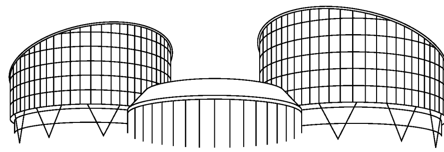

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

10th Meeting of the Heads of the monitoring and advisory bodies of the Council of Europe

Speech by Síofra O'Leary

Strasbourg, 17 January 2023

Secretary General,
Commissioner Mijatović,
Dear Christos,
Ladies and gentlemen,

Firstly, let me thank very warmly the Secretary General for inviting me to take part in the opening session of your 10th meeting.

It is an honour and great pleasure for me, in my relatively new role as President of the European Court of Human Rights, to join you this morning.

I hope that my presence attests to the fact that the Court does not see itself as an isolated body within this vital organisation, a proverbial judicial "ivory tower". We cannot, and do not wish to, operate in an institutional, political or social vacuum. The maintenance of permanent and dynamic relations between the Court and the monitoring and advisory bodies of the Council of Europe is essential to the functioning of the whole organisation.

Former Court Presidents have organised working meetings with you over the last years and I firmly intend to continue this well-established tradition. Indeed, on 7 February I will attend a meeting of GREVIO.

Before I address briefly the three topics chosen for your working groups, let me provide you with an overview of where the Court stands as we enter 2023.

On 1 January 2023, the number of applications pending before the Court was around 74,650, up about 5,000 on last year.

Almost three quarters of our pending cases concern five States: Türkiye with around 20,100 applications; the Russian Federation with around 16,750 applications; Ukraine with 10,400 applications; Romania approximately 4,800 and finally Italy with around 3,550 applications.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Approximately 10,200 of the pending applications are the result of conflicts between two States (Ukraine and Russia; Armenia and Azerbaijan and Georgia and Russia). Moreover, we now have 19 pending inter-State applications, around half of which have been brought against the Russian Federation.

Relying on the case-processing tools which the Court has steadily developed during the Interlaken reform period and beyond, we have ruled on 39,570 applications over the last year; 4,168 of which have given rise to a judgment.

The impact case-processing strategy, introduced in January 2021, is bearing fruit. The idea behind the strategy, which develops the already existing priority policy, is to identify potentially well-founded impact cases which address key issues of relevance for the State concerned or the Convention system in general and which call for speedier processing.

2022 saw the adoption of a number of important impact rulings which in time will no doubt enrich your work. Take, for example, *C. v. Romania*, no. 47358/20,[1] on protection against sexual harassment in the workplace; *M. v France (dec).* no. 42821/18,[2] on "feminising" medical procedures carried out on an intersex person during childhood without the person's knowledge or consent; *Hashemi and others v. Azerbaijan*[3] on the refusal of the national authorities to recognise the Azerbaijani citizenship of the applicants' children; and *Arnar Helgi Lárusson v. Iceland*[4] on the lack of wheelchair access to two public buildings. I will come to the other cases on judicial independence later.

I am conscious that my time this morning is necessarily limited, so let me now turn to the topics of the three workshops:

I. The consequences of the war in Ukraine and the expulsion of the Russian Federation from the Council of Europe

Russia's war in Ukraine is a tragedy first and foremost for that country and its people. More broadly, however it is also a tragedy for Europe and our rules-based system of international law.

As you know very well, the Council of Europe and the Court have taken a number key decisions following the invasion on 24th February last. In two Plenary Resolutions, the Court clarified its residual jurisdiction in relation to Russian applications and the end of the mandate of the judge elected in respect of Russia.

The Court remains competent to deal with applications directed against the Russian Federation in relation to acts and omissions capable of constituting a violation of the Convention provided that they occurred up until 16 September 2022, the date on which that State ceased to be a High Contracting Party to the Convention.

Important Grand Chamber and Chamber cases have been and will be processed by way of a fully reasoned judgment for the benefit of victims and the international legal order, for example cases related to civil society activists and legal questions concerning democratic governance. However, the majority of the 17,000 individual applications pending relate to well-established case-law principles

[1] *C. v. Romania*, no. 47358/20, 30 August 2022.
[2] *M. v. France (dec.)*, no. 42821/18, 26 April 2022.
[3] *Hashemi and Others v. Azerbaijan*, nos. 1480/16 and 6 others, 13 January 2022.
[4] *Arnar Helgi Lárusson v. Iceland*, no. 23077/19, 31 May 2022.

and they will be dealt with in a more summary fashion in accordance with what we call our "WECL" procedures.

A number of important impact cases against Russia have been decided since last February and many more are to come. When I leave you this morning it will be to deliver the Grand Chamber judgment in a case called *Fedotova and Others* on the question of the Russian Federation is obliged under Article 8 to provide some form of legal recognition of same-sex partnerships.[5]

Half of our pending inter-state docket (a record high of 19 applications) concerns Russia. Of those cases, two date from events in Crimea and Eastern Ukraine in 2014 are pending before the Grand Chamber.[6] A decision in relation to the admissibility of the latter case, which also concerns the downing of Malaysia Airlines Flight MH17 will be delivered next week.[7]

It is hoped that the remaining four inter-State cases, including the 2022 application introduced after the invasion in which 26 Member States have sought leave to intervene, will be communicated in the coming months.[8]

These important inter-State cases, as all the pending inter-State cases, are a top priority for the Court. Indeed, we have put in place a Conflicts Unit within the Registry which coordinates the conflicts related inter-State work and have moved more human resources to deal with the huge files and volume of evidence entailed in these cases.

II. Relations between the Council of Europe and the European Union

Étant une Présidente irlandaise qui défend fortement le bilinguisme à la Cour et au Conseil d'Europe, je tourne, en français, vers la question des négociations actuellement en cours sur l'adhésion de l'Union européenne à la Convention.

Comme vous le savez sans doute, ces négociations ont bien progressé ces derniers temps, à tel point qu'elles approchent du but et qu'il ne reste plus qu'une petite poignée de questions – certes très délicates – en suspens.

Aussi j'en appelle à toutes les parties concernées afin que, sur cette dernière ligne droite, elles redoublent d'efforts en vue de surmonter ces derniers obstacles. Il serait en effet extrêmement dommage de se priver définitivement de la plus-value qu'apporterait l'adhésion de l'Union européenne à la Convention.

En effet, cette plus-value est non seulement juridique, elle est aussi politique et symbolique. Elle est juridique, parce qu'aucun système juridique, pas même celui de l'Union européenne, ne saurait aujourd'hui encore se targuer d'être à l'abri de dérives, petites ou grandes, que le contrôle externe exercé à Strasbourg au nom des droits de l'homme est précisément destiné à détecter et prévenir. La jurisprudence nous en livre de nombreux exemples, y compris des exemples qui concernent le droit de l'Union.

Mais la plus-value d'une adhésion de l'Union européenne serait aussi politique et symbolique, puisque cette adhésion marquerait la volonté politique des dirigeants européens de rester unis sur

[5] *Fedotova and Others v. Russia* [GC], nos. 40792/10 and 2 others, 17 January 2023.
[6] For an overview of the interstate cases, see https://www.echr.coe.int/Pages/home.aspx?p=caselaw/interstate&c.
[7] *Ukraine and the Netherlands v. Russia*, nos. 8019/16, 43800/14 and 28525/20.
[8] *Ukraine v. Russia* (re Crimea), nos. 20958/14 and 38334/18; *Ukraine v. Russian Federation* (VIII), no. 55855/18; *Ukraine v. Russian Federation* (IX), no. 10691/21; *Ukraine v. Russia* (X) (no. 11055/22).

les droits de l'homme et de prévenir leur fragmentation. A l'heure où une guerre dévastatrice fait à nouveau rage en Europe, entraînant dans son sillage les violations les plus graves des droits de l'homme, cette unité politique autour d'un socle commun des droits de l'homme est plus que jamais nécessaire.

III. The challenges presented by democratic backsliding

Finally, I would like to address the topic of your last workshop – the challenges presented by democratic backsliding - from a slightly different angle. I have chosen a Grand Chamber judgment from 2022 to showcase how the Court promotes the rule of law and democratic governance drawing inspiration from and reliance upon your work - the work of the Council of Europe, and in particular its monitoring and advisory bodies.

The case is *Grzęda v. Poland*,[9] delivered on 15 March 2022. The case forms part of a series of impact judgments from 2021 and 2022 which deal with the rule of law crisis in Poland and in particular the reorganisation of the judicial system. Here I am thinking of the judgments in *Xero Flor*,[10] *Broda and Bojara*[11] and *Reczkowicz*[12] from 2021 and *Advance Pharma,*[13] *Żurek*[14] and *Juszczyszyn*[15] (which is not yet final) from 2022.

The *Grzęda* case concerns the applicant judge's removal from the National Council of the Judiciary (NCJ) before his term had ended and his inability to seek judicial review of that decision.

In making its assessment, the Court takes into account a raft of international law standards. For today's purposes I would like to highlight the multiple reports and assessments by Council of Europe bodies which are not merely cited but relied upon heavily in the reasoning – the reports and opinions of the Venice Commission including a 2020 joint Opinion prepared with DG1;[16] a 2019 monitoring visit report of the Commissioner; several reports and opinions of the Consultative Council of European Judges (CCJE), including an Opinion of the Bureau of the CCJE from 2017 on draft Polish legislation on the National Council for the Judiciary,[17] and a 2019 GRECO report.[18]

The Court – in coming to its finding of a violation of Article 6 § 1, specifically relies on the fact that numerous Council of Europe bodies had consistently supported the view that the judicial members of the NCJ were entitled to serve a full term of office (§ 284 of the judgment).

Moreover, in the related *Żurek* case, when finding a violation of the applicant judge's freedom of expression, the Court relies on Council of Europe findings to corroborate the applicant's claims that there was a causal link between the punitive measures taken against him and his activities as spokesperson of the NCJ and critic of the Polish judicial reforms (§ 211 of the judgment).

---

[9] *Grzęda v. Poland* [GC], no. 43572/18, 15 March 2022.
[10] *Xero Flor w Polsce sp. z o.o. v. Poland*, no. 4907/18, 7 May 2021.
[11] *Broda and Bojara v. Poland*, nos. 26691/18 and 27367/18, 29 June 2021.
[12] *Reczkowicz v. Poland*, no. 43447/19, 22 July 2021.
[13] *Advance Pharma sp. z o.o v. Poland*, no. 1469/20, 3 February 2022.
[14] *Żurek v. Poland*, no. 39650/18, 16 June 2022.
[15] *Juszczyszyn v. Poland*, no. 35599/20, 6 October 2022.
[16] Joint urgent opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on Amendments to the Law on the Common Courts, the Law on the Supreme Courts and Some Other Laws of 18 June 2020, CDL-AD(2020)017, available at https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2020)017-e.
[17] CCJE Bureau Opinion on the Draft Act on the NCJ submitted by the President of Poland of 12 October 2017, CCJE-BU(2017)9REV, https://rm.coe.int/opinion-of-the-bureau-of-the-ccje-on-the-draft-act-of-september-2017-p/168075ddf0.
[18] GRECO report adopted at its 84th Plenary Meeting (2-6 December 2019), GrecoRC4(2019)23.

These concrete examples from the case-law demonstrate how your work constitute more than mere background to our judicial decision-making. Your work informs our judicial reasoning. We of course also like to see how our case-law can inspire your own work; I refer, for example, to a new Opinion on freedom of expression of judges,[19] adopted by the CCJE on 2nd December last year, which refers to the very same *Żurek* case.

Let me conclude by saying that increasing and strengthening the dialogue between us will allow for an even greater synergy between the work of the Court and the Council of Europe monitoring and advisory bodies.

We know that the Convention system faces many challenges: democratic and rule of law backsliding; an environmental crisis which has prompted difficult and ground-breaking pending climate change litigation; the increased polarisation of our societies which the cost of living crisis is likely to exacerbate further and, critically, a war on European soil.

It is clear that through cooperation and dialogue we will be in a better position to surmount these challenges together and safeguard the Convention system so it continues to benefit future generations.

Once again, thank you for the invitation to address you. I wish you an excellent day's work.

[19] CCJE Opinion No. 25 (2022) on expression of judges, 2 December 2022, available at https://rm.coe.int/opinion-no-25-2022-final/1680a973ef%0A%0A.