



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”

Speech by Clare Ovey

Strasbourg, 23 March 2023

Following Russia’s expulsion from the Council of Europe on 16 March 2022, on 23 March 2022 the CM adopted resolution [CM/Res\(2022\)3](#). Paragraph 7 of this Resolution states that the Committee of Ministers will continue to supervise the execution of the judgments and friendly settlements in cases against Russia and refers to the continuing obligation on Russia under international law to implement them. The Committee also stated in the resolution that the Russian Federation should continue to participate in the meetings of the Committee of Ministers when the latter supervises the execution of judgments with a view to providing and receiving information concerning the judgments where it is the respondent or applicant State, but without the right to participate in the adoption of decisions by the Committee nor to vote.

Unfortunately, however, the Russian authorities have declined to take part in any DH meetings since the end of 2021 and since 3 March 2022, they have also stopped all communication with the (DEJ) and the Secretariat of the Committee of Ministers. (We still send letters to the Russian Government Agent, to request information on specific cases, action plans/reports and to forward communications received under Rule 9. The Secretariat of the Committee continues to inform the Russian Government Agent of the cases against the Russian Federation proposed for examination at the DH meetings and to invite them to participate in the meetings in accordance with the CM’s resolutions. We do not receive any response though).

We know from public sources that on 11 June 2022 a law entered into force in the Russian Federation regarding the execution of judgments. It stated that, because of the “procedurally incorrect exclusion” of the Russian Federation from the Council of Europe, the Committee of Ministers cannot insist upon the obligations on Russia flowing from the Council of Europe’s legal instruments, with the consequence that judgments of the European Court which became final after 15 March 2022 shall not be enforced, nor shall they serve as a ground for the reopening of proceedings. Just satisfaction would be paid until 1 January 2023 for judgments which became final before 15 March 2022. However, payment would be made in roubles and only to bank accounts in Russia.

The Committee has repeatedly, clearly and firmly expressed its expectation that the Russian Federation must respect its obligations in international law which require it to implement the Court’s judgments and friendly settlements. With this in mind, when in June and December last year the Committee considered its strategy for the supervision of Russian cases, it decided to continue adopting decisions and interim resolutions in Russian cases, although mainly to examine them without debate in the absence of any Russian representative. It also invited the Secretary General to send a letter after each of the CMDH meetings to the Minister of Foreign Affairs of the Russian Federation

informing him of the decisions and resolutions adopted in cases where the Russian Federation is the respondent State and urging the authorities to comply with their obligations under international law and the Convention to fully abide by the judgments of the European Court. Two such letters were sent: [one after the December DH meeting](#), and [the second](#) after the March DH meeting.

The Committee has continued classifying the new cases received from the Court (more than 400 since 16 March 2022) and has examined a total of 25 cases at its June, September and December 2022 and March 2023 DH meetings, on the basis of notes and draft decisions prepared by the Secretariat.

As of 21 March 2023, there are 2,404 cases under the supervision of the Committee of Ministers (compare to 2,025 in March 2022¹). 1,432 of these cases are under enhanced supervision. Overall, there are 227 leading cases under both enhanced and standard supervision. Three cases under standard supervision were closed in 2022 based on previously submitted action reports. It appears unlikely that it will be possible to close many more for the foreseeable future, although it's possible that in some repetitive cases we'll get information from applicants that they received just satisfaction and the CM could possibly close those cases. In the CM's annual report (to be published on 5 April) and on our website we are therefore presenting the statistics relating to Russian cases separately from those relating to the 46 Member States, to give a clearer picture of the effectiveness of the execution system in respect of Member States.

The DEJ is currently engaged in a stock-taking of all these pending Russian cases. We will propose to the CM to move cases into bigger, thematic groups to make it easier to follow the outstanding issues. One example of this can be seen at the March 2023 DH meeting, when the Committee decided to move all the pending cases concerning Mr Aleksey Navalnyy into one group (*Navalnyy and others*), and adopted a strong interim resolution (CM/ResDH(2023)35) strongly urging the authorities to quash his current conviction and sentence and to release him immediately.

In tandem with the stock-taking, we are preparing a thematic document for our website setting out the various general measures which are required from Russia for the execution of the cases pending before the CM, and a register of the outstanding just satisfaction.

Information is awaited on the payment of just satisfaction in over 1,000 cases. The outstanding amount stands at over EUR 2 billion, including EUR 10 million and EUR 1.3 million default interest in the first *Georgia v Russia* case. According to information provided by applicants, some payments continued to be made until December 2022 but in view of the law mentioned above, it appears unlikely that any payments will be made this year. A register showing the sums owing in the first *Georgia v Russia* interstate case is already in place on our website.

In the absence of communication from the authorities, information provided by NGOs remains a vital resource to enable the Committee to keep up to date with the situation in the Russian Federation. The Committee has therefore underlined the continuing possibility for NGOs, applicants and other actors to continue to send information to it about execution in the usual way under Rule 9 of its Rules of Procedure. The CM has received 13 Rule 9 submissions from NGOs in 2022, and five since the beginning of 2023, providing information related to general measures, in the light of the current situation in the Russian Federation. Most of these NGOs are Russian-based, although some of them

¹ Since 16 March 2022, the European Court has continued delivering judgments in cases against the Russian Federation, finding violations on a wide range of Convention articles. Among the important leading judgments adopted are the judgments in the case of *Ecodefence and Others*, on the application of the Foreign Agents Act to NGOs, and *Taganrog LRO and Others*, on the measures taken against Jehovah's witnesses.^[2]

have had to change their organisational form or name. All of these submissions can be found on the HUDOC-EXEC website.

On 7 March the CM held an exchange of views with representatives of three Russian human rights NGOs: Memorial Human Rights Defence Centre, Mass Media Defence Centre and Stichting Justice Initiative, concerning general measures related to execution of three groups of cases against the Russian Federation, namely freedom of assembly (*Lashmankin* group of cases), freedom of expression online (*Vladimir Kharitonov* group of cases), and serious human rights violations in the North Caucasus region (*Khashiyev* group of cases).

They also exchanged with the CM on the value of the Committee's continuing supervision of Russian cases. The NGO representatives submitted that, even if there is no foreseeable prospect of Russia responding and taking the measures required, the Committee's decisions provide vindication and moral support to the applicants and others concerned by the violations. They also reinforce the authority of the Court and the credibility of the Convention system as a whole. No State can be allowed simply to opt out of its international law obligations.

They also informed us that applicants are now also advised to use the UN mechanisms to complain about human rights violations in the Russian Federation. This leads me to the last point I'd like to mention this afternoon. Russia remains a member of the United Nations Organisation. The NGO representatives underlined that the Council of Europe has a status of observer in the UN and moreover it represents a concordant voice of 46 member states, nearly 25% of UN Member States overall. The judgments of the Court and the decisions adopted by the COE CM carry huge authority in the UN. Moreover, we know that a number of the UN bodies and mechanisms are seized of issues concerning Russia that are also raised by ECHR cases that are pending for execution.

With these considerations in mind, we are organising a mission of DEJ to Geneva in June, when the new Special Rapporteur for the Russian Federation will hopefully be in place. We aim to share information, experience and also our expertise and support with the UN bodies and mechanisms.

Thank you for your attention.