Roundtable on Effective national co-ordination: a key factor in reinforcing the domestic capacity for rapid execution of judgments of the European Court of Human Rights

Introductory remarks

Dear participants, dear colleagues,

I join Ambassador O'Reilly in welcoming you at this roundtable organised under the aegis of the Irish Vice-Presidency of the Committee of Ministers.

Allow me first to thank you, Ambassador, and your team, for your endorsement and support to this event.

I will get straight to the point:

The choice of the topic for this roundtable – driven by the Committee of Ministers' work in the follow-up of the Interlaken process – is rooted in "warning signs" that emerge from an overview of the current state of play and the outlook for the execution process for the next few years.

Challenges in this process have been flagged in the Committee of Ministers' annual reports dedicated to the supervision of execution of judgments and decisions.

These reports, particularly as of 2018, have also advocated with increasing intensity for action to reinforce the domestic capacity for full and rapid execution of judgments. This message has also, of course, been underlined in the high-level declarations adopted by the Committee of Ministers, notably in Copenhagen.

As I will elaborate next, the challenges persist, and are compounded by new ones.

The current situation and outlook show that swift and decisive action must be taken to enhance domestic capacity for rapid execution if the Convention system is to remain effective and credible.

As part of this action, given the pivotal role of national co-ordinators in the execution process and in the related processes, member States must ensure that all the necessary conditions for effective co-ordination are met.

What are these challenges we are facing?

I will first start with remarks about the current situation and then outline the "risk factors" which, if left unaddressed, may rather "turn the tide".

In terms of the Committee's overall volume of work, since 2016, the number of pending cases has been brought down to half of the previous top levels (from a record of about 11,000 in 2012-2013 to under 5,500 in 2019-2021).

Though less spectacular, over the same time span, a steady decrease has also been achieved in the number of "leading cases", that is the cases which require specific and often wide-ranging measures to guarantee non-repetition of the violations (from a peak of 1,555 cases in 2015 to 1,300 or below in 2019-2021).

These results were achieved due to an exceptionally high number of cases closed in 2016-2019, with an unprecedented total of 3,691 cases closed in 2017.

A decrease in the number of cases received from the Court in the relevant period, up to last year, also helped.

There were two main factors behind this high number of cases closed: (i) the Committee's new policy to systematically close repetitive cases once the necessary individual measures have been adopted and (ii) the closure of individual leading cases and groups of cases generally requiring less complex execution measures.

The Secretariat is, however, concerned that the situation, as it is now, could rapidly deteriorate, putting again the system under considerable strain.

A first "risk factor" identified relates to <u>the "profile" of the leading cases which remain to be fully executed.</u>

As I explained, the high level of closures achieved in 2016-2019 was in part due to the closure of individual cases and groups of cases generally requiring less complex execution measures.

The leading cases that remain to be fully executed conversely require more sustained and wide-ranging execution measures, including at legislative level, to resolve the problems identified by the Court.

This may in part explain the increasing “age” of the pending cases.

In standard supervision, almost half of the leading cases have been pending for more than five years.

In enhanced supervision, the situation is even more worrying: about two thirds of the leading cases have been pending for over five years. About half of these (that is one third of all leading cases in enhanced supervision) have been pending for more than a decade.

Although in some of these cases progress has been made in the adoption of general measures, in others the lack of clear and near prospects for completing the execution process perpetuates the risk of repetition of the Convention violations at issue.

Prolonged delays and impasses in the execution process also undermine the effectiveness and credibility of the Convention system and of the Committee’s supervisory action, which are threatened whenever repeated interventions are required to ensure compliance with member States’ legal obligations under the Convention.

In this connection, it is significant that in 2021, the Committee in its DH meetings has examined a record of 161 cases or groups of cases, concerning 29 States, of which many are raising such long-standing, systemic and structural problems, requiring close attention.

Against this backdrop, there is a second “risk factor” which has now emerged, and which again explains the choice of the topic for this roundtable.

More recently, increasing delays have been observed in the submission by member States of information that is vital for the execution process, such as initial action plans or reports and information on the payment of just satisfaction.

As regards the payment of just satisfaction, a steady increase has been noted of cases where such information is delayed: in 2021 there were 1,772 cases, compared to 1,423 in 2019.

Such difficulties in maintaining a fluid, effective dialogue with the Committee must be swiftly and decisively tackled, otherwise they are likely to trigger delays in execution and hamper the system's capacity to effectively handle an increasing volume of cases.

This brings into focus a third "risk factor", related to expected evolutions in the volume of incoming cases.

In 2021, there has been an increase of about 40% in the number of incoming cases from the Court, compared to 2020.

This is likely to continue, as a result of the Court's new case-processing strategies, implemented since March 2021.

As you are no doubt aware, one part of this strategy is to speed up the way in which the Court can process repetitive cases. Although these cases involve the Court's well-established case-law, and can be decided in a streamlined manner by the Court, in terms of execution measures they still usually require the payment of just satisfaction and often other individual measures, as well as general measures to stop the flow of more repetitive cases.

The other part of the Court's strategy is to give priority to "impact cases", which by definition require significant changes in legislation and practice, touch upon societal issues or deal with emerging or otherwise significant human rights issues.

This may well entail that a higher proportion of the incoming cases will require complex execution measures and will add up to the significant number of such cases that member States have yet to fully execute.

To sum up, the "risk factors" identified relate to an already significant stock of cases raising structural, systemic, or complex execution issues, which is expected to grow as a result of the Court's new case processing strategy, while there are indications that, on the whole, the existing domestic capacities for rapid execution are already very strained.

How to counter these risk factors?

It is clear that to resolve many, if not most, of the issues at stake in the remaining cases, the actors in the member States concerned must deploy more sustained,

concerted, and cohesive efforts and also demonstrate high-level political commitment to solve outstanding problems, including the most intractable ones.

This will remain valid over the next few years.

At the same time, member States must find ways to maintain an effective dialogue with the Committee and provide relevant and sufficient information on the progress in the execution of these and the other cases, to allow the Committee to fulfill its role under Article 46 and, preferably sooner than later, close their supervision.

The execution efforts, in particular for the more complex cases, such as those touching upon societal issues, necessarily involve and would greatly benefit from effective synergies amongst all the actors concerned in the process and with other national stakeholders, including National Human Rights Institutions and civil society organisations.

Much, if not all of this, requires a driving force to steer the necessary actions, commitment, and involvement, and forge the necessary synergies to advance the execution process.

This mission generally rests on national co-ordinators and has not become any easier in time.

The three sessions proposed for today’s event are meant to illustrate, through an exchange of good practices, the complexities attached to the co-ordination mission and the prerequisites for effective action in this area.

Our hope is that the examples and discussions will feed in ongoing reflexions and actions at national level, where necessary, to reinforce the domestic execution capacity, including national co-ordination.

I thank you for your attention and I am very much looking forward to the interventions and the discussions to follow!