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

Intervention before the Committee of Ministers

Speech by Síofra O'Leary

14 June 2023

President of the Committee of Ministers,

Dear Ambassadors,

When I addressed you on the 13th of April last, the road to Reykjavik had been traced but not yet fully constructed.

The run up to the Fourth Summit was a complex exercise for all parties involved. Your efforts, as representatives of our 46 member States, to find common ground and make that exercise a success, are to be highly commended.

Building notably on the contributions from, amongst others, PACE, the Commissioner for Human Rights and the Court, under the skilled Icelandic presidency, you have managed to find the right alchemy and to produce a historical declaration which we hope will mark the 21st century in Europe and beyond.

You are here today to take stock and reflect on how the Council of Europe should translate the commitments undertaken into legal and operational terms. On behalf of the Court, I thank you for having asked for our input.

I will limit myself to the four pillars of the Court's memorandum which I will address in this order: 1) accountability; 2) execution; 3) resources and 4) safeguarding the Convention system.

As regards, firstly, **accountability**, the Court continues to deal with over 15,000 individual applications lodged against the Russian Federation. Since the beginning of the year, over 1,500 communicated cases have been decided by committees of three judges and over 4,000 cases have been communicated. Leading judgments in cases such as *Fedotova*, on recognition of same-sex couples, *Navalnyy*, concerning the applicant's poisoning, and *S.P. and others*, on the caste system in prisons, have been handed down.

The challenge will be, in line with the Reykjavik declaration, to develop a means to execute judgments in relation to a non-cooperating respondent State which is no longer a High Contracting Party.

As regards the inter-State cases pending against the Russian Federation, as I have explained on other occasions, the Court is the only international court which is examining, at the merits stage, events in Ukraine dating back to 2014 and up to the full-scale invasion in February 2022. These cases are extremely complex cases from both a factual and legal perspective. They have to be assigned to experienced lawyers and a significant effort has been made in order to allocate sufficient resources to those cases; resources which are therefore unavailable elsewhere.[1]

In short, the exercise of residual jurisdiction comes at a cost.

Special committees have been set up across the five Sections and sitting judges replace the former judge elected in respect of the Russian Federation, acting as ad hoc judges in these cases.

Judicial and registry time is diverted from "impact" cases. Our essential endeavour over the last two years to bring case-processing time down for such cases cannot bear fruition without the experienced lawyers needed to prepare the cases for judicial consideration and deliberation.

As I have explained to many of you in bilaterals, it is essential that the Court can exercise both its judicial function in these interstate and individual conflicts cases and its judicial function in "regular" Convention cases which are of central importance to the defence of democracy, the rule of law and fundamental rights in all our 46 States.

On the second pillar, **execution**, which has been given a prominent place in Appendix IV, it too is of paramount importance when it comes to safeguarding and strengthening the Convention system as a whole.

80 % of the Court's docket, as we have explained, is composed of repetitive cases or others in which the case-law is well-established and easily applicable by national judges.

Given this figure, it is clearly essential to reinforce institutional dialogue between the Court and the Committee of Ministers. Such dialogue must of course respect the separation of powers, as I indicated in response to a question posed here in April.

Admittedly, responsibility for the execution of the Court's judgments lies primarily with the Committee of Ministers. The Court's role is judicial. Its indications under Articles 41 and 46 of the Convention when it gives a judgment are the primary way to help States when it comes to execution.

[1] To give you a sense of their complexity, as many as 31 third parties, including 26 member States, have been granted leave to intervene in the proceedings in the case of *Ukraine and the Netherlands v. Russia (Application nos. 8019/16, 43800/14, 28525/20 and 11055/22*) concerning the 2022 invasion, events in Eastern Ukraine and the downing of Malaysia Airlines flight MH17. In parallel, a hearing in the case of *Ukraine v. Russia*, which relates to Crimea, will be held on 8 November. Every effort will be made to deliver the judgment as soon as possible thereafter.

It is not surprising that successive chairmanships of the Committee of Ministers, including now Latvia,[2] have singled out the execution of Court judgments as a priority theme.

A seminar organised at the Court in March, in the framework of the Icelandic Presidency, brought together different execution stakeholders (Judges, Ambassadors, staff from the execution department, CM Secretariat and Registry) and looked at ways to increase synergies between them. Strengthening our institutional dialogue would benefit all concerned and the boost provided by Appendix IV should ensure that it continues in the right direction.

Moving to the Court's third point, we are grateful for the express recognition that "current resources are insufficient and unsustainable to deal with the influx of new and pending applications, including inter-State cases". You and we now have a concrete commitment to the **allocation of sufficient and sustainable resources** to enable the Court to exercise its judicial functions effectively and expeditiously.

The Court thanks wholeheartedly the Governments of Croatia, Cyprus, the Czech Republic, France, Ireland, Italy, Monaco, Norway, Portugal and Sweden for the voluntary contributions received or pledged since the beginning of the year.

Such contributions help us to strengthen the sectors which are most in need of case-processing lawyers at a particular point in time.

By their very nature, however, they are designed to finance targeted projects of limited duration.

To give you a concrete example, in 2022, the monthly salaries of 27 different lawyers were funded through voluntary contributions. But short-term and non-renewed or non-renewable financing does not allow for effective case management in the medium to long-term.

The Court is, in essence, performing at least four functions under one roof – filtering out annually over thirty-five thousand inadmissible cases, dealing with thousands more repetitive ones, providing legal responses to a conflict-torn continent in a handful of complex interstate and over 10,000 related individual cases, while trying to provide rigorous legal responses to the new climate, technological, democratic and socio-ethical challenges of our time; all the while preparing for *possible* EU accession.

It is essential – and the Court's requests have been already circulated to you – to have resources allowing us to meet our needs, which means an increase in real terms of the Ordinary Budget.

[2] Under the auspices of the Latvian presidency, we will have the opportunity in September 2023 to reflect further on the challenges posed by execution in the context of a conference on the "Role of the Judiciary in the execution of the judgments of the European Court of Human Rights".

I would therefore implore you to stand by the commitment to sufficient and sustainable financing in the budgetary round which has just commenced. The spirit of Reykjavik will then be translated into concrete material support.

President Kārkliņš,

Dear Ambassadors,

I come to my fourth and final point.

In Reykjavik, the Heads of State and Government have reaffirmed their deep and abiding commitment to the Convention and the Court as the ultimate guarantors of human rights across our continent. The Convention system means we exercise our shared responsibility alongside domestic democratic and judicial systems.

Respecting and implementing the Court's judgments and decisions is crucial for the proper functioning of the Convention system and for preserving the authority of the Court.

In an increasing number of places, those judgments and decisions, including decisions on interim measures, are questioned at the highest political level. Criticism starts with points of process and then moves on to legal basis and legitimacy. We understand that your rejection in Appendix IV of "attacks at high political levels on the rights protected by the Convention and the judgments of the Court seeking to safeguard them" is also a defence of the Strasbourg judges whose duty it is to interpret and apply the Convention and ensure its cornerstone, the right of individual application, remains effective.

Such attacks seek, advertently or inadvertently, to weaken the Court's authority at the very moment when that authority is more needed than ever.

Thank you for your attention.