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

Exchange of views with the Committee of Ministers

Speech by Síofra O'Leary

13 April 2023

Madame la présidente du Comité des Ministres,

Monsieur le Secrétaire général adjoint Berge,

Madame la Secrétaire générale Chatzivassiliou-Tsovilis,

Mesdames et messieurs les ambassadeurs,

C'est un honneur et un plaisir de m'adresser à vous ce matin en ma qualité de présidente de la Cour européenne des droits de l'homme, presque six mois après avoir accédé à cette fonction.

En novembre dernier, l'Irlande et l'Islande ont effectué un « chassé-croisé » à la présidence du Comité des Ministres, tandis que l'Islande et l'Irlande faisaient de même, dans le sens contraire, en ce qui concerne la présidence de la Cour.

En tant que présidente, je me suis concentrée et je continuerai à me concentrer sur sept priorités principales :

- Accélérer le traitement des affaires au niveau de la Grande Chambre ;
- Consolider la stratégie impact au niveau des chambres ;
- Améliorer la manière dont nous exploitons nos outils pour un traitement rapide - et économe en termes de ressources - des affaires répétitives ;
- Déployer les outils conçus pour le traitement de notre stock russe après l'expulsion de l'État défendeur ;
- Accélérer et coordonner les affaires interétatiques pendantes qui concernent, en particulier, la situation en Ukraine, et
- Dans la mesure du nécessaire à l'heure actuelle, veiller à ce que la Cour soit prête à une possible adhésion de l'UE à la Convention.

  A cet égard j'observe que des questions liées au droit de l'Union soulevées dans des affaires devant nous deviennent plus nombreuses et plus complexes.

Certes, il s'agit d'un programme ambitieux. Toutefois, en prenant le bâton présidentiel je me suis penchée vers une forme de gouvernance moins centrée sur la personne qui occupe ce poste que sur les effets à long terme de son œuvre en faveur de la Cour et du système conventionnel.

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L'importance de nos discussions régulières et fructueuses va sans dire, aussi bien au sein du Comité des Ministres que dans le cadre des nombreux échanges bilatéraux constructifs que j'ai eus avec un grand nombre d'entre vous depuis que j'ai pris mes fonctions.

Je tiens à remercier en particulier la présidence islandaise – l'ambassadrice Ragnhildur Arnljótsdóttir et son équipe – pour leur excellent travail au cours des derniers mois, en cette période cruciale pour le Conseil de l'Europe et pour le multilatéralisme européen en général.

Le 4e Sommet sera un moment décisif pour l'organisation et je suis heureuse de représenter la Cour en Islande à cette occasion.

La coopération de la Cour avec la présidence islandaise actuelle s'est également manifestée à la fin du mois de mars, sous la forme d'un séminaire organisé conjointement avec le Service de l'exécution. Le séminaire portait sur le dialogue entre nos deux organes relativement à un sujet essentiel pour l'effectivité du système conventionnel : à savoir l'exécution des arrêts de la Cour.

La véritable valeur ajoutée de ce séminaire était de rassembler un grand nombre de juges de la Cour, d'ambassadeurs et d'agents du Conseil de l'Europe, permettant ainsi un échange de connaissances, de points de vue et d'expériences. De telles discussions concernant l'exécution doivent se poursuivre et elles se poursuivront sous une forme ou sous une autre, toujours respectant le caractère différent de nos fonctions.

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Aujourd'hui, je voudrais vous informer de l'activité de la Cour au cours des six derniers mois.

J'ai le plaisir d'être accompagnée par le Greffier adjoint, Abel de Campos, ainsi que par des membres de mon Cabinet, dont Stefano Piedimonte-Bodini, qui a pris la relève de Patrick Titiun.

I. Statistiques

Commençons, comme il est d'usage, par quelques statistiques.

À ce jour, il y a 76 400 requêtes pendantes devant la Cour. Ce nombre est en augmentation par rapport au nombre de requêtes pendantes à la fin de l'année 2022[1] et de l'année 2021[2], respectivement de 2 000 et de 6 000 requêtes.

[1] 74 650
[2] 70 150

Les principales raisons de cette augmentation sont l'arrivée d'un nombre considérable de nouvelles requêtes concernant la suite de la tentative de coup d'État survenue en Türkiye en 2016, ainsi que des pics d'affaires d'immigration et d'asile provenant par exemple de Grèce et de Belgique.

En 2022, la Cour a statué sur près de 39 600 requêtes, ce qui représente une augmentation de 10 % par rapport à 2021.

Elle a en particulier rendu des arrêts concernant 4 168 requêtes (soit une augmentation de 33 % par rapport à 2021). Une grande partie de ces requêtes étaient jointes. En effet, le traitement groupé des affaires est un signe de l'efficacité de la Cour lorsqu'il s'agit de faire face à un grand nombre de requêtes.

Depuis le début de l'année 2023, la Cour a statué sur plus de 8 150 requêtes. Des arrêts ont été rendus relativement à 1 254 requêtes. Des comités de trois juges se sont prononcés sur 1 143 requêtes et les juges uniques sur près de 5 700 requêtes.

Près des trois quarts des requêtes pendantes sont dirigées contre cinq pays, les cinq mêmes que j'ai mentionnés dans mon discours lors de l'audience solennelle en janvier.

Il s'agit, en ordre décroissant, de la Türkiye, avec environ 22 650 requêtes, de la Fédération de Russie, avec environ 16 150 requêtes, suivie par l'Ukraine, avec approximativement 9 900 requêtes, puis de la Roumanie et de l'Italie, avec respectivement 4 500 et 3 650 requêtes.

88 % des requêtes prioritaires pendantes – qui sont plus de 23 000 – proviennent de 6 pays, à savoir la Russie (34 %)[3], la Türkiye (19 %)[4], la Roumanie (13 %)[5], l'Ukraine (8 %)[6], la Grèce (7 %) et la Belgique (7 %)[7]. Les affaires prioritaires peuvent, dans certains pays, être également des affaires répétitives. Ce qu'il faut – ainsi que nous l'avons dit à maintes reprises –, ce sont des solutions durables au niveau national pour éviter que la Cour ne soit confrontée à une telle charge.

Près de 10 000 requêtes pendantes concernent un conflit entre deux États (Russie/Ukraine, Arménie/Azerbaïdjan et Géorgie/Russie). Ces requêtes sont particulièrement complexes et elles nécessitent des efforts spécifiques, en particulier en ce qui concerne le personnel et les ressources que l'on y consacre. Comme cela vous a été indiqué lors de la réunion d'octobre dernier, nous avons créé au sein de la Cour une unité spécifique, l'unité des conflits, pour traiter ces requêtes.

[3] Dans le cas de la Russie, ces requêtes portent principalement sur les conditions de détention et sur des privations de liberté irrégulières.

[4] Dans le cas de la Türkiye, ces requêtes portent principalement sur des privations de liberté irrégulières.

[5] Dans le cas de la Roumanie et de la Grèce, ces requêtes portent principalement sur les conditions de détention.

[6] Dans le cas de l'Ukraine, ces requêtes portent principalement sur des mauvais traitements et sur des privations de liberté irrégulières dans la région du Donbass et en Crimée.

[7] Les requêtes récemment introduites contre la Belgique portent sur des mauvais traitements dans le contexte de l'immigration.

Il y a actuellement 15 affaires interétatiques pendantes devant la Cour (qui concernent 19 requêtes). C'est malheureusement un record absolu.

En cette période de préparation du 4e Sommet, où les questions de responsabilité seront au cœur de vos discussions, il convient de rappeler que la Cour est la seule juridiction internationale qui traite les questions qui se posent en matière de droits de l'homme relativement à la guerre en Ukraine.

C'est aussi la seule juridiction qui examine actuellement, sur le fond, les événements survenus en Ukraine de 2014 jusqu'à l'invasion en février 2022 et au-delà.

Permettez-moi de vous dire que le rôle de la Cour – de votre Cour –, qui se trouve de l'autre côté du canal, ne doit pas être négligé, en particulier dans toute déclaration sur la responsabilité qui pourrait résulter du Sommet de mai.

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II. Impact case-processing strategy

The impact case-processing strategy, which was launched two years ago, is now bearing fruit.

As you know, this strategy builds upon and strengthens the priority policy adopted by the Court in 2009 and amended in 2017.

Impact cases do not concern core rights, such as those protected by Articles 2 and 3 of the Convention and prioritised for that reason. They nonetheless raise very important legal issues of relevance for the State in question or for the Convention system as a whole. This justifies rapid identification and more expeditious case-processing than was previously the case.

As of the beginning of 2023, 429 applications have been identified as "impact" cases. Approximately three quarters of these have already been communicated to your governments. Last year 219 "impact" applications were processed, leading to 111 impact judgments, 21 impact decisions and the remaining applications were communicated.

To give you a flavour of some recent impact rulings. Take, for example, *Mortier v. Belgium*,[8] concerning the operation of the legal framework authorising euthanasia; *Darboe and Camara v. Italy*,[9] on age-assessment procedures in the context of asylum, *C. v. Romania*, no. 47358/20,[10] on protection against sexual harassment in the workplace; *Bouton v. France*,[11] on protest action concerning the issue of abortion, or *Mørck Jensen v. Denmark*,[12] concerning a Danish national prohibited from entering and staying in areas in which a terrorist organisation was a party to an ongoing armed conflict (the al-Raqqa district in Syria). Additionally, three Polish cases, *Advance Pharma,*[13] *Żurek*[14] and *Juszczyszyn*[15] addressed crucial issues of judicial independence, adding to our rule of law jurisprudential toolbox.

[8] *Mortier v. Belgium*, no. 78017/17, 4 October 2022.
[9] *Darboe and Camara v. Italy*, no. 5797/17, 21 July 2022.
[10] *C. v. Romania*, no. 47358/20, 30 August 2022.
[11] *Bouton v. France*, no. 22636/19, 13 October 2022.
[12] *Mørck Jensen v. Denmark*, no. 60785/19, 18 October 2022.
[13] *Advance Pharma sp. z o.o v. Poland*, no. 1469/20, 3 February 2022.

Throughout 2023 we will communicate and adjudicate impact cases as expeditiously as we can.

Climate change cases are also good examples of pending, relinquished "impact" cases. The Court held hearings in two Grand Chamber cases: *Verein Klimaseniorinnen Schweiz and Others v. Switzerland* (application no. 53600/20) and *Carême v. France* (application no. 7189/21) just two weeks ago; both of which attracted unprecedented legal and media attention.

A hearing in *Duarte Agostinho and Others v. Portugal and 32 Others* (application no. 39371/20) is planned for September. These are legally complex and challenging cases. For that reason, the Court welcomed third party interventions from a variety of UN and civil society bodies, but also from 8 Council of Europe States, which intervened in the Swiss case. Other pending climate applications, including three against multiple member states, have been adjourned pending examination of the cases I have just mentioned.[16]

As regards such third-party interventions, you will have seen that the Court both amended the relevant Rules of Court and recently issued a Practice Direction so that provision for such interventions proceeds in the most transparent manner possible.

III. The developments in relation to the processing of the pending Russian cases, including inter-State cases

Russia's war in Ukraine is a tragedy first and foremost for that country and its people. As we in this Chamber are acutely aware, it is also a tragedy for Europe and for our rules-based system of international law.

Since handing down its two Plenary Resolutions in 2022, the Court has sought to clarify how, as a Court of law which respects due process, it will engage with the Russian Federation as a respondent State, but one which is no longer a High Contracting Party. In addition, this is a respondent State which has ceased to cooperate with the Court despite its continued obligations pursuant to the Convention and the Rules of Court.

In a series of Grand Chamber and Chamber judgments delivered from January 2023 onwards, we have explained:

- what is meant by and the legal basis for our residual jurisdiction;
- the mechanism for choosing *ad hoc* judges from amongst sitting judges in the absence of a judge elected in respect of Russia or a valid ad hoc list; and
- that the Court may proceed with examination of applications even when the respondent State refuses to cooperate.

We have clarified what is, in essence, a default judgment procedure. The failure of a respondent State to participate effectively in the proceedings does not automatically lead to acceptance of an applicant's claims.

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[14] *Żurek v. Poland*, no. 39650/18, 16 June 2022.
[15] *Juszczyszyn v. Poland*, no. 35599/20, 6 October 2022.
[16] Status of climate applications before the European Court

The Court must be satisfied by the available evidence that a claim is well-founded in fact and law.[17] However, lack of cooperation does not mean that our Convention examination is automatically stymied.

Approximately 12,000 of the pending applications against Russia raise legal questions in relation to which the Court's case-law is already well-established.

These cases are being notified to the parties and processed in a simpler manner using case-processing tools which the Court has developed to deal with repetitive cases of this nature.

We have established a timetable for this work and three judge committees across all five sections to share the case-processing burden. Between 26th January and 1st April 2023, almost 3,000 applications have been communicated, and over 750 applications have produced a judgment or decision.

More important or novel Russian cases – and specifically those relating to questions of democratic good governance, or the erosion thereof - are being examined by Chamber formations and determined by way of fully reasoned decisions and judgments.

This is the "middle ground" approach which I and my predecessor have previously outlined.

There are eight inter-State cases pending concerning Russia.[18] We have prioritised those relating to the conflict in Ukraine. The 2022 case - in which 26 Member States have been granted leave to intervene as third parties - has been joined to the case concerning eastern Ukraine and the downing of flight MH17. This is with a view to a rolled-up hearing on admissibility and merits when possible.

In the *Ukraine v Russia (Crimea)* case we hope to hold a hearing on the admissibility and merits on 8 November together with other applications on political prisoners[19] and the transfer of prisoners[20].

To achieve this progress, resources have had to be moved from ordinary or impact case-processing to interstate and conflicts cases, a point to which I will return later if needed.

IV. Outreach

One important aspect of my outreach role as President of the Court is to pay official visits to superior courts and members of government in the member States.

In February, I visited Croatia, accompanied by the national judge, Davor Derenčinović, and the Registrar.

I would like to thank the Croatian authorities and Ambassador Toma Galli for their precious assistance in organising an excellent mission. As a quick aside, I would like to compliment the Secretary General on her beautiful country and its people.

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[17] See, for example, *Fedotova and Others v. Russia [GC], nos. 40792/10 and 2 others, 17 January 2023*; *Ukraine and the Netherlands v. Russia [GC] nos. 8019/16, 43800/14 and 28525/20)*, 30 November 2022 and *Kutayev v. Russia, no. 17912/20, 24 January 2023* and *Svetova and Others v. Russia*, *no. 54714/17,* 24 January 2023.

[18] *Georgia v. Russia (II)* (Article 41 – just satisfaction); *Georgia v. Russia (IV); Ukraine v. Russia (re Crimea); Ukraine and the Netherlands v. Russia; Ukraine v Russia (VIII); Ukraine v. Russia (IX); Russia v. Ukraine; Ukraine v. Russia (X).*

[19] no. 38334/18.

[20] no. 20958/14.

I also thank in advance the permanent representations of Latvia, Spain and Moldova as we prepare for missions to these countries in the autumn and winter.

The Court is regularly hosting delegations of judges from member States' superior courts. In 2023, we will host, in Strasbourg, judicial delegations from the Czech Republic, Norway, Hungary, Spain, Slovenia and Sweden.

On 22nd March last, I addressed the 44th session of the Congress of Local and Regional Authorities of the Council of Europe. It was the first time that a President of the Court had addressed elected representatives of the Congress during one of their sessions and I am confident that we will be able to foster further fruitful exchanges. The President of PACE has also kindly invited me to address parliamentarians at their session later in April.

The symbolism of gathering in the parliamentary hemicycle on the other side of the River Ill was important; not least for someone like myself, who has spent most of their professional life in two European courts. As I stated in my opening words to Congress, creating more deliberate and productive synergies between the Council of Europe and the European Union can only lead to a more harmonised European political and legal space and, with it, to greater peace and stability.

At the Court we continue to attach great importance to the maintenance of permanent and dynamic relations between us and the monitoring and advisory bodies of the Council of Europe. I addressed the heads of the Council of Europe's monitoring and advisory bodies at their 10th meeting in January this year and participated in an exchange of views with GREVIO in February. A number of exchanges are planned with other bodies in the coming months, not least ECRI and GRECO.

Beyond Europe I have exchanged online with Judge Saburo Tokura, Chief Justice of the Supreme Court of Japan, hosted a delegation of judges from the Court of Justice of the Economic Community of West African States (ECOWAS) last month and in May, a judicial delegation from the Court will attend the Third International Human Rights Forum organised by the Inter-American Court of Human Rights in the framework of tripartite judicial dialogue with that Court and the African Court of Human and Peoples' Rights.

In March, the Court finally welcomed Judge Arnardóttir from Iceland and just this morning I swore in, online, Judge Bormann from Denmark.

As you know, the selection and election of judges and the situation of judges post-mandate remains a concern for the Court. On the first topic, I have had exchanges with the Secretary General of PACE and will meet with the Advisory Panel in June. On the second, the Court's Status Committee continues to work on relevant questions and it is envisaged that a delegation of three Judges will address a CDDH sub-group at their next meeting in May.

V. The Court's Memorandum for the 4th Summit

As regards the 4th Summit, we are all conscious of the fact that the Heads of State and Government will meet when the Council of Europe is at a historical crossroads.

You have received a copy of the Court's memorandum in preparation for the Summit in which we focus on four issues – safeguarding the Convention system, resources, accountability, and execution.

All four issues are intrinsically linked:

- As regards **recommitting to the Convention system**, let's not forget that for over 60 years the Court has dealt with well over 1 million applications and handed down almost 26,000 judgments.
Those judgments have saved many lives, transformed many thousands of others and contributed to positive societal changes across our member States.

- On the subject of **resources**, I have been vocal because, as President of the Court, I need to convey firmly but fairly the reality of our situation.
We need sufficient and sustainable financial resources to enable the Court to exercise effectively our judicial function and handle the caseload expeditiously.

To borrow the terminology of the draft declaration which I have seen, as things stand, our "statutory functions" are not covered by our ordinary or extraordinary budget.

In Reykjavik I would ask you to translate the discourse of values into material and political support.

In the meantime, let me thank warmly Norway, the Czech Republic, Slovenia, Ireland, the Netherlands, the Slovak Republic, Malta, Germany, Sweden, Spain, Portugal, France[21] and Cyprus for their recent voluntary contributions. I would also like to thank those member States which have seconded officials to the Registry of the Court.

- As regards **accountability**, as I stated in my message for the Council of Europe's visibility project, the Convention is a unique and precious model of international justice.

Other national and international courts will engage with events in Ukraine in due course.

As I mentioned earlier, however, the Strasbourg court is already fully seised. It is striking that the draft political declaration overlooks this.

- In relation, lastly, to **execution**, there is a direct and proportionate relationship between execution of judgments and compliance with Convention obligations on the one hand and the size of the Court's docket on the other.

As indicated in the memorandum, over 80 % of the current docket is made up of repetitive cases or ones in relation to which Convention standards and case-law are clear.

The Court clearly supports your emphasis on execution; but, let me remind you – before execution you need judicial adjudication.

The impetus for the drafting of the Convention and the establishment of the Court lay in the atrocities committed during the Second World War, following the erosion of democracy and the rule of law in the aggressor States.

The raison d'être remains as relevant in 2023 as it was when Churchill spoke so inspiringly in the late 1940s.

[21] France and Ireland contributed to the joint project between the Court and the Directorate General of Human Rights and the Rule of Law on "Enhancing Subsidiarity: Support to the ECHR Knowledge-sharing and Superior Courts Dialogue", in particular with regard to the Court's Knowledge Sharing platform (ECHR-KS).

The Court is always mindful of constructive comments designed to better its functioning. Throughout the Interlaken reform process the judges and the Registry have worked unremittingly to improve internal procedures and respond to the demands of successive Intergovernmental conferences.

However, it is important that you keep in mind the extent to which attacks on the Court at the highest political level in certain member States damage the authority and integrity of the Convention system as a whole. If that is not the intention; it may be the effect.

Since respect for the rule of law is premised on respect for an independent and autonomous judiciary, such attacks are unacceptable and should be condemned in the strongest terms.

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Before concluding, let me ask you to save the date of Friday 13th October. We will host a half day seminar to mark the 5th anniversary of the entry into force of Protocol No. 16.

The aim is to take stock of how the advisory opinion mechanism is operating in practice and to reflect on how we can improve the mechanism and the judicial dialogue it seeks to foster for the future.

Judges from States which have ratified the protocol, and those from States which have not yet done so, have been invited. I'm pleased to announce that this morning I delivered the sixth advisory opinion following a request from the Supreme Court of Finland. The opinion was handed down just over sixth months after the request was lodged.

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Dear ambassadors,

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 climate change litigation; the increased polarisation and democratic erosion of our societies which Covid and the cost-of-living crisis have likely exacerbated 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 our societies and future generations.

I thank you most sincerely for your attention and hope to be able to answer your questions as clearly as possible.