

SUBSIDIARITY PRINCIPLE: NATIONAL IMPLEMENTATION OF ECtHR JUDGMENTS

STRASBOURG – 4 MAY 2023

CLARE OVEY

Good afternoon. I'd like to thank the Icelandic Chairmanship for their organisation of this conference on the very important topic of subsidiarity and the national implementation of ECtHR judgments.

Over the last few decades major reforms have been made to the ECHR mechanisms, including the working methods of the Court and of the Committee of Ministers for the supervision of execution. In the Department of Execution, and indeed across the Council of Europe Secretariat, with the numerous related cooperation projects, we work hard to provide expert assistance to States in their endeavours to take individual and general measures. However, the obligation under the Convention to implement the Court's judgments rests on the State authorities. Without political will to take the required measures, and without effective coordination between the various decision-makers, actors and stakeholders at national level, nothing can be achieved.

It is to be hoped that this month's Summit in Reykjavik will see a reaffirmed commitment at the highest political level to the Convention system, including the execution of the Court's judgments.

Commitment is needed. There are currently about 6,000 cases pending full implementation, of which over 5,000 are repetitive cases. In respect of the 46 Member States, we received over 1000 new repetitive cases in 2022. And the number of such judgments will continue to grow, since the Court has improved the efficiency of its working methods so that the Committee of Ministers received an increase of over 40% new violation judgments from the Court over the last two years, mainly repetitive cases relating to major, unresolved structural problems. Examples of such structural problems, which affect many member States, relate to the legal framework surrounding actions of security forces and the effectiveness of investigations into alleged illegal or excessive use of force, overcrowding and other problems relating to conditions in prisons and other places of detention, issues to do with the length and lawfulness of pre-trial detention, length of judicial proceedings, interferences with property rights, excessive restrictions on freedom of expression and freedom of assembly.

These problems, combined with the failure to put in place effective remedies at national level, end up generating hundreds, sometimes even thousands, of repetitive applications before the European Court.

Effective general measures to prevent such repetitive violations is complex – if there were easy solutions, the States would have taken them. They can require legislative, sometimes even Constitutional, amendments; and changes in the case law of domestic courts and the practice of other public servants, such as prosecutors and the police. Sometimes significant financial expenditure is required, and on problems that are not necessarily high on the political agenda.

The problem of the lack of sustained political will to take the required measures is linked to, and compounded by, the persistent problem in a number of States of insufficient national capacity, due in particular to the low status and/or lack of resources of national coordinators.

Insufficient capacity at domestic level means that the national coordinator responsible for the execution process does not have the resources or the authority sufficiently to mobilise support for

execution across the various government departments, bodies and agencies that need to work together.

It also means that often, even when the required measures have been taken, the Committee of Ministers is not informed, which in turn means it can't close the case.

On the most basic level, this is evidenced by the fact that, as of the end of 2022, there was a new record number of 2,257 cases (the highest number since 2011) on which information on payment of just satisfaction was not submitted by respondent States to the Committee of Ministers. In addition, 2022 witnessed an increased delay in the submission by States of action plans and information within the required deadlines.

In this context, in March 2022, the DEJ organised a roundtable on Effective national co-ordination: a key factor in reinforcing the domestic capacity for rapid execution of ECHR judgments, which took place under the aegis of the Irish Vice Presidency of the Committee of Ministers. The roundtable aimed at fostering a peer-to-peer exchange of views and good practices concerning national co-ordination and effective action, particularly in light of current and upcoming challenges in the execution process.

Now, to follow up on this, I am extremely happy that the contributors to the Human Rights Trust Fund have enabled this important transversal cooperation project to go ahead. We have high hopes that it will provide valuable guidance and assistance to states who wish to improve their capacity to execute judgments, and indeed their execution rates, enabling us to reduce the backlog pending before the CM.

Thank you for your attention.