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"

Statement by Ambassador Anna Jóhannsdóttir
Director General for the Directorate for Legal and Executive Affairs
Ministry for Foreign Affairs of Iceland

Strasbourg, 23 March 2023

Madam President, Excellencies, colleagues.

It is a pleasure for me to be with you here today and we are grateful to the Court and the Department for the Execution of Judgments for organizing today's seminar with us.

Seeing so many of you here shows the importance of clear and concise institutional dialogue between the Convention institutions. It is certainly central to ensuring the protection of the rights under the Convention.

It is a priority of the Icelandic Presidency of the Committee of Ministers to be united around our values of human rights, democracy and the rule of law. This priority echoes the preamble of the European Convention of Human Rights which considers that greater unity between Council of Europe members is to be pursued through the protection of the human rights and fundamental freedoms found in the Convention.

The Convention system with the Court's judgments and their enforcement is unique. It is the Court's well-established case-law that the Convention is intended to guarantee - not rights that are theoretical or illusory - but rights that are practical and effective. These principles extend equally to the execution process.

Indeed, as Protocol No. 14 underlined, rapid and full execution of the Court's judgments is vital - for the protection of the applicant's rights but also as the Court's authority and the system's credibility depend to a large extent on the effectiveness of this process.

Given the importance and uniqueness of Article 46, it is perhaps interesting to take a moment to look back at some of the contemporary discussions concerning its framing.

In February 1949, the International Council of the European Movement Presided over by Duncan Sandys[1] adopted a series of Recommendations which inspired the founding texts of the Council of Europe and the Court, and which are detailed in the *travaux préparatoires* to the Convention.

1. The European Movement was formally created on 25 October 1948. Duncan Sandys the British politician was elected President. Léon Blum, Winston Churchill, Alcide De Gasperi and Paul-Henri Spaak were elected Honorary Presidents.

There was some discussion recorded in the preparatory works of what was conceived by the European movement as Article 14, and which contained a provision foreshadowing what is now Article 46 paragraph 4.
It anticipated that "in the event of a failure to comply with a judgment for the Court, the matter shall be brought before the council of Europe which shall take such action as it may consider appropriate"[2].
Article 14 was not taken into the Convention but the justification for it in the Recommendations of the European Movement illuminates some of the contemporary concerns about respect for the Court's judgments:

> In part"(b) Examination of criticisms:
>
> part 6.[the criticism is that] **Since there exists as yet no international police force to execute its judgments, the Court will, it is said, prove impotent and ineffective**
>
> ….
>
> [the reply is that] Governments will be reluctant to be regarded as violators of their people's liberties and will usually prefer to comply with the judgments of the Court, even if they do not always agree with them, rather than face the loss of popularity and electoral support which refusal would probably involve. With this in mind, the framers of the Draft Convention have included in Article 11 the provision that every signatory State 'must, by all means available to it, ensure the widest possible publicity for the judgments of the Court and for any statements published by the Commission'.
>
> States in which democracy has been completely overthrown and in which an absolute dictatorship has been established, admittedly present a much harder problem. However it must be remembered that it is rare indeed for a democratic country to go over to a totalitarian system in a day. There is almost always a period during which liberty is being progressively curtailed. It is in this critical transition stage that the publication of the Court's judgments could exercise such an importance and perhaps even a decisive influence.
>
> …".

It seems clear that the importance of the Court's judgments having a meaningful impact was a concern from the beginning of the process.
Later, the drafters of the Convention also indicated the importance of the Court's judgments having an effect and that States would have agreed to the jurisdiction of the Court and so would respect its decisions[3].

When discussing Article 50, which later became Article 41, Mr Teitgen of France[4], complained about the Committee's attempts to focus the wording of that Article only on the payment of just satisfaction[5]:

> "Moreover Article 50 contains **another outstanding defect**. It seems to suggest that the only form of reparations will be compensation. It seems to suggest that the European Court will be able to grant indemnities to victims, damages and interests, or reparation of this kind. It does

2. See the Travaux Préparatoires on Articles 53 and 54 of the Convention.
3. See comments of Mr Churchill, during the sitting of 17 August 1949 in the First Session of the Consultative Assembly of the Council of Europe.
4. Pierre-Henri Teitgen (29 May 1908 – 6 April 1997).
5. See the First part of the Second Session of the Consultative Assembly, plenary sitting of 14th August 1950 (original in French).

not say that the European Court will be able to pronounce the nullity or invalidity of the rule, or the law, or the decree which constitutes a violation of the convention.

…

If tomorrow, France were to sink into a dictatorship, and if her dictator were to suppress the freedom of the press, would the European Court award one franc damage to all Frenchmen so as to compensate for the injury which the suppression of this fundamental freedom had caused them? Such a proceeding would not make sense.

If we really want a European Court to succeed in guaranteeing the rights which we have placed under its protection, we must grant jurisdiction to declare void, if need be, the laws and decrees which violate the convention."

The Convention was adopted as is well known in Rome on 4 December 1950. Mr Teitgen's proposals were ultimately not taken up in Article 50. However, Articles 53 and 54 contained the provisions that the judgments of the Court are **binding** and that they **should be transmitted to the Committee of Ministers** for their **execution,** provisions now found in Article 46 paragraphs 1 and 2. This reflects the general concerns raised by the drafters of the importance for the Court's judgments to have real consequences in terms of bringing to an end or preventing human rights violations.

These voices are from the past, still very obviously remain relevant to today's concerns about the functioning of the Convention system. But how have we fared – has the Court proven impotent and ineffective?

Since 1959 (as of 03/01/2023):

- 30 651 cases[6] have been sent to the Committee of Ministers (of which 4 905 leading)
- 24 575 have been closed (of which 3 621 leading)
- Since 2010, 19 804 cases have been closed (of which 2 713 leading)

That is to say that since the Convention system was put in place, the Committee of Ministers has been able to close its supervision in around 80% of cases where there was a violation of the Convention (or a friendly settlement). I would therefore say that fortunately, the system has in fact worked well and it is still up to all of us to make it work for the future.

However, much remains to be done and I have no doubt that this seminar will be an important contribution to that process.

Thank you.

[6] Including friendly settlements.