

# Opening speech by Ms. Elisabeth MARGUE, Minister of Justice of Luxembourg – BETTER ENFORCEMENT OF NATIONAL JUDICIAL DECISIONS: A HUMAN RIGHTS AND RULE OF LAW REQUIREMENT

## *Principles, challenges and possible solutions*

Mr. Director General,  
Excellencies,  
Distinguished Judges and Lawyers,  
Representatives of Academia,  
Ladies and Gentlemen,

It is a true honor for me to address you within the framework of the Luxembourg Presidency of the Committee of Ministers of the Council of Europe on the occasion of this conference on the principles, challenges, and possible solutions for better enforcement of national judicial decisions.

Three weeks ago, I had the great privilege of launching the three new linguistic versions of the European Court of Human Rights' knowledge-sharing platform.

Indeed, since February 27th, alongside French and English, the Court's knowledge-sharing platform is now available to legal professionals, academics, and the general public in Romanian, Turkish, and Ukrainian.

The development of the knowledge-sharing platform aims to enable a dialogue between national judges and Strasbourg judges, which can only be achieved through a common understanding of human rights in a language accessible to all stakeholders.

It is through this shared understanding of the requirements of human dignity and the common good enshrined in the European Convention on Human Rights and Fundamental Freedoms that full, effective, and direct application of the Convention, as interpreted by the Court, is ensured in the domestic legal order of Member States through the execution/enforcement of its judgments.

The common thread of these two conferences is the enforcement of judicial decisions.

It is traditionally accepted that the activity of a judge has two dimensions: on the one hand, the ability to state the law (or *jurisdictio*) and, on the other hand, the power to impose a solution on the parties (or *imperium*).

The first function stems from authority, the second from power.

As the judge is limited to "declaring" the law and does not have the function of "making" the law, the execution of his decision is beyond his control.

However, the effectiveness of judicial decisions, whether national or international, is one of the pillars of the Law.

It is the logical continuation of the right of access to a judge.

Without access to a judge, there can be no trial.

And without a trial, there can be no judicial decision.

The pronouncement of the decision rendered at the end of a procedure respecting the fundamental rights of the parties extinguishes the proceedings and relieves the judge of jurisdiction.

This decision must therefore now be executed to achieve its full effectiveness.

What would be the value of a judicial decision that is not executed if not a mere piece of paper?

It is in this respect that the Convention intervenes since it requires in its Article 6 relating to the right to a fair trial, that everyone subject to the law has "an effective remedy before a national authority."

In *Hornsby v. Greece*<sup>1</sup>, the Court stated that the enforcement of judicial decisions is part of the right to a fair trial under Article 6(1) of the Convention, particularly as regards reasonable time limits for enforcement.

Indeed, the right to a tribunal would be illusory if the domestic legal order of a contracting State allowed a final and binding judicial decision to remain inoperative to the detriment of another party.

How could the procedural guarantees provided by Article 6 of the Convention granted to the parties, such as fairness, publicity, and expedition, be reconciled with a lack of protection regarding the enforcement of judicial decisions?

The Court has therefore specified that Article 6 of the Convention cannot be confined exclusively to access to the courts and the conduct of proceedings but must also be capable of being applied to the enforcement of a judgment or ruling by any court, which must therefore be regarded as an integral part of the 'proceedings' within the meaning of Article 6.

The right to the execution of a judicial decision is, however, not absolute, and the Contracting States enjoy a certain margin of appreciation in regulating the procedure, subject to the Court's review of compliance with the requirements of the Convention.

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<sup>1</sup> 17 mars 1997 requête n° 18357/91

The number of repetitive cases examined by the Court concerning this issue is striking, which means that, in some Contracting States, the systemic and structural problems identified in the case law remain, at least partially, unresolved.

The aim of the conference is, on the one hand, to explore the main problems concerning the non-enforcement of national judicial decisions in the light of recent case law.

On the other hand, the panelists will have the opportunity to review existing best practices and explore concrete ways of remedying this problem, drawing in particular on the expertise of the European Commission for the Efficiency of Justice (CEPEJ).

I am convinced that the discussions that will take place in the three panels of the conference will provide food for thought that will enable concrete solutions to be found to the problems related to the non-execution of national judicial decisions.

Thus, your work will contribute to making significant progress in strengthening the rule of law and access to justice.

I thank you all for your attention, for your support of the presidency, and for your continued commitment to the values of democracy, human rights, and the rule of law that my country shares with all the Member States of the Council of Europe.