022 saw an increase in the total number of judgments currently pending full execution (6,081 compared to 5,533 in December 2021), this is a reflection of the increased judicial output of the Court during the same period. The total number of pending cases remains one of the lowest since 2007.[5]

Some of the cases successfully closed in 2022 followed significant legislative reforms in administrative practice in Armenia, Croatia, Greece, Latvia, Lithuania and Türkiye, to name but a few.

Four different types of obstacles to execution can roughly be identified: (i) deliberate political opposition, (ii) practical and/or financial difficulties, (iii) the absence of an effective execution mechanism at domestic level and (iv) resistance derived from, amongst others, reliance on national (constitutional) identities.

Cases of deliberate political opposition are the most sensitive but, to the extent that they turn on a political decision and do not necessarily require heavy structural reforms and/or the commitment of significant financial resources, they should be the easiest to resolve. As per the Statute and the case-law of the Court, the Convention translates common European values, such as the rule of law, in a community of 46 States whereby membership is contingent on respect for and adherence to those values.

Behind the first two cases which saw the Committee of Ministers trigger the infringement action provided by Article 46 § 4 – *Ilgar Mammadov v. Azerbaijan*[6] and *Kavala v. Türkiye*[7] – lay political opposition to faithful execution of the Court's principal judgments. Both cases concerned the arbitrary detention of the applicants and a clear instruction to order immediate release either in the body of the judgment and/or its operative part.

As regards Kavala, more than 45 months have passed since the Court's principal judgment; and a further 14 months since the judgment finding an infringement. Two days ago, the Committee of Ministers has discussed, under Article 46 § 5, what further measures are required given that Mr Kavala has still not been released. I understand it will issue a decision or update tomorrow.

Deficiencies in the timely execution of Court judgments may also be due to practical and/or financial difficulties. This is typically the case where the general measures necessary to comply with a State's obligations under the Convention require the commitment of significant resources. In 2021, for instance, the Committee of Ministers ended its supervision of execution of the *Oyal v. Türkiye*[8] group of cases in which violations, amongst others, of the right to life and the prohibition of inhuman treatment had been found on account of medical negligence in State-run hospitals between 1996 and 2008.

Following the delivery of the first Court judgment in this group in 2010, the authorities implemented significant reforms to increase the quality and capacity of health care services, including an increase in the number of hospitals and medical staff, leading, inter alia, to a decrease

[4] Council of Europe Department for the Execution of Judgments of the ECtHR, Execution Factsheet Latvia.
[5] Committee of Ministers, 16th Annual Report on the supervision of the execution of judgments and decisions of the European Court of Human Rights (2022) 12.
[6] *Ilgar Mammadov v. Azerbaijan* (infringement proceedings) [GC], no. 15172/13, 29 May 2019.
[7] *Kavala v. Türkiye* (infringement proceedings) [GC], no. 28749/18, 11 July 2022, §§ 169-170.
[8] *Oyal v. Turkey*, no. 4864/05, 23 March 2010.

in new-born and maternal mortality rates. Other measures included the admission of patients to emergency care services of hospitals irrespective of their social security status and without pre-payment, the establishment of a central coordination system between hospitals to ensure rapid access to health care in emergency situations, and improvement of the standards of testing in blood donations to prevent contamination.

Other examples of concerted attempts to execute pilot and quasi-pilot judgments on conditions of detention via State investment in the prison sector can be seen for instance in Croatia, where, following the Court's judgment in *Cenbauer v. Croatia*[9] (2006), several measures were adopted, including the renovation of a number of prison facilities. The Committee of Ministers closed the case in 2020.

Torreggiani v. Italy[10] or *Vasilescu v. Belgium*[11] are further examples where execution has been closed, or not, depending on whether the structural problems identified persist.

Another barrier to the timely or correct execution of Court judgments may be the absence of an effective structural execution mechanism at domestic level. This is mostly due to the lack of administrative coordination between relevant authorities and does not necessarily derive from conscious government actions or omissions.

With the correct political will, this type of difficulty can be remedied relatively easily. Slovenia is a case in point. In 2015 it set up an inter-ministerial working group on the execution of the Court's judgments, followed the next year by the creation of a project unit within the Ministry of Justice tasked with proposing and coordinating execution measures across all relevant authorities. The fact that Slovenia now has one of the best records in terms of execution, with 98% of closed cases before the Committee of Ministers[12], is surely not unrelated.

Probably, the most sensitive issue when it comes to execution is resistance that derives from reliance on national (constitutional) identity. This aspect will be addressed further by Judge Ineta Ziemele this morning and in a panel later today.

Let me just say a few words here to set out the context by looking at the case of Germany. Germany has a very good record in terms of applications before the Court, with 0.06 applications per 10,000 inhabitants, against a member State average of 0.54[13]. In terms of execution, it currently has only 5% of the total number of cases transmitted for supervision still pending before the Committee of Ministers[14]. German superior courts have engaged in constant and fruitful dialogue with the Court and this dialogue has managed to overcome some traditional resistance of, for example, the Federal Constitutional Court in areas which were deeply rooted in German legal tradition.

However, even with a State like Germany, with a good Convention record, we see how ambivalent domestic court statements can be picked up and used in other contexts to resist abiding by Article 46 obligations. In a case called *Görgülü v. Germany*[15], the Court found a violation of Article 8 in proceedings relating to the custody and access to the applicant's child, who had been born out of wedlock. Following that judgment, the Federal Constitutional Court granted visiting rights to the

[9] *Cenbauer v. Croatia*, no. 73786/01, 9 March 2006.
[10] *Torreggiani and Others v. Italy*, nos. 43517/09 and 6 others, 8 January 2013.
[11] *Vasilescu v. Belgium*, no. 64682/12, 25 November 2014.
[12] Council of Europe Department for the Execution of Judgments of the ECtHR, Execution Factsheet Slovenia.
[13] ECtHR, Analysis of statistics 2022 (January 2023) 14.
[14] Council of Europe Department for the Execution of Judgments of the ECtHR, Execution Factsheet Germany.
[15] *Görgülü v. Germany*, no. 74969/01, 26 February 2004.

applicant, thereby aligning itself with the Strasbourg judgment.[16] However, in its 2004 judgment the Federal Constitutional Court emphasized in an obiter dictum that it retained the last word on national constitutional sovereignty:

> "[t]he Basic Law aims to integrate Germany into the legal community of peaceful and free states, but does not waive the sovereignty contained in the last instance in the German constitution. There is therefore no contradiction with the aim of commitment to international law if the legislature, exceptionally, does not comply with the law of international agreements, provided this is the only way in which a violation of fundamental principles of the constitution can be averted."[17]

That there is a non-hierarchical dialogue between the Strasbourg Courts and national constitutional courts is not in itself problematic. Indeed, a system based on shared responsibility depends on and accommodates such dialogue. However, it is noteworthy that the Federal Constitutional Court's decision[18] in *Görgülü* was referred to by the Russian Constitutional Court in its 2015 decision when it ruled that the Russian Constitution had supremacy over the European Convention on Human Rights.[19] It was picked up again by the Constitutional Court of Poland in its judgment of 10 March 2022[20] where it found certain aspects of the Court's case-law on Article 6 and judicial independence stemming from the judgments in *Broda and Bojara v. Poland*[21] and *Reczkowicz v. Poland*[22] to be incompatible with the Polish Constitution.

A system based on shared responsibility depends not just on trust that the Strasbourg court remains sensitive to national culture and constitutional heritage – as it has always proven to be[23] – but also on a commitment to standing together in defence of common European values, not least respect for the rule of law, rather than erecting national constitutions as obstacles to compliance with State obligations under international law.

This is why it is only in exceptional circumstances that the Court can accept constitutional heritage or "identity" – and accommodate it in the margin of appreciation accorded to States – as a legitimate ground for a finding of no violation in situations which would otherwise be problematic under the Convention. As I tried to explain, together with my colleagues Judges Grozev and Lemmens, in our joint dissenting opinion in the case of *Savickis and Others v. Latvia* [GC][24], the very concept of constitutional identity must be subject to a narrow interpretation associated with the fundamental structures, political and constitutional, of the State. Otherwise, we may find ourselves on a very slippery slope in a Convention system serving 46 quite heterogenous States each with their own history and the imprint the latter has left.

2. Failure to execute and the functioning of the Convention system

As I said before, the binding legal force of the Court's judgments and decisions flows inexorably from Articles 1, 19, 32, 34 and 46 of the Convention. Failure to execute the Court's judgments not only contradicts the basic Convention construct but fundamentally weakens the right of individual application embedded in Article 34, which is the cornerstone of the system.

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[16] BVerfG, Order of the Second Senate of 14 October 2004, 2 BvR 1481/04.
[17] Ibid, § 35.
[18] See Stefanie Schmahl, "The European Court of Human Rights – Can there be too much Success? A Comment" (2022) 14(1) Journal of Human Rights Practice 191-203.
[19] Constitutional Court of the Russian Federation, Judgment of 14 July 2015, No. 21-П/2015.
[20] Constitutional Tribunal of Poland, Judgment of 10 March 2022, K 7/21.
[21] *Broda and Bojara v. Poland*, nos. 26691/18 and 27367/18, 29 June 2021.
[22] *Reczkowicz v. Poland*, no. 43447/19, 22 July 2021.
[23] see recently the judgment in *Valiullina and Others v. Latvia*, nos. 56928/19 and 2 others, 14 September 2023.
[24] *Savickis and Others v. Latvia* [GC], no. 49270/11, 9 June 2022.

If we draw a parallel with the domestic dimension, as the Court has repeatedly explained, Article 6 § 1 of the Convention protects the implementation of final, binding judicial decisions.[25] In *Scordino v. Italy* (no. 1) the Grand Chamber concluded that the right to see such decisions executed is an integral part of the "right to a court".[26]

Since *Golder v. the United Kingdom* in 1975,[27] and as illustrated more recently in *Grzęda v. Poland*[28], the Court has established a direct link between the right of access to a tribunal, which, as we have just seen, includes the right to execution of final binding decisions, and the principles of the rule of law and the avoidance of arbitrariness which underpin much of the Convention.

Failure to execute final and binding judicial decisions undermines the credibility and authority of any judicial system, and, in the end, of the State or system which a given court serves. What would be the point of putting in place a system where people can hold public authorities accountable before the courts if the decisions of those courts remain ineffective? The same applies, *mutatis mutandis*, when it comes to the Convention, as demonstrated by the terms, inter alia, of Articles 1, 19, 34 and 46.

In its infringement judgment in *Kavala v. Türkiye* [GC], the Court emphasised that the whole structure of the Convention rests on the general assumption that public authorities in the member States act in good faith. That structure includes the supervision procedure, such that the execution of judgments should also involve good faith and take place in a manner compatible with the "conclusions and spirit" of the Court's judgment.[29]

From a practical perspective, deficient execution of the Court's judgments has been consistently evidenced over two decades by the evolution in our caseload; a point made throughout the Interlaken reform process by successive Court Presidents.[30]

Around 80% of our present docket is composed of applications concerning questions in relation to which the Court has well-established case-law or repetitive cases. The latter are cases where Contracting Parties have failed to take effective steps to remedy the underlying systemic or structural problems previously, and often repeatedly, identified by the Court. As a consequence, a significant part of the Court's already scarce resources is diverted to deal with thousands of applications which continue to be lodged as a result of deficient execution of previous judgments, to the detriment of strategically important and timely processing of priority and "impact" cases.

Where the root cause of a systemic problem at national level remains untreated, the Court continues to receive applications – often in their hundreds or thousands – and continues to find violations which stem from that systemic or structural problem, thus creating a vicious circle with negative effects on the effective functioning of the Convention system.

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[25] See, for example, *Ouzounis and Others v. Greece*, no. 49144/99, 18 April 2002, § 21.
[26] *Scordino v. Italy* (no. 1) [GC], no. 36813/97, 29 March 2006, § 196.
[27] *Golder v. the United Kingdom*, no. 4451/70, 21 February 1975, §§ 29-36.
[28] *Grzęda v. Poland* [GC], no. 43572/18, 15 March 2022, §§ 342-343.
[29] *Kavala v. Türkiye* (infringement proceedings) [GC], no. 28749/18, 11 July 2022, § 169. The importance of the good faith obligation was paramount in both *Kavala* and *Ilgar Mammadov* because the principal judgments had found violations of Article 18, the object and purpose of which is to prohibit the misuse of power.
[30] See, for example, the speech by President Jean-Paul Costa at the Solemn hearing of the European Court of Human Rights on the occasion of the opening of the judicial year 2010 and the speech by President Dean Spielman at the Solemn hearing of the European Court of Human Rights on the occasion of the opening of the judicial year 2015.

As the Court pointed out in its Reykjavik Memorandum, and I have repeated before the Committee of Ministers, the present situation is unsustainable, both from the perspective of the principles of subsidiarity and shared responsibility and from the perspective of a court seeking to respond sufficiently quickly to the new and difficult questions to which changes in our societies, democracies, climate and conflict give rise.

3. The relevance of execution to the broader European rule of law context

As I emphasised in my introduction, the rule of law is one of the three pillars on which the Council of Europe and the Convention system are based.

It is also a value now enshrined in Article 2 of the Treaty on European Union. Needless to say, when it comes to respect for the rule of law, what happens in Strasbourg is monitored very closely in Luxembourg and Brussels and vice versa. When adjudicating cases relating to the independence of the judiciary or the operation of mutual recognition instruments such as the EAW, the Court of Justice refers extensively to the well-established case-law of the Strasbourg Court under Article 6 of the Convention. Indeed, the extent to which the spirit of the *Golder* judgment, handed down by the Court in 1975,[31] is reflected in the recent conditionality judgments of the CJEU in annulment actions brought by Poland and Hungary, is striking.[32]

As the Luxembourg court has developed its case-law in relation to Articles 2 and 19 § 1 TEU and Article 47 of the EU Charter, clear synergies can also be seen in Strasbourg references to that same case-law.

Beyond interaction between the two European courts in defence of the rule of law, the European Commission, in its assessment of EU Member State compliance with Article 2 values and the rule of law, looks to their Convention record. This makes perfect sense if one looks back to the early nineties and the dramatic geo-political changes which Europe was undergoing with new democracies emerging on the doorstep of the newly baptised EU. EU accession criteria firmly anchor conditionality into the accession process, with the newly added Articles 2 and 7 TEU designed to encourage adherence thereafter. New Member States, and indeed older ones, are required to ensure the stability of institutions guaranteeing democracy, the rule of law and human rights.[33] Membership of the Council of Europe and ratification of the European Convention are key in this regard because in the words of one EU legal commentator:

> "it is the key task of the EC[t]HR, among other international institutions, to keep European legal orders in check".[34]

[31] See *Golder v. the United Kingdom*, no. 4451/70, 21 February 1975, § 34: "[…] the Preamble […] points to [the rule of law] as being one of the features of the common spiritual heritage of the member States of the Council of Europe. […] it would be a mistake to see in this reference a merely "more or less rhetorical reference", devoid of relevance for those interpreting the Convention. One reason why the signatory Governments decided to "take the first steps for the collective enforcement of certain of the Rights stated in the Universal Declaration" was their profound belief in the rule of law. […]"

[32] See, for example, CJEU Case C-157/21, *Poland v. European Parliament and Council*, EU:C:2022:98, § 264: "[…] Article 2 is not a mere statement of policy guidelines or intentions, but contains values which […] are an integral part of the very identity of the European Union as a common legal order, values which are given concrete expression in principles comprising legally binding obligations for the Member States".

[33] See further C. Hillion, "The Copenhagen Criteria and their Progeny" in C. Hillion (ed.), *EU Enlargement: A Legal Approach* (Hart Publishing, 2004) and D. Kochenov, "The ENP Conditionality: Pre-Accession Mistakes Repeated" in L. Delcour and E. Tulmets (eds.), *Pioneer Europe. Testing EU Foreign Policy in the Neighbourhood* (Nomos, 2008).

[34] See D. Kochenov, "EU Law without the Rule of Law: Is the Veneration of Autonomy Worth It?" (2015) 34(1) Yearbook of European Law 1-23, 10.

Five EU Member States still feature on the Strasbourg Court's top ten list of States ranked per number of pending applications; two feature in the top five. In its annual Rule of Law Reports since last year, the Commission refers to the execution of judgments of the European Court of Human Rights as an important indicator of the functioning of the rule of law in surveyed EU Member States.[35]

The same indicator will presumably be of paramount importance for the eight member States of the Council of Europe which are now candidates for EU accession.[36]

My purpose here is not to address in detail rule of law synergies which have successfully developed between the EU and Council of Europe systems but to highlight the type of centrifugal tensions and consequences that failure by States to execute Strasbourg Court judgments create both within the ambit of the Convention system and beyond.

4. Responding to deficient execution both at international and domestic levels

What has been done so far to address deficient execution of the Court's judgments?

At the political level, the critical problem of deficient execution of the Court's judgments has been highlighted time and time again.[37] In the Reykjavik Declaration in May the Heads of State and Government acknowledged that the primary responsibility for ensuring compliance with international legal obligations, to which member States have sovereignly committed, is borne by domestic democratic and judicial systems.[38] They recommitted to the binding nature of the Court's judgments and decisions and to redoubling their efforts for the full, effective and rapid execution of judgments, which they considered of fundamental importance "to ensure the long-term sustainability, integrity and credibility of the Convention system".

It is hoped that one of the fruits of the 4th Summit will be the development of a more co-operative, inclusive and, where needed, a political approach to execution based on dialogue between States and relevant Council of Europe institutional actors. There is clearly room for further strengthening of synergies between the Registry of the Court and the Department for the Execution of Judgments. In this respect, at a seminar organised at the Court in March, different execution "stakeholders" – Judges, Ambassadors, staff from the execution department, members of the Committee of Ministers' Secretariat and the Court's Registry – were brought together to look at ways to promote this.

At judicial level, the deficient execution of the Court's judgments can be and is indeed tackled both in Strasbourg and at the national level.

At Strasbourg level, over the course of the last twenty years the Court has assumed more responsibility in the execution process, notably by giving indications as to the specific individual and/or general measures to be taken under Article 46 of the Convention in order to put an end to a

[35] Communication from the Commission to the European Parliament, the Council, ECOSOC and the Committee of the Regions, 2023 Rule of Law Report, Brussels, 5 July 2023, COM(2023) 800 final. See in particular page 26. According to the 2023 report, performance continues to vary between Member States. Overall, around 40% of the leading judgments of the ECtHR relating to EU Member States from the last 10 years have not been implemented.

[36] Ibid, at page 33 with references to Ukraine, Moldova and Georgia.

[37] See, for example, ECtHR, High Level Conference on the Future of the European Court of Human Rights, Brighton Declaration, at point 20. See also, Committee of Ministers, Securing the long-term effectiveness of the European Convention on Human Rights, Hamburg, 21 May 2021, CM/Del/Dec(2021)131/3.

[38] Council of Europe, Reykjavík Declaration "United around our values", Reykjavík Summit, 16-17 May 2023, 17.

situation which it has found to be in violation of the Convention.[39] As of June 2023, more than 300 judgments contained such indications.

The Court's practice is intended not only to guide national authorities but also seeks to facilitate the Committee of Ministers' role in supervising the execution process, bearing in mind that the ultimate choice of execution measures to be taken (provided the conclusion and spirit of the judgment is respected) remains within the margin of appreciation of the State concerned.

I would not wish to take much of our time today dwelling on the specificities of individual measures. They are by definition case-specific and frequently indicated in cases involving specific provisions of the Convention, notably, Articles 5[40] and 6.[41] It has to be said, the Court has not been shy to indicate individual measures in other types of cases too when required. I can mention *H.F. and Others v. France* [42] as an example, concerning the refusal of the French authorities to consider a request to repatriate French nationals detained in camps in Syria. After finding a breach of Article 3 § 2 of Protocol No. 4, the Court indicated that the French Government had to "re-examine those requests, in a prompt manner, while ensuring that appropriate safeguards [were] afforded against any arbitrariness"[43].

With regard to general measures, the Court may find it useful or even necessary to indicate them where it has found that the violation of the Convention is occurring or is likely to occur in similar situations. Accordingly, the measures should be such as to remedy the Court's finding of a violation in respect of the existence or non-existence of legislation, or even a general practice, so that the system established by the Convention is not compromised by a large number of repetitive applications stemming from the same cause.

The dynamic nature of the Court's review is implicit in the pilot and quasi-pilot judgment procedures, to which I want to turn for a moment. I believe these procedures are well known to you and my intention is not to dwell on their mechanics.[44] I would rather want to mention them with a view to offer some reflections on a "judicialization"[45] of the execution process and the "constitutionalising effect" which such processes can produce.[46] Let me explain.

In the context of the pilot and quasi-pilot procedures the Court remains in control of the supervision of measures taken at the domestic level to address the deficiencies identified in the pilot or leading judgment. The adequacy of the measures adopted is not under the sole scrutiny of the Committee of Ministers, but under the judicial scrutiny of the Court and the standards used for that scrutiny are Convention legal requirements. We have seen how that works in some of the examples I mentioned earlier, such as *Torreggiani and Others v. Italy* or *Vălеanu and Others v. Romania*.

[39] For the previous more cautious approach regarding the Court's engagement in the execution process see *Soering v. the United Kingdom*, 7 July 1989, § 127, Series A no. 161: "The Court is not empowered under the Convention to make accessory directions of the kind requested by the applicant (see, mutatis mutandis, the Dudgeon judgment of 24 February 1983, Series A no. 59, p. 8, § 15). By virtue of Article 54 (art. 54), the responsibility for supervising execution of the Court's judgment rests with the Committee of Ministers of the Council of Europe."

[40] *Assanidze v. Georgia* [GC], no. 71503/01, ECHR 2004-II, 8 April 2004.

[41] *Sejdovic v. Italy* [GC], no. 56581/00, ECHR 2006-II, 1 March 2006.

[42] *H.F. and Others v. France* [GC], nos. 24384/19 and 44234/20, 14 September 2022.

[43] Ibid, § 295.

[44] See further: ECtHR, The Pilot-Judgment Procedure: Information note issued by the Registrar; ECtHR, Press Factsheet – Pilot judgments (both available at www.echr.coe.int); Leach et al, *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, 2010); Haider, *The pilot-judgment procedure of the European Court of Human Rights* (Brill, 2013).

[45] See also H. Keller and C. Marti, "Reconceptualising Implementation: The Judicialisation of the Execution of the ECtHR's Judgments" (2015) 26 EJIL 829-850, 829.

[46] See, for instance, Sadurski, *Partnering with Strasbourg: Constitutionalisation of the European Court of Human Rights, the Accession of Central and East European States to the Council of Europe, and the Idea of Pilot Judgments*, (2009) 9(3) HRLR 397-453.

Consequently, there is a greater involvement of the Court in the execution process and, to an extent, a form of "judicialization" of that process. This "judicialization" also means that in its supervision of the measures adopted at the domestic level the Court is concerned with a broader picture – namely, the national system – rather than just the necessity to adjudicate an individual case.

The emphasis is therefore shifted from the Court's "adjudicative role" to its "constitutional role"[47] , which is to clarify Convention obligations, protect the achieved level of Convention rights and freedoms and, where needed, further develop Convention standards.

A more extensive use of the pilot and quasi-pilot judgment procedures therefore has the potential to be an effective tool to tackle the problem of the high number of cases currently pending before the Court by identifying the cases of "constitutional" relevance and dealing with other repetitive cases in a more summary way. At the same time, these procedures could ensure effective judicial oversight of the reforms carried out at the domestic level and thus enhance the execution of the Court's judgments.

The Court is currently in the process of internal reflections as regards the further enhanced use of pilot and quasi-pilot judgment procedures.

Any effort in the execution of the Court's judgments critically depends on the involvement of national courts. They must act as "faithful guardians" of Convention standards and values.[48] They have the task of ensuring that the Convention is duly implemented in their domestic orders.

However, at national judicial level, as I mentioned before, a varying degree of reluctance in executing the Court's judgments may stem from reliance on member State constitutional traditions or identity.[49] It is important to remember that cases of open conflict may be high profile – but they are rare. On the contrary, the strong and continued institutional dialogue between the Strasbourg Court and national superior courts continues to bear fruit.

For the role of national judges when it comes to execution, the aftermath of recent French and Latvian cases are illustrative.

In *J.M.B. and others c. France*,[50] decided in January 2020, the Court found a violation of Articles 3 and 13 on account of inadequate conditions of detention in French prisons and the lack of effective remedies available to prisoners.

In July of the same year, the French Court of Cassation explicitly relied on the *J.M.B.* judgment and found that, even before the requisite legislative changes were made, judges should be able to put an end to conditions of detention contrary to Article 3. A few months later, the French Constitutional Court, on the basis of a priority preliminary ruling (*question préjudicielle de constitutionnalité*) requested by the Court of Cassation, decided to repeal the relevant provisions of the Code of Criminal Procedure which precluded early release in case of conditions of detention incompatible with human dignity. This timely sequence of judicial dialogue between the Strasbourg

[47] On the Court's "constitutionalist" and "adjudicative" roles, see further Greer and Wildhaber, "Revisiting the Debate about 'constitutionalising' the European Court of Human Rights" (2012) 12(4) HRLR 655-687.
[48] See further, Bjorge, *Domestic Application of the ECHR: Courts as Faithful Trustees* (OUP, 2015).
[49] See Constitutional Tribunal of Poland, Judgment of 10 March 2022, K 7/21, mentioned above.
[50] *J.M.B. and Others v. France*, nos. 9671/15 and 31 others, 30 January 2020.

Court and the French superior Courts culminated in the adoption, a few months later, of legislative amendments seeking to comply with the *J.M.B.* judgment.[51]

As regards Latvia, the case that I would like to mention is *Ēcis v. Latvia*[52], which concerned a blanket ban on prison leave for male prisoners in maximum security prisons without any individual assessment of the proportionality of such a prohibition. A majority of the Chamber found a violation of Article 14 in conjunction with Article 8.

The case was closed by the Committee of Ministers in September 2022[53] following an amendment of the Code for the Enforcement of Sentences which introduced the possibility for prisoners to apply for the organisation of a funeral service for a close family member within the prison premises. In the same year, a further amendment introduced the possibility to grant compassionate leave for up to two days. I would like to emphasise that, following the judgment of the Strasbourg Court, and before the relevant legislative amendments, the Constitutional Court of Latvia had found that the provision of domestic law which precluded all prisoners serving their sentences in closed-type prisons from requesting compassionate leave, was incompatible with the Constitution.

Lastly, allow me to note that in terms of the role of national judges when it comes to execution and subsidiarity, Article 46 § 1 imposes on the State an obligation to execute a judgment handed down in its regard. However, there is also a *res interpretata* effect of the Court's judgments for courts and authorities in States other than those which are party to proceedings. This is one of the most important tools reinforcing subsidiarity but also limiting the number of applications before the Court.

In conclusion, the success of the Convention system has been achieved through a combination of efforts both domestically and at international level. Implementing the Convention must be a joint effort of governments, parliaments, domestic courts, civil society and, of course, the Strasbourg Court.

I stand before you today as President of a human rights court which currently has some 75,600 pending applications, 80% of which are repetitive cases or cases in relation to which the case-law is well-established.

Tackling the related question of the docket and execution is critical not only for the sake of individual applicants but also for the long-term health of the Convention system, and its ability to tackle the many grave and new challenges to respect for human rights, democracy and the rule of law emerging in our societies.

I am impatient to hear the contributions of the next distinguished speakers and I am grateful to have had the opportunity to transmit the Court's collective voice here in Riga today.

Thank you for your attention.

[51] Loi n° 2021-403 du 8 avril 2021 tendant à garantir le droit au respect de la dignité en détention. Note that the execution proceedings are still pending before the Committee of Ministers due to the fact that it still remains to be seen how the reforms are carried out at the domestic level, including if the noted legislative amendments will actually be implemented in practice. In this regard, see Committee of Ministers, Decision CM/Del/Dec(2022)1451/H46-11 of 8 December 2022.

[52] *Ēcis v. Latvia*, no. 12879/09, 10 January 2019.

[53] See Committee of Ministers, Resolution CM/ResDH(2022)206 of 22 September 2022.