The system of the European Convention on Human Rights: responding to new trends and challenges

Le système de la Convention européenne des droits de l'homme : répondre aux nouvelles tendances et aux nouveaux défis

Proceedings of the Conference
Strasbourg, 24 June 2025

Actes de la Conférence
Strasbourg, 24 juin 2025

EUROPEAN CONVENTION ON HUMAN RIGHTS
CONVENTION EUROPÉENNE DES DROITS DE L'HOMME
1950 - 2025 75

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

THE SYSTEM OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS: RESPONDING TO NEW TRENDS AND CHALLENGES /

LE SYSTÈME DE LA CONVENTION EUROPÉENNE DES DROITS DE L'HOMME : RÉPONDRE AUX NOUVELLES TENDANCES ET AUX NOUVEAUX DÉFIS

Proceedings of the Conference

Actes de la Conférence

All requests concerning the reproduction
or translation of all or part of this
document should be addressed to the
Directorate General of Human Rights and Rule of Law
(F-67075 Strasbourg Cedex).

All other correspondence concerning this
document should be addressed to the
Human Rights Intergovernmental Co-operation
Division.

Layout: SPDP, Council of Europe

Printed at the Council of Europe

Toute demande de reproduction ou de
traduction de tout ou d'une partie de ce
document doit être adressée à la Direction
Générale Droits humains et État de droit
(F 67075 Strasbourg Cedex).

Toute autre correspondance relative à ce
document doit être adressée à la Division de la
Coopération intergouvernementale en matière de
droits humains.

Mise en page : SPDP, Conseil de l'Europe

Imprimé dans les ateliers du Conseil de l'Europe

Preface / *Préface*

Strasbourg, 24 June */ juin* 2025

Today, Europe and the world are confronted with unprecedented and multiple challenges. The Council of Europe, and its European Convention on Human Rights, are the lighthouse which will help us navigate them.

The Convention is at the heart of the Council of Europe's activities. It has always been a work in progress. Since its establishment 75 years ago, sixteen protocols to the Convention have been adopted, making significant changes to its control mechanism and adding to the catalogue of protected rights. These reforms have occurred alongside developments in the Court's caselaw and working methods, which have evolved to keep pace with legal, social, and technological changes.

The Steering Committee for Human Rights, and more particularly its sub-committee, the Committee of Experts on the System of the European Convention on Human Rights (DH-SYSC), is where the member States of the Council of Europe meet to examine the operation of this system and consider proposals for reform. Their discussions cover all aspects of the system: national implementation of the Convention, the functioning of the Court, and implementation of the Court's judgments, including the supervisory role of the Committee of Ministers.

In June 2025, the DH-SYSC organised a conference on "The System of the European Convention on Human Rights: Responding to New Trends and Challenges". Discussions focused on three areas: how is the Court dealing with new trends in litigation, including cases on issues of general interest, such as climate change, cases arising from international armed conflict, and related challenges, such as multiple parties to proceedings? How should the Court use new technologies, such as artificial intelligence? And what are the wider challenges facing the Convention system in 2025 and beyond? National officials, judges of the Court and senior members of its Registry, and a range of key stakeholders explored these issues from different perspectives: many questions were raised, more views were expressed, and some answers were suggested.

Through the DH-SYSC and other fora, the Council of Europe will continue to ensure that the Convention system remains relevant and effective. In uncertain times, its importance for our rights and freedoms becomes only more certain.

Aujourd'hui, l'Europe et le monde sont confrontés à des défis multiples et sans précédent. Le Conseil de l'Europe et sa Convention européenne des droits de l'homme sont le phare qui nous aidera à les surmonter.

La Convention est au cœur des activités du Conseil de l'Europe. Elle a toujours été en constante évolution. Depuis sa création il y a 75 ans, seize protocoles à la Convention ont été adoptés, apportant des modifications importantes à son mécanisme de suivi et enrichissant l'ensemble des droits protégés. Ces réformes ont accompagné l'évolution de la jurisprudence et des méthodes de travail de la Cour, qui ont évolué au rythme des changements juridiques, sociaux et technologiques.

Le Comité directeur pour les droits humains, et plus particulièrement son sous-comité, le Comité d'experts sur le système de la Convention européenne des droits de l'homme (DH-SYSC), consiste à réunir les États membres du Conseil de l'Europe pour examiner le fonctionnement de ce système et étudier les propositions de réforme. Leurs discussions portent sur tous les aspects du système : la mise en œuvre nationale de la Convention, le fonctionnement de la Cour et l'exécution des arrêts de la Cour, y compris le rôle de surveillance du Comité des Ministres.

En juin 2025, le DH-SYSC a organisé une conférence intitulée « Le système de la Convention européenne des droits de l'homme : répondre aux nouvelles tendances et aux nouveaux défis ». Les discussions se sont concentrées sur trois questions : de quelle manière la Cour traite-t-elle les nouvelles tendances dans les litiges, notamment les affaires d'intérêt général dont le changement climatique, les affaires découlant de conflits armés internationaux et les défis connexes, tels que la multiplicité des parties à la procédure ? Comment la Cour devrait-elle utiliser les nouvelles technologies, telles que l'intelligence artificielle ? et quels sont les défis plus larges auxquels le système de la Convention sera confronté en 2025 et au-delà ? Des responsables nationaux, des juges de la Cour et des membres éminents de son Greffe, ainsi que divers acteurs clés ont examiné ces questions sous différents angles : de nombreuses questions ont été soulevées, de nombreux points de vue ont été exprimés et certaines réponses ont été suggérées.

Par le biais du DH-SYSC et d'autres forums, le Conseil de l'Europe continuera à veiller à la pertinence et à l'efficacité du système de la Convention. En ces temps incertains, son importance pour nos droits et libertés n'en devient que plus évidente.

TABLE OF CONTENTS
TABLE DES MATIÈRES

PROGRAMME

Tuesday 24 June 2025		Mardi 24 juin 2025
Opening of the Conference by: • **Krista OINONEN** Chairperson of the Steering Committee for Human Rights (CDDH) • **Daniele CANGEMI** Head of the Department on Human Rights, Justice and Legal Co-operation standard-setting activities, Council of Europe	10:00	**Ouverture de la Conférence par :** • **Krista OINONEN** Présidente du Comité directeur pour les droits humains (CDDH) • **Daniele CANGEMI** Chef du Service Activités normatives en matière de droits humains, justice et coopération juridique, Conseil de l'Europe
PANEL 1 **New trends in litigation before the European Court of Human Rights** Moderator: **Ed BATES** Associate Professor in Law, University of Leicester • **Lətif HÜSEYNOV** Judge of the European Court of Human Rights elected in respect of Azerbaijan • **Isabella RISINI** Professor at *Technische Hochschule Georg Agricola*, Senior Editor at *Verfassungsblog* • **Isabelle NIEDLISPACHER** Agent of the Belgian Government before the European Court of Human Rights • **Jenny SANDVIG** Partner, SVW; former Policy Director at the Norwegian National Human Rights Institution • **Abel CAMPOS** Deputy Registrar, European Court of Human Rights	10:15	**SESSION 1** **Nouvelles tendances dans les litiges devant la Cour européenne des droits de l'homme** Modérateur : **Ed BATES** Professeur associé de droit, Université de Leicester • **Lətif HÜSEYNOV** Juge à la Cour européenne des droits de l'homme, élu au titre de l'Azerbaïdjan • **Isabella RISINI** Professeure, *Technische Hochschule Georg Agricola*, Rédactrice en chef, *Verfassungsblog* • **Isabelle NIEDLISPACHER** Agente du gouvernement belge auprès de la Cour européenne des droits de l'homme • **Jenny SANDVIG** Associée chez SVW ; ancienne directrice des politiques *Norwegian National Human Rights Institution* • **Abel CAMPOS** Greffier adjoint, Cour européenne des droits de l'homme
COFFEE BREAK	11:30	**PAUSE CAFÉ**

PANEL 2 — 11:45 — **SESSION 2**

Challenges and opportunities in the Court's use of new technologies

Moderator:
Tim KOLK
Member of the CDDH in respect of Estonia, CDDH Thematic Rapporteur on human rights and artificial intelligence

- **Klaudiusz RYNGIELEWICZ**
  Director of filtering and support services, European Court of Human Rights
- **Mateja ĐUROVIĆ**
  Judge of the European Court of Human Rights elected in respect of Serbia
- **Veronika FIKFAK**
  Professor of Human Rights and International Law at University College London, School of Public Policy and co-Director of the UCL Institute for Human Rights
- **Matthieu QUINIOU**
  Avocat, member of the CEPEJ Artificial Intelligence Advisory Board (AIAB), Chair of UNESCO ITEN

Défis et opportunités dans l'utilisation des nouvelles technologies par la Cour

Modérateur :
Tim KOLK
Membre du Comité directeur pour les droits humains (CDDH) pour l'Estonie, Rapporteur thématique du CDDH sur les droits humains et l'intelligence artificielle

- **Klaudiusz RYNGIELEWICZ**
  Directeur du filtrage et des services de support, Cour européenne des droits de l'homme
- **Mateja ĐUROVIĆ**
  Juge à la Cour européenne des droits de l'homme, élu au titre de la Serbie
- **Veronika FIKFAK**
  Professeur de droits humains et de droits international, *University College London*, *School of Public Policy* et Co-directrice de l'*UCL Institute for Human Rights*
- **Matthieu QUINIOU**
  Avocat, membre du Bureau consultatif pour l'intelligence artificielle (AIAB) de la CEPEJ, Président de UNESCO ITEN

PANEL 3 — 13:00 — **SESSION 3**

The European Court of Human Rights in 2025 and Beyond

Moderator:
Tonje MEINICH
Vice-chairperson of the CDDH, Chairperson of the CDDH ad hoc Negotiation Group ("46+1") on the Accession of the EU to the ECHR

- **Alex TALLON**
  Vice-President of the Council of Bars and Law Societies of Europe (CCBE)

La Cour européenne des droits de l'homme en 2025 et au-delà

Modératrice :
Tonje MEINICH
Vice-présidente du CDDH, Présidente du Groupe de négociation ad hoc du CDDH (« 46+1») sur l'adhésion de l'UE à la CEDH

- **Alex TALLON**
  Vice-Président du Conseil des barreaux européens (CCBE)

• **Babette KOOPMAN** Agent of the Dutch Government before the European Court of Human Rights, member of the CDDH • **Philip LEACH** Professor of Human Rights Law, Middlesex University, London		• **Babette KOOPMAN** Agente du gouvernement néerlandais auprès de la Cour européenne des droits de l'homme, membre du CDDH • **Philip LEACH** Professeur en droits humains, Université de Middlesex, Londres
COFFEE BREAK	15:30	**PAUSE-CAFÉ**
CLOSING REMARKS	12:20	**ALLOCUTION DE CLÔTURE**
John Finbarr (Barra) LYSAGHT Chairperson of the Committee of experts on the system of the European Convention on Human Rights (DH-SYSC)		**John Finbarr (Barra) LYSAGHT** Président du Comité d'experts sur le système de la Convention européenne des droits de l'homme (DH-SYSC)

OPENING SESSION / *SESSION D'OUVERTURE*

Krista OINONEN

Chairperson of the Steering Committee for Human Rights / *Présidente du Comité directeur pour les droits humains* (CDDH)

Dear colleagues,
Distinguished guests and participants,

I would like to extend my warm thanks to each of you for being here today. As Chairperson of the Steering Committee for Human Rights, under whose authority the Committee of Experts on the System of the European Convention on Human Rights — the DH-SYSC — conducts its work, I am confident that your knowledge and insights will prove invaluable.

This is a timely and important event. The Convention system faces new challenges and the need to come together in a spirit of open, expert reflection is as important as ever.

The European Court of Human Rights and the Convention are indispensable pillars of the Rule of Law and human rights protection in Europe, ensuring accountability, legal certainty, and the safeguarding of individual freedoms amid evolving global challenges.

It is now five years since the end of the Interlaken Process, a decade-long effort to reinforce the effectiveness of the Convention system that involved the States Parties, the Court, the Council of Europe as a whole, and numerous stakeholders.

A lot has happened in those five years. The numerous reforms introduced during the Interlaken Process have shown their effects. The Court is also continuously developing its working methods to respond effectively to new trends and maintain its efficiency and authority. Later this week, the CDDH will adopt the reports prepared by the DH-SYSC on the impact of Protocols 15 and 16 to the Convention.

We have also completed a renegotiation of the legal basis for accession of the European Union to the Convention, following the rejection of the initial draft accession agreement by the EU Court of Justice in 2014. Hopefully, the Court of Justice will soon be asked to give its opinion on the revised draft.

The wider world has also changed dramatically, as the Secretary General has described in his New Democratic Pact for Europe. The Covid-19 pandemic, Russia's war of aggression against Ukraine and conflicts in the Middle East, the climate crisis, rapid technological developments, attacks on multilateralism, and democratic backsliding have had and continue to have significant and often unpredictable effects.

In this context, the DH-SYSC provides a space for stakeholders to analyse, anticipate, and shape responses to developments affecting the European human rights system.

Over the years, this Committee has addressed a broad range of issues with direct impact on the functioning and future direction of the Convention system. Towards the end of the Interlaken Process, these included broad issues, such as the longer-term future of the Convention system and the place of the Convention in the European and international legal order.

The DH-SYSC's work in recent years has been more narrow and technical, with reports on issues relating to the Court's judges, including their election, and the way in which the Court handles inter-State cases.

All of these contributions have offered the Committee of Ministers important insight and practical tools. They show what intergovernmental work, when rooted in cooperation and mutual respect, can achieve.

Today's Conference is a continuation of this work.
During the morning sessions, we will discuss two issues that the CDDH will be examining in future: one on new trends in litigation before the Court, and the other on the use of new technologies, including artificial intelligence, within the Court's functioning. These topics reflect the evolving nature of the Convention system, as well as the growing complexity of its operating environment.

At the same time, the Conference also provides space to reflect on longer-term priorities. The third session invites us to identify areas for potential future intergovernmental work — how we might deepen dialogue, enhance cooperation, and contribute to reinforcing the system at both European and national levels.

This ambition is closely aligned with the commitments expressed in the Reykjavík Declaration. Heads of State and Government not only reaffirmed their "deep and abiding commitment" to the Convention system and the European Court of Human Rights, but also called for greater transparency, strengthened dialogue, and reinforced support for the Convention's institutions. Their pledge to preserve and develop the system for present and future generations carries with it an expectation of collective responsibility and concrete follow-up.

Looking ahead, the work of the DH-SYSC continues to reflect the Steering Committee's commitment to ensuring the long-term viability and legitimacy of the Convention system.

The challenge lies in preserving the core of our shared values, while allowing the Convention system to adapt to shifting legal, social, and technological landscapes.

This task cannot be carried out in isolation. That is why today's Conference brings together a wide range of actors: members of the judiciary, legal practitioners, civil society representatives, academics, and national experts. Each brings a unique perspective. This diversity is a strength — and it is essential for the type of multidimensional thinking that the current moment demands.

As we begin today's discussions, I encourage each of you to draw on the DH-SYSC's rigorous preparatory work, the Court's evolving case law, and the diversity of national experience represented in this room. The insights you share will inform and inspire the future work of the CDDH.

Thank you for your attention, and I wish us all a productive and thought-provoking day of deliberation.

Daniele CANGEMI
Head of the Department on Human Rights, Justice and Legal Co-operation standard-setting activities, Council of Europe / *Chef du Service des Activités normatives en matière de droits humains, justice et coopération juridique, Conseil de l'Europe*

Dear colleagues,
Distinguished participants,
Ladies and gentlemen,

It is a great pleasure to welcome you to today's Conference, held on the occasion of the 7th Plenary Meeting of the Committee of Experts on the System of the European Convention on Human Rights. I would like to thank all of you for being here.

As the Chairperson of the CDDH has said, we are living in difficult times. It is precisely because of these difficulties that the European Convention on Human Rights remains as central as ever. The Convention is a constitutional instrument of European public order and a crucial part of the legacy bequeathed to us by those who rebuilt Europe from the ashes of the Second World War. It remains the cornerstone of human rights protection throughout free, democratic Europe.

As the Chairperson of the CDDH has just recalled, this centrality was reaffirmed in 2023, at the Fourth Summit in Reykjavik. The Heads of State and Government of the Council of Europe reaffirmed the obligation of all member States to secure the rights and freedoms set out in the Convention and its Protocols, and to abide by the final judgments of the Court.

The Reykjavík Declaration also expressed strong support for the Court's efforts to manage its caseload efficiently and called on States to strengthen efforts for the full, effective, and timely execution of its judgments. It highlighted the need for a cooperative and inclusive approach to the Committee of Ministers' supervision process, one based on dialogue and shared responsibility.

In this context, the work of the DH-SYSC has proven indispensable. Over the years, this Committee has provided thoughtful, well-researched, and balanced contributions on the entire range of matters essential to the functioning of the Convention system. Its reports offer valuable insight and practical guidance to member States and the Committee of Ministers alike. The quality of the DH-SYSC's work reflects the dedication and expertise of its members, participants and observers, and I wish to express my sincere appreciation for their efforts. The Council of Europe has actively supported work on the system of the Convention, including by promoting the exchange of good practices, investing in capacity-building programmes at national level, and launching, in line with the Reykjavík Declaration, the Network of National Co-ordinators on the execution of judgments — including the organisation of an annual meeting with the Department for the Execution of Judgments. These initiatives aim to reinforce a community of practice and shared learning.

Another important development for the Convention system has been the unanimous provisional agreement reached on the revised draft instruments for the European Union's accession. Along with the Chairperson of the ad hoc negotiation group, now Vice-chairperson of the CDDH, Tonje Meinich, I have followed the negotiations since they began in 2010. Once it becomes real, accession will enhance the overall coherence and consistency of human rights protection across the European legal space. But it will also introduce new dimensions and complications into the workings of the Conventions control mechanism.

The Council of Europe as a whole has also continued to evolve. In response to the destruction wrought on Ukraine by Russia's war of aggression, the Committee of Ministers established the Register of Damage, to be followed by a claims commission to determine compensation. The legal framework for a Special Tribunal for the crime of aggression has been constructed.

Faced with the triple planetary crisis of climate change, pollution and loss of biodiversity, the Council of Europe has made the environment, including its human rights aspects, a visible priority in its work. New treaties have been adopted, notably the Framework Convention on artificial intelligence, human rights, democracy and the rule of law.

These external realities are also important for the Convention system. The Court is in the process of adjudicating on a number of inter-State cases concerning the actions of the Russian Federation. Environmental issues already feature prominently in the Court's caselaw, and it is only a matter of time before the Court delivers its first judgments on AI.

But we must not be complacent. Today's conference reflects the continued need to evaluate, anticipate, and adapt. The conference themes we will explore together — including evolving forms of litigation and the integration of new technologies in the Court's work — are both timely and consequential. These discussions offer an opportunity to take stock, to exchange perspectives.

Through your discussions today we hope to encourage open, constructive dialogue on how to safeguard and strengthen the Convention system for the years to come.

The Council of Europe remains fully committed to supporting all stakeholders in this process, with respect, neutrality, and a shared belief in the value of this unique legal system we have built together.

I wish you a productive and enriching day of discussion.
Thank you.

PANEL / SESSION 1

New trends in litigation before the European Court of Human Rights

Nouvelles tendances dans les litiges devant la Cour européenne des droits de l'homme

Moderator / *Modérateur :* Ed Bates, Associate Professor in Law, University of Leicester / *Professeur associé de droit, Université de Leicester*

Lətif HÜSEYNOV
Judge of the European Court of Human Rights elected in respect of Azerbaijan / *Juge à la Cour européenne des droits de l'homme, élu au titre de l'Azerbaïdjan*

I am delighted to be here today and to share a few personal reflections – from my perspective as a judge at the Court – concerning the new trends in litigation before the European Court of Human Rights.

I believe we would all agree that litigation trends tend to mirror the broader societal challenges of their time. If we take a step back and adopt a "diagnostic" view of the past five years, it becomes clear that this has been an unprecedented period globally and, in particular, for the Council of Europe member States.

In 2020, we were in the midst of a global pandemic due to COVID-19. In 2021, alongside the ongoing migration crises in the Mediterranean, a new crisis unfolded at the EU's eastern borders, triggered by the irregular arrival of migrants from Belarus. In February 2022, Russia invaded Ukraine — a war that has continued ever since. The years 2021 and 2022 also brought record-breaking temperatures across Europe and beyond, accompanied by unprecedented floods and wildfires. I could, unfortunately, continue the list. But in short, these crises have all found their way before our Court, which is being called upon to address the various complex legal issues they raise.

In my brief presentation I will mainly focus on inter-State applications, more precisely, on challenges the Court is facing in dealing with such applications. Before addressing this point, let me briefly touch upon the other trends I mentioned earlier, specifically litigation relating to migration and climate change.

As mentioned earlier, the recent and overlapping migration crises have led to a significant increase in cross-border movement — both regular and irregular — which, in turn, has resulted in a notable rise in migration-related cases lodged before the Court. These cases often concern pushbacks and the denial of access to asylum procedures, raising issues under Article 3 (prohibition of inhuman or degrading treatment), and Article 4 of Protocol No. 4 (prohibition of collective expulsion of aliens).

Specifically, because of numerous complaints concerning pushbacks Article 4 of Protocol 4 has become a “rising star”. As from 2020, the Court has rendered more than 10 judgments and decisions dealing with this Article. Currently, there are more than 40 pending cases where a violation of Article 4 Protocol 4 is alleged. These pending cases are primarily directed against Poland, Greece, and Hungary.

In this regard, I think it is worth noting that — for the first time in its history — the Court has been invited to interpret the Convention in the context of what has been called by others outside of the Court as ‘migrant instrumentalisation’ or ‘hybrid attacks’, allegedly orchestrated by the Belarusian authorities against three Council of Europe member States.

As these matters are currently pending before the Grand Chamber, I will confine myself to noting that they involve three linked cases brought against Lithuania, Latvia and Poland, each concerning allegations of pushbacks involving Cuban, Afghan, and Iraqi nationals at the Belarusian border. In each case, the applicants allege that they were returned to Belarus – which they argue is not a safe third country – without any opportunity to request asylum in the relevant EU member State. They further claim that this amounted to a violation of Article 3, and that under Article 4 of Protocol No. 4, they were subjected to collective expulsion without an individual assessment or effective access to lawful entry procedures.

Amid the growing number of migration-related cases, it is notable that, in recent years, the Court has received mass requests for interim measures under Rule 39 of the Rules of Court against Belgium and Poland.

Finally, I would like to acknowledge an important institutional development: in February 2023, the Court established an Immigration Committee – I would say, the first "specialised" judicial formation within the Court[1]. This cross-Section body was created to centralise expertise and improve efficiency in handling migration cases — a structural response that reflects not only the growing volume, but also the increasing legal and factual complexity of this area.

A few words are warranted about climate change litigation. Following a number of successful domestic cases, starting with *Urgenda*[2], it was only a matter of time before similar complaints reached our Court. Last April the Court rendered a judgment (*Verein Klimaseniorinnen Schweiz and Others v. Switzerland*) and two inadmissibility decisions (*Duarte Agostinho and Others v. Portugal and 32 Others*; and *Carême v. France*) in climate cases. The three cases showed that the absence of a right to a healthy environment in the Convention was not an obstacle to climate change litigation before the Court, despite what many commentators had previously argued.

In my view, the judgment in *Klimaseniorinnen* is a very important ruling which provides a framework for future cases, not only for our Court, but also both domestically and globally. Notably, the recognition of *locus standi* of environmental NGOs will strengthen the role of civil society in climate change matters. That said, I must emphasise that the Court has received only two climate change related applications since April 2024.

Turning now to inter-State applications. A lot can be said about the topic, but I will try to limit my remarks to a number of issues I found relevant, as I am mindful that Prof. Risini will also touch upon this topic.
Currently, the Court has before it a total of 12 conflict-related inter-State cases and approximately 11,000 related individual applications. These individual applications represent approximately 18% of all individual applications currently pending before the Court.

Some of these cases are pending before Sections (not before the Grand Chamber), e.g.: *Ukraine v. Russia (VIII)*, lodged in 2018, *Ukraine v. Russia (IX)*, lodged in 2021. Incidentally, the case of *Georgia v. Russia (IV)* was examined in April 2024 by Chamber of Second Section.

There are approximately 9,500 individual applications concerning the conflicts in Crimea, eastern Ukraine, and the ongoing war in Ukraine. Around 700 of them have already been communicated.

[1] See Thematic committee for immigration-related cases - ECHR - ECHR / CEDH, last accessed on 4 July 2025.
[2] *Urgenda Foundation v. The State of the Netherlands*, C/09/456689 / HA ZA 13-1396, District Court of The Hague, Judgment of 24 June 2015.

There are a total of around 160 pending individual applications linked to the conflict between Georgia and Russia.

Seven inter-State cases concerning the conflict between Armenia and Azerbaijan are currently pending before the Court: 5 of them, including the case of *Armenia v. Türkiye*. Are pending before a Section.

In addition, there are also a total of approximately 1,400 pending individual applications related to that conflict.

Obviously, the rise in inter-State applications is primarily due the armed conflicts that occurred in Europe over the last two decades. But not only. The Court has also examined or is going to examine complaints which can be regarded as a form of diplomatic protection: *Slovenia v. Croatia* (2020), *Liechtenstein v. Czech Republic*, *Slovakia v. Belgium*, the last two are still pending.

As regards applications like *Georgia v. Russia (II)* and the applications lodged by Ukraine against Russia relating to Crimea, Eastern Ukraine or the 2022 full-scale invasion, in view of the scope and nature of the complaints raised by Georgia and Ukraine – allegations of gross and large-scale violations of human rights and humanitarian law – one might argue that Georgia and Ukraine are not only defending the rights of their own nationals, but also the public order in Europe and the fundamental values that underpin the Convention system. One fact is noteworthy – 26 State Parties to the Convention have intervened as third parties in the inter-State proceedings initiated by Ukraine.

Turning to the challenges the Court faces in examining and adjudicating conflict-related inter-State applications, it may be argued that these challenges and difficulties mainly stem from the fact that the Convention system was not originally designed to address such cases. This was acknowledged in *Georgia v. Russia (II)*, where the Court recognised that it was not equipped to assess large-scale military confrontations. Consequently, it refrained from establishing the respondent Government's jurisdiction in the context of active hostilities.

The Court stated:

"*Having regard in particular to the large number of alleged victims and contested incidents, the magnitude of the evidence produced, the difficulty in establishing the relevant circumstances and the fact that such situations are predominantly regulated by legal norms other than those of the Convention (specifically, international humanitarian law or the law of armed conflict), the Court considers that it is not in a position to develop its case-law beyond the understanding of the notion of "jurisdiction" as established to date*".

If you ask my opinion, I cannot subscribe to that statement, nor can I agree with the Court's finding that Russia lacked jurisdiction on the grounds of the chaos prevailing during active military hostilities.

In my view, the Court can effectively deal with such cases and must do it, not only by virtue of its mandate and powers established by the Convention, but also because, at present, there are no other effective avenues and means in international law through which States can resolve such international disputes. One might argue that in examining and adjudicating conflict-related complaints the Court has actually become an enforcement mechanism for international humanitarian law. I think that whenever it is indispensable for the Court to discharge its mandate, the Court has to interpret provisions of international humanitarian law and assess compliance with those provisions.

As regards the specific challenges, the issue of executing inter-State judgments in conflict-related cases could arguably be placed at the top.

Further, conflict-related inter-State cases require the Court to examine and assess *enormous amount of evidence* concerning a significant number of victims. The facts in such cases are highly contested by the parties, and their establishment by the Court is both time-consuming and resource-consuming.

That said, over the years, the Court has developed clear evidentiary rules based on free assessment of evidence which allow it to draw inferences and to establish the facts. The Court has effectively used these rules even when the respondent Government has failed to cooperate. 50 years ago, when the former Commission was faced with Turkey's refusal to participate in the proceedings initiated by Cyprus, it expressly "*refrained from drawing any conclusions from the fact that the respondent Government failed to make any statements, or to propose counter-evidence on the applicant Government's allegation*". Nearly 40 years later, in *Georgia v. Russia (I)*, the Court affirmed that a Government's unjustified failure to submit evidence in its possession may justify drawing of inferences as to the well-foundedness of the applicant Government's allegations.

Another significant challenge lies in the interaction between overlapping individual and inter-State applications. The Court gives priority to inter-State cases and adjourns the examination of related individual applications until the "overarching issues" arising in the "parallel" inter-State dispute – such as the question of jurisdiction – have been determined. More specifically, following the controversial concept of context of chaos introduced in *Georgia v. Russia (II)*, thousands of individual applications are pending (though some of them, even not related to that conflict (e.g., against Azerbaijan and Armenia), have already been found inadmissible for a lack of jurisdiction based on the said judgment).

That is not to say that related individual case files are simply piled up and left to gather dust in lawyers' drawers. They can be processed and examined — though only to declare them inadmissible, notably for being manifestly ill-founded.

In the meantime, some individual applications which appear *prima facie* admissible are in the process of being communicated, with a view to preparing them for decisions or judgments once the relevant inter-State proceedings have been concluded.

Finally, a quick remark about victims and just satisfaction within inter-State proceedings. It is essential for applicant States that to identify the victims on whose behalf they are bringing the case and to submit sufficient evidence demonstrating that those individuals were indeed affected by the alleged violations. Without such identification, the Court, despite having found a violation, will not award just satisfaction.

Take, for example, the case of *Georgia and Russia (II)*. The Georgian Government submitted a list of 1,408 alleged victims of the administrative practice of torching and looting of houses in the so-called "buffer zone". But the Court found that the evidence submitted by the applicant Government was insufficient to show that the properties in question had actually belonged to those individuals, or that they had constituted their homes within the meaning of Article 8 of the Convention. As a result, the Court ultimately could not make an award in their favour.

Conclusion

Ladies and gentlemen,

Let me conclude by saying that while the Court faces significant procedural and substantive challenges in addressing the issues I have tried to briefly describe in my presentation, it is essential that it remains both principled and pragmatic, adapting its procedures and working methods where necessary.
Thank you for your attention.

Isabella RISINI
Professor, Technische Hochschule Georg Agricola, Senior Editor at Verfassungsblog / *Professeure, Technische Hochschule Georg Agricola*, Rédactrice en chef, *Verfassungsblog*

This image captures the fundamental paradox at the heart of the inter-State complaint mechanism under the European Convention on Human Rights. States are both the guardians of the Convention system and, all too often, its potential violators – or the protectors of those who are.

Some of the reflections I present here build on earlier work published in a 2021 blog symposium on *Völkerrechtsblog*, which I co-edited with Justine Batura.[3] *Of Foxes Guarding the Chickens and the fellow foxes*, was borrowed from a joint contribution by Geir Ulfstein and me that we wrote with Andreas Zimmermann. The work builds on a conference organized under the German Presidency of the Committee of Ministers of the Council of Europe in April 2021.[4]

[3] On Current Developments and Reforms - Völkerrechtsblog.
[4] Inter-state cases under the European Convention on Human Rights - Experiences and current challenges.

Ladies and Gentlemen,
Distinguished Colleagues,

It is a privilege to speak here in Strasbourg, at a time when the role and resilience of the European Court of Human Rights are being tested from multiple directions. Inter-State applications were a tool that was once exceptional but has, in recent years, become a more regular - and necessary - part of the Court's work. But I want to begin by widening the lens for a moment.

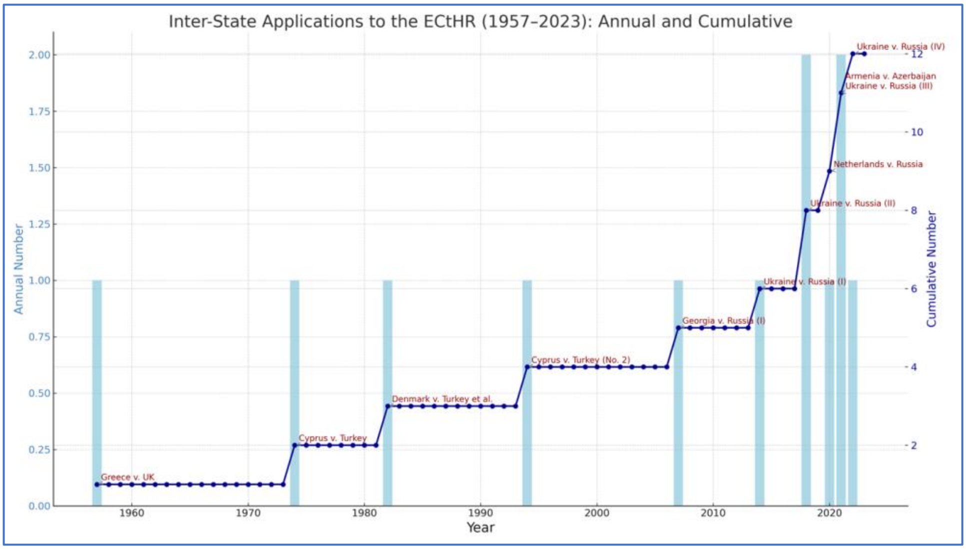
In the same week as our conference, the Agreement on the Special Tribunal for Ukraine was signed. We are three years into the war of aggression by Russia against Ukraine.

I sensed – as many of us do – that the European human rights system is at an inflection point.

We are witnessing a convergence of challenges: geopolitical fracture lines reflected in inter-State cases, the transformative impact of AI on fundamental rights, and climate change judgments that test the limits of consensus in Europe.

And yet, the demand for the Court’s guidance has never been greater. Individuals and states alike turn to Strasbourg not just to correct violations but to seek direction in legal terrain that is increasingly uncharted. The inter-State procedure is emblematic of this: originally conceived as a diplomatic safeguard, it is now one of the very few legal avenues for accountability in the context of armed conflict and systemic abuses.

In this environment, the Court’s role is both more fragile and more vital than ever. The legitimacy of the system will depend not only on legal doctrine, but also on our collective ability -as scholars, practitioners, and institutions - to defend its integrity, even as we debate its future.



We have seen an upsurge of cases since 2007, the first set of proceedings between Georgia and Russia. Not all situations that would merit attention are subject of inter-State proceedings, I have - for example - Turkey in my mind here. Also, the reaction against the Russian annexation of Crimea, and before, the war in Georgia, did gather only a response by the immediately affected States. Georgia lodged overall four applications; Ukraine lodged no less than ten.

Today, I would like to underline the essential importance of inter-State proceedings in Strasbourg. In this vein, I make a pledge to further improve the Court's website in re Inter-State proceedings. Then, I will make the overlap between inter-State and individual applications a leitmotiv for further considerations, as I believe it is a central and largely unresolved issue. 18% of the pending individual cases overlap with inter-State proceedings.

Further issues must remain beyond the scope of this discussion, including the duration of proceedings—for instance, the case *Ukraine and the Netherlands v. Russia*, scheduled for judgment in July 2025, has in part been pending before the Court since 2014.

It would be most welcome for the Court to clarify the binding nature of interim measures in inter-State proceedings. Although their binding force is not in doubt, compliance has often been lacking. Notably, several of these measures have drawn on the language of international humanitarian law. The interaction between the Convention and IHL represents another fundamental topic - one that would warrant an entire conference of its own.

This is also not the occasion to delve into the issue of just satisfaction under Article 41 ECHR in inter-State proceedings, or the need to ensure that individuals ultimately benefit from such awards. To date, this has remained largely theoretical, as the three relevant judgments have not yet been implemented.

The EU accession might mean a restriction of inter-State proceedings, which I would find regrettable as much as an EU accession has its good sides. The reason behind this is one rooted in the (missing) competences of the EU, which should, in my view, not lead to a restriction for the proceedings as such.

Likewise, I am not speaking about the role of third parties, while I would like to point out, much in preparation to my pledge to improve the Court's website, that the third-party interventions by the 26 member States in the case of Ukraine, The Netherlands v Russia are available mainly through a post by Marko Milanovic on EJILTalk![5]. In my view, it would be good to see the State's submissions on the official website of the Court. It would make it also easier for researchers to engage with the materials. This would perhaps also address the issue of the "letter of the nine". Rendering visible the voices of States is certainly not easy but should be considered in the context of inter-State proceedings. I will return to this point below.

Inter-State Proceedings in the ECHR system

In the original 1950 version of the European Convention on Human Rights, inter-State proceedings were not an anomaly but the default enforcement mechanism. An inter-State application to the now-defunct European Commission of Human Rights represented the *minimum* level of international supervision that all Member States were required to accept.

By contrast, jurisdiction of the European Court of Human Rights was optional, as was the right of individual petition. It was only later that individual applications became the dominant mode of enforcement.

When Protocol No. 11 entered into force in 1998, replacing the two-tiered system with a single, permanent Court, the inter-State application procedure was not reconsidered in any depth during the reform process – despite the ongoing accession process of the Russian Federation and despite the ongoing litigation in *Cyprus v. Turkey*, which by then had already underscored the procedure's political and legal sensitivity. All the more, there are many open questions to be addressed.

[5] Marko Milanovic, 9 July 2024, The Mariupol Test: Analysing the Briefs of Third States Intervening in Ukraine and the Netherlands v. Russia – EJIL: Talk!.

A plea for more transparency on the Court's website

Let me make a plea – admittedly, one that belongs on a wish list, but an important one nonetheless. The Court would benefit from greater transparency and better access to information when it comes to inter-State proceedings under Article 33 ECHR. A lot of progress has been made in this regard already.

In terms of further improvement, it is time to model the Court's public information practices more closely on those of the International Court of Justice – not least because the stakes in inter-State cases tend to be high, both politically and legally. The number of pending cases in both venues is comparable, of course, the many pending individual cases in Strasbourg make it more difficult to adjudicate the inter-State cases.

What could this look like in practice? Ideally, we would see comprehensive and structured documentation throughout the entire life cycle of inter-State proceedings, including:

- Publication of the applications instituting proceedings;
- Disclosure of requests for interim measures;
- Timely information about third-party interventions or declarations – including their sequence;
- Verbatim records of public hearings, in addition to the existing webcasts;
- A dedicated tab on the Court's homepage for direct access to all inter-State cases;
- Links to the Committee of Ministers' EXEC database, indicating the status of execution;
- Cross-references to overlapping individual applications – at least once final judgments in those cases have been delivered;
- And information about the priority status of any given inter-State application.

In short: inter-State cases deserve commitment to openness, documentation, and "knowledge sharing". This is essential not only for legal scholarship, but also for accountability and institutional trust.

It is interesting to note that the comparatively rich and systematic information provided by the International Court of Justice on its website appears to be the result of an internal, free development of practice – not something directly mandated by a specific source of (international) law.[6]

[6] See for example Robert Kolb, The International Court of Justice (2013), 1183ff.; in this regard, I would like to thank Vahid Rezadoost for very much appreciated insights about the practices at the ICJ.

The European Court of Human Rights is free to make this type of institutional choice, of course, the financial resources allowing. The payoff in terms of accessibility, research potential, and public confidence would be considerable.

Overlap of individual and inter-State applications

Today, the overlap between individual and inter-State proceedings under the European Convention on Human Rights is very much the rule rather than the exception. This development was neither foreseen in the original Convention of 1950, nor addressed during the major reform effort that led to Protocol No. 11. Today, inter-State proceedings inevitably unfold alongside massive individual litigation.

Take *Ukraine v. Russia* as an example: it is currently flanked by approximately 9,500 overlapping individual applications — out of a total of around 70,000 pending applications before the Court. As Abel Campos pointed out on the panel, 18% of the pending individual applications overlap with inter-State proceedings. Many of the inter-State proceedings concern thousands of victims and raise systemic human rights issues.

And yet, there is no "global formula" for reconciling the two tracks. The Court's case law offers fragments of guidance:

- In *Varnava*[7], the Grand Chamber upheld the possibility of parallel proceedings, noting the co-existence of both tracks.
- Hélène Tigroudja, by contrast, has warned that such overlaps can become a calamity for individual justice.[8]
- Geir Ulfstein and myself have suggested that where there is smoke, there is often a fire – meaning that a surge in individual applications may in fact substantiate the broader claims made in inter-State cases.[9] Inter-State cases, especially those alleging systemic violations, function *de facto* like pilot judgments, even without formal procedural designation.

The overlap is an issue that touches not only on legal doctrine but also on the facts, the duration of proceedings, the Court's priority policy, and the potential for friendly settlements and just satisfaction.

One promising avenue would be to consider a more integrated approach to evidence. In cases where individual and inter-State applications are closely linked, individual applicants could play a more formal role — for instance, as

[7] Varnava and others v Turkey, 18.9.2009. para. 119.
[8] Hélène Tigroudja, Could the Collective Guarantee Mechanism be Detrimental to Individuals' International Litigation Capacity? - Völkerrechtsblog
[9] Geir Ulfstein, Isabella Risini, Inter-State Applications under the European Convention on Human Rights: Strengths and Challenges – EJIL: Talk!

witnesses in the inter-State proceedings. This could strengthen the evidentiary base of those cases and create factual synergies that benefit both sides of the docket.

Facts, evidence

Let me add a personal reflection, drawing on over fifteen years of research on inter-State applications.

In 2019, I had the privilege of participating in the conference *"50 Years of the Greek Case"*, co-organized by Professor Vassilis Tzevelekos in Athens. What made this event so memorable was not only the legal discussion, but the presence of witnesses and victims of the junta's repression - some of whom brought their children and grandchildren. Their interventions showed me the importance of the work of the European Commission of Human Rights. The importance of the documentation of what had taken place. For many, it was the first and only form of official recognition.

This experience served as a powerful reminder that inter-State cases should be assessed not only in terms of legal outcomes or procedural efficiency, but also in terms of their *long-term impact*. They form part of the historical record and offer, at times, a platform for truth-telling, hopefully enabling a transition to a better future.

It also reinforced my view that the Court, in inter-State cases, is effectively operating as a court of *first instance* — particularly where no domestic remedies are available. That reality brings with it a heightened responsibility, not just to adjudicate, but to record and to bear witness. I am aware that this is of course a heavy task for an already busy Court.[10]

Friendly settlements and exit strategies

One final point concerns exit strategies: for those States that make use of the inter-State procedure, there must be a *face-saving* way to exit proceedings when circumstances on the ground have changed — for instance, when there has been a demonstrable improvement in the human rights situation.

Such exits should be accompanied by *transparency*, and designed in a way that strengthens, rather than undermines, the legitimacy of the process. This is not only a matter of diplomatic delicacy, but of procedural integrity.

Closely tied to this is the question of *individual applications*. Inter-State settlements must not compromise the rights of individuals with pending claims, especially where their applications overlap with the subject matter of the inter-

[10] See also Thilo Marauhn, Less is More - Völkerrechtsblog, Philip Leach, Enhancing Fact-finding in Inter-State Cases - Völkerrechtsblog, Alina Miron, Fact-Finding or Just Evidence Assessment? - Völkerrechtsblog.

State case. One might even envision mechanisms for involving affected individuals in settlement processes, or at the very least ensuring that their procedural rights are respected throughout.

On this, I would refer to important contributions by Nicola Wenzel[11] and by Réka Piskóty and Helen Keller[12], who have explored the tensions between collective resolution and individual justice in this context. Their work highlights the delicate balance that must be struck between system-level efficiency and victim-centred accountability.

The way forward

Inter-State applications are among the most politically sensitive, factually complex, and legally consequential proceedings before the European Court of Human Rights. They test the limits of what international adjudication can achieve — and yet, they are also powerful reminders of why the Convention system matters.

These cases are not just about States in abstract legal dispute; they are about people, often in situations of conflict, repression, or systemic failure. They are about the visibility of truth, the memory of injustice, and the possibility of redress — even if delayed.

As we reflect on the past and present of Article 33 ECHR, we should resist the temptation to treat these proceedings as anomalies. Instead, we must develop them thoughtfully, transparently, and with a firm eye on both justice and institutional credibility. That includes better documentation, more clarity on their relationship to individual applications, and serious thinking about how such cases begin — and how they might end.

The foxes may still be guarding the chickens. But inter-State proceedings can render this picture less paradoxical — and more principled.

Thank you for your kind attention[13].

[11] Nicola Wenzel, Rethinking Friendly Settlements under the European Convention on Human Rights - Völkerrechtsblog.
[12] Helen Keller, Réka Piskóty, Friendly Settlements as the Sleeping Beauty in Inter-State Cases - Völkerrechtsblog.
[13] Please note that the conference took place before the Grand Chamber judgment in Ukraine, The Netherlands v. Russia was published in July 2025. A note in anticipation was published by Marko Milanovic on 3 July and is available here: Grand Chamber Judgment in Ukraine and the Netherlands v. Russia Forthcoming Next Week – EJIL: Talk!.

Isabelle NIEDLISPACHER

Agent of the Belgian Government before the European Court of Human Rights / *Agente du Gouvernement belge auprès de la Cour européenne des droits de l'homme*

Mesdames, messieurs, chers collègues et amis,

Je vais vous partager maintenant ma modeste expérience de coordinatrice des agents, avec mon co-équipier Hans-Jörg Behrens, dans le cadre des requêtes contre plusieurs États.

La coordination demandée par une requête visant plusieurs défendeurs est assez différente de celle de la situation de la tierce intervention. Dans le cadre de la tierce intervention, chaque Agent du Gouvernement rédige des informations ou arguments généraux impartiaux et objectifs propres à aider la Cour à résoudre de manière plus éclairée le litige dont elle est saisie. Les tierces parties n'étant pas parties au litige ne peuvent exprimer leur soutien direct à l'une ou l'autre partie, formuler des demandes concernant les procédures devant la Cour ou demander réparation.

Les défendeurs multiples étant parties au litige et susceptibles de devoir exécuter un ou plusieurs constats de violation par la Cour, l'enjeu est très important.

Aussi quand des États reçoivent une demande de la Cour visant à ce qu'ils limitent et coordonnent leur défense par souci de rationalisation et de clarté, la tendance première, au-delà du caractère inhabituel de devoir se concerter avec des défendeurs multiples, est parfois la crainte des Etats de voir limiter leur droit de la défense.

Quand je parle de défendeurs multiples, je vise les situations dans lesquelles il y a plus de deux défendeurs. Ces dossiers illustrent surtout des enjeux transnationaux et sont, jusqu'ici, très rares, leur nombre global depuis 2000 étant estimé à peine plus d'une dizaine.

La situation s'est présentée en 1999, dans le cadre de la requête *Banković et autres c. 17 États contractants*. L'affaire concernait le bombardement par l'Organisation du Traité de l'Atlantique Nord du siège de la radio-télévision serbe à Belgrade le 23 avril 1999, dans le cadre de la campagne de frappes aériennes menée contre la RFY pendant le conflit du Kosovo. Seize personnes furent tuées et 16 autres furent gravement blessées. L'affaire était dirigée contre les 17 États membres de l'OTAN qui sont également Parties à la Convention.

Les États visés par la requête s'étaient alors ralliés aux observations écrites et orales du gouvernement britannique qui avait coordonné la défense commune développant l'absence de lien juridictionnel entre les personnes ayant été victimes de l'acte incriminé et les États défendeurs. L'argumentation fut suivie et la Cour déclara la requête irrecevable le 19 décembre 2001, estimant que les requérants n'avaient pas démontré qu'eux-mêmes et leurs proches décédés étaient susceptibles de « relever de la juridiction » des Etats défendeurs du fait de l'acte extraterritorial en cause.

Un an plus tard, en 2000, une autre affaire vise des défendeurs multiples, la requête DSR Senator Lines c. 15 États membres de l'UE. Les faits sont les suivants. Le 16 septembre 1998, la Commission européenne adopta une décision infligeant à seize compagnies de navigation maritime, dont la requérante, une amende pour violation des règles de concurrence établies par le traité instituant la Communauté européenne. Le 7 décembre 1998, la société requérante attaqua la décision devant le Tribunal de première instance des Communautés européennes. En mars 2001, la Commission européenne obtint en Allemagne une décision d'exequatur lui permettant d'engager dans ce pays une procédure de recouvrement de l'amende. En avril 2002, dans le cadre de la procédure devant la Cour de Strasbourg, elle déclara qu'elle ne procéderait à aucune mesure de recouvrement tant que l'affaire serait pendante à Strasbourg. Par un jugement du 30 septembre 2003, le TPI annula les amendes infligées à la société requérante. Ainsi, la Cour constata, dans une décision d'irrecevabilité de 2004, que les faits de l'espèce n'avaient jamais été de nature à permettre à la société requérante de se dire victime d'une violation de ses droits découlant de la Convention.

Vingt ans plus tard, en 2020, une troisième affaire vise des défendeurs multiples, l'affaire *Duarte Agostinho* dans laquelle six jeunes ressortissants portugais saisissent la Cour contre 33 États pour inaction climatique et en particulier les effets sur leur vie, leur bien-être, leur santé mentale et les agréments de leur foyer de vagues de chaleur, feux de forêt et fumées d'incendie en augmentation.

Ici encore, les défendeurs sont invités par la Cour à se coordonner. J'ai l'honneur d'organiser des réunions en ce sens avec mes collègues et nous parvenons à nous accorder pour la rédaction d'observations écrites et de plaidoiries sur les questions de juridiction, non-épuisement des voies de recours internes et absence de statut de victime.

La Cour déclare l'affaire irrecevable, constatant qu'aucun titre de juridiction ne peut être établi en ce qui concerne les États défendeurs, à l'exception du Portugal à l'égard duquel la juridiction territoriale est établie mais à l'égard duquel le non-épuisement des voies de recours internes doit être retenu, les requérants n'ayant exercé aucune voie de droit disponible au Portugal.

Je conclurai mon intervention sur le constat que si les requêtes contre des défendeurs multiples sont assez rares jusqu'ici, rien ne fait en théorie obstacle à ce qu'elles se multiplient à l'avenir. Toute nouvelle affaire de ce type amènera à nouveau les agents des gouvernements à se coordonner dans un souci de répondre à la demande du juge international de rationaliser leur défense en vue d'en augmenter la clarté et la pertinence. L'exercice n'est pas facile mais il est enrichissant et l'on peut constater que dans les trois affaires que j'ai évoquées, les efforts conjoints des Etats ont été couronnés de succès, la Cour ayant suivi leur argumentation commune.

Je vous remercie pour votre attention et suis bien sûr disponible pour toute question.

Jenny SANDVIG

Partner, SVW, former Policy Director at the Norwegian National Human Rights Institution / *Associée chez SVW, ancienne directrice des politiques, Norwegian National Human Rights Institution*

I am absolutely delighted to take part in these discussions, and to hear my distinguished co-panelists' views on the substantial, procedural and administrative challenges that new trends in litigation bring before this Court. My perspective is one of attorneys and third-party interveners. Before, I used to work at the Attorney General's Office in Norway, often defending my State in cases here in Strasbourg, including in the Grand Chamber. Since, I have steered the combined efforts of all European National Human Rights Institutions in drafting third party interventions in four climate cases before this Court. And for the past two years, I have moved on to private practice. In this capacity, I represent individual and NGO applicants before the ECtHR, in the pending *Greenpeace Nordic and Nature and Youth et al. v. Nor*way, often referred to as 'Arctic Drilling'. It is one of six cases awaiting a decision after the Grand Chamber decisions in *Klimaseniorinnen*, *Careme* and *Duarte*.

I will speak about the trend of strategic climate litigation before the ECtHR. These are cases which often go beyond the interest of any particular individual and may be brought by NGOs or a group of individuals representing the aggregate interests of many. The Court exceptionally allowed for this kind of representative complaints in KlimaSeniorinnen, recognizing that substantively wronged interests would otherwise be deprived of the Court's protection on procedural grounds. Because these cases by necessity rely on organized interests to a larger extent than complaints from single individuals, they are often portrayed as strategic. They are strategic also in the sense that the claimants seek to both win the individual case and influence the public debate or change the behaviour of a targeted group of actors.[14]

Whilst climate cases are new to the Court, complaints over pollution and environmental harm are not. Climate harm is only one sub-set of environmental harm publicly known since the 1950s. What is new is the advances in attribution and detection science which increasingly allow for the application of the Court's well-established principles in cases such as air pollution and asbestos cases to climate harm. And whilst there are about 2967 climate cases worldwide,[15] only 14 to date have been brought before this Court. The argument that the Court through *KlimaSeniorionnen* would open the floodgates, has so far been overstated.

[14] London School of Economics, Global trends in climate litigation, 2024, p. 4.
[15] On 25.06.2025, after the conclusion of this conference, the London School of Economics published its yearly report on Global trends in climate litigation. Here, it is noted that 2,967 climate cases have been brought to date world-wide.

Where do I see these kinds of cases before the Court going in the future? Can we identify some distinct substantive, procedural or administrative challenges that arise in climate litigation going forward?

Before I speak to the future, let me say a few words of the past.

I do so to recall what the Court promises to do. In short: It is to rise above present biases to interpret and apply the Convention in the way that law, logic and reason impel.

History teaches a powerful example. In 1841, the U.S. Supreme Court cut through existing biases to rule that unlawfully captured Afrikans on a ship called the Amistad were not property, but free men. The Spanish traders had no title to them. Life and liberty superseded their property claims.

Today, this legal solution is self-evident. Back then, it required courage, and a meticulous – to our view abhorrent – interpretation of property law, bref: judges who dared analyze contemporary practices through a prism of logic and moral, concluding that it didn't hold up to rules that were already in place. As it were, this piece of judicial reasoning offered one step on the way towards abolition and equality. It solved nothing on its own. It contributed. Step by step. One may call it strategic.

And without any comparison intended, the case law of this Court offers contemporary examples where the Court dared judge matters with the clear-sighted views of tomorrow. Judgments that have passed the test of time:

- *Tyrer v. UK* – on the unacceptable practice of corporal punishment of children in schools.
- *Marx v. Belgium* – on the unacceptable discrimination of children born out of wed-lock.
- *Verein KlimaSeniorinnen Schweiz v. Switzerland* – on the unacceptable burden of climate harm that current generations impose unwittingly and irreversibly on vulnerable groups in society, and all those yet to be born.

I doubt that any of these cases were easy outcomes for the Court. Each challenged persistent views, the all too powerful status quo, the defence of "this is the way things are done", please don't upend and upset our ways, please don't request that we question who we are.

But as you know well. The persuasive power of status quo fades with time. If a judgment shall stand the test of time, one must arrive at the same conclusion without recursion to "the way things are done around here". One must be able to arrive at the same conclusion using merely law, logic and reason, decoupled from the exact time and space the judgment is rendered in.

As an international supra-national body, this Court is exceptionally well placed to do so. The very distance from national jurisdictions that begets restraint and a margin of appreciation, also makes it easier to cut through the locally conditioned noise and prejudice. To rise above.

So, for instance, in jurisdictions where independent judicial opinions have become entangled with personal risk, or where criminal prosecution is used for ulterior motives to quell opposition, this Court can cut through the noise.

Likewise, in jurisdictions where the authorities and courts are captured, to various degrees, by vested interests who have swayed public opinion from first grade throughout parliament on the necessity of their continued existence whilst deflecting responsibility for the harm their activities cause, this Court can provide a corrective.

To do so, to be the corrective, the Court must access the widest possible pool of arguments, in search of the best arguments, legally and factually. These many come from the parties, but also from third parties, and – exceptionally – from expert witnesses.

The opportunity to inform the case through third party interventions or expert witnesses is particularly called for in climate and environmental cases. As the Court noted in *Klimaseniorinnen*, adjudicating a climate case requires a "sufficient understanding of science".

In *KlimaSeniorinnen*, the Court had the privilege of being presented with brilliantly crafted pleadings from the appellant, but it sought more. It admitted several third-party interventions and even accepted a plea from the European Network of National Human Rights Institutions – which I represented – to plead orally before the Grand Chamber.

Having read all these submissions in depth, from all parties and third parties, I think it is fair to say that they in combination presented the Court with cutting-edge scientific evidence, comparative case-law and arguments, which I hope enabled the Court to conclude as it did.

For the future, I challenge the Court to make even more use of third-party interventions to enlarge its perspectives. The parties can only be expected to have their own case at heart and mind. Third parties can see beyond.

Yet, permission to intervene as a third party is often difficult to obtain. To maximize the chances of being accepted, various NGOs often team up to request joint interventions, agreeing on shared common denominators, at the expense, perhaps, of clarity and focus that each of them could bring if they were encouraged to write apart.

Other times, aspiring intervenors are left guessing at the Court's rejections. To give one example, ENNHRI – all national human rights institutions in Europe – was initially refused permission to intervene in Duarte. It was only because we dared ask again, when the Chamber relinquished jurisdiction to the Grand Chamber, that ENNHRI was invited in.

So, if I may, I would encourage the Court to allow more third-party interventions. The downside seems limited, if any. The upside is widening and deepening the pool of available arguments and advice that the Court need only follow to the extent they are persuasive.

Another way to seek out the best arguments, is to make use of the exceptional possibility of conducting fact finding investigations and invite expert witnesses to appear before the Court in camera. To be sure, yours is not a court of first instance. Yet, in some cases, perhaps particularly in climate and environmental cases, hearing from expert witnesses directly can avoid misconceptions, and assure that the Court's reasoning – as in Klimaseniorinnen – is based on the best available scientific evidence.

This is particularly important given the rapidly evolving nature of climate science. For instance, the IPCC's reports, which the Court correctly ascribed particular weight in *KlimaSeniorinnen*, are published in a five-year cycle, relying on peer-reviewed and published articles. The newest scientific insights in these reports may thus be seven to eight years old at the time that the Court adjudicates a matter. To fill this gap, and ensure updated scientific understanding, expert witnesses could assist the Court.

As an aside, given the media attention that these kinds of cases inevitably receives, showcasing climate science during a hearing and in the judgment itself, could also serve democratic and informative purposes.

One may retort that the Court is only mandated to decide individual complaints, it is not to showcase science more broadly, its decisions are only binding inter partes. But that is only part of the story. The truth of the matter is that judgments of this Court have a de facto erga omnes effect. The decisions of this Court are looked to for guidance throughout Europe and the world at large.[16] It is a beacon of hope in an increasingly divisive world and should shine ever brighter the darker its surroundings may be.

And yes, there will be criticism. If there weren't, the Court would not be doing its job.
The function of a supra-national human rights court with the power to issue binding judgments on Contracting Parties, was never to act as a frictionless pretty flower. The very purpose of this Court is to offer oversight and

[16] On 29.05.2025, after the conclusion of this conference, the Inter-American Court of Human Rights cited and followed KlimaSeniorinnen in its Advisory Opinion OC-32/25 on The Climate Emergency and Human Rights.

protection, to check excesses of power over individuals and groups of individuals.

Yet, if authorities knew that the Court would only rubber stamp, that the Court would shy away from reaching difficult decisions, this interplay would faulter. The Court can only act as a check against unfettered majoritarian power, if that power knows that the Court will and can hold it to account.

So, I would say: don’t fear the critics. Their voices mean that the Court is doing its job. It is only when these voices go silent, when everyone roots for the Court, that the Court, in truth, should ask itself whether it has gone astray.

Abel CAMPOS

Deputy Registrar, European Court of Human Rights / *Greffier adjoint, Cour européenne des droits de l'homme*

Dear All,

Thank you very much for your invitation and for giving me the opportunity to underline the importance of the work of the CDDH.

My presentation will focus on the inside view about the problems/issues brought by the new trends in litigation before the European Court of Human Rights. Indeed, administration of justice, whether at national or at international level, evolves and changes: it is dynamic. And courts have to adapt to such dynamics, otherwise they lose relevance and even, in some more extreme cases, legitimacy.

As I said, this is valid to national as it is to international courts and to our Court in particular. Especially if it takes place within a somehow adverse context. We are all aware, I think, of the multiple hesitations concerning multilateralism, not to mention democratic backsliding in some parts of Europe.

What have we seen these last few years? More Inter State cases (most of the time because of geopolitical situations extremely complex and challenging); bringing very often with them thousands of individual cases. More strategic litigation (in itself totally legitimate – as everyone can try to push the boundaries of human rights law – but putting new increased pressure on a system traditionally used to deal with purely individual applications) in emerging Human Rights issues: climate change is the obvious example but there are others: about end of life; about discrimination against minorities; about abortion legislation; about digital rights or mass surveillance. The consequences are that the Court is confronted with cases going beyond the "traditional" individual case and going sometimes, in the end, into something very similar to a class action or even *actio popularis*. And let's not forget as well the importance of certain events in the life of a Nation: if it was not for the legislation and measures adopted by Türkiye following the attempted coup d'Etat in 2016, 80% of the Turkish case load would simply not exist and Türkiye would go from supplying the Court with practically one third of its total caseload (20,000 cases out of 60,000) to being outside of the Top 3 case count countries.

So how do we deal with these challenges? With a mix of old but refined methods and radically new solutions. I will go through some of them, perhaps the most important for today's debate, without nevertheless being exhaustive.

First of all, something you all know, I think, but that it is always good to explain again as some confusion remains: our priority policy. We have devised (since 2009 already but with many changes and fine tuning throughout the years, always precisely to respond to new circumstances) a priority policy: to paraphrase Orwell, although in a totally different context, all cases are equal, but some are more equal than others. Urgent cases (literally “life or death” cases: expulsion/extradition; alleged ill-treatment; alleged arbitrary detention): these are “priority” cases; followed by “non-priority” cases including other possibly meritorious cases dealing with other issues (A6, A8, A10 for example); and only then repetitive cases and prima facie manifestly inadmissible cases. How and why did we refine this: through the impact strategy, that allows us to deal in a more expeditious way with non-priority cases still raising extremely important issues for the legal order of the states concerned.

In response to the number of cases, we do join cases, which can be procedurally challenging but pays off later on. This helps the processing of cases even if it doesn’t necessarily help the execution of cases – we are aware of that (hence an enhanced cooperation with the Execution Department, as called for by the Declaration of Reykjavik).

As to large number of parties and third parties, with recent examples including Inter State cases, climate change cases, and pushback cases): “big” hearings have been organized, if necessary over consecutive days. This involves extremely heavy resources of the Registry but it is the way in which, in the end, we can facilitate processing of the cases. It also involves some rationalisation of the third parties’ pleadings (bearing in mind, for example, that we had 26 member states intervening as third partners in Ukraine and Netherlands v Russia), including when they intervene in the hearing. As many of you know, we can ask Government agents to cooperate amongst themselves and to submit coordinated or even joint observations to the Court. This is not always possible, but it should remain a valid option in some big cases.

In some very specific cases, the Court can hold fact-finding hearings in which expert evidence is heard and examined. This happened in the so called “extraordinary rendition cases”, about the CIA operated “black sites” in some Member States; and more recently, in *Karsai v Hungary*, concerning an end-of-life case. We know that for some new and complex issues submitted to the Court, expert and scientific evidence can be very important, or even decisive.

In relation to mass influx of cases (for example Covid-related cases, or cases related to the war in Ukraine or the attempted coup d’Etat in Türkiye): the President issued a Practice Direction to deal with such exceptional situations, allowing the Registry not to register immediately application files, pending a judicial decision on a leading case.

We have also developed specialised units for particular issues, such as the Conflicts Unit, specialized immigration Committee, and environmental cases coordination.

Finally (but not least important), we have indeed three different Courts within our Court: they variously deal with repetitive well-founded cases, manifestly ill-founded cases, and complex cases. The overall strategy is to do “everything everywhere all at once”: in other words, freeing time for complex cases by dealing with the “simple” cases as expeditiously as possible – and here I would underline the importance of IT, which will be discussed by another panel.

These are just some of the measures that have been adopted by the Court and its Registry to deal with the issues raised by new trends in litigation. There are not many courts in the world, international or domestic, that have been adapting to change as constantly as the ECtHR. And we have to continue to do so, if we want to remain relevant in Europe and elsewhere.

PANEL / SESSION 2

Challenges and opportunities in the Court's use of new technologies

Défis et opportunités dans l'utilisation des nouvelles technologies par la Cour

Moderator / *Modérateur :* Tim KOLK, Member of the Steering Committee for Human Rights (CDDH) in respect of Estonia, CDDH Thematic Rapporteur on human rights and artificial intelligence / *Membre du Comité directeur pour les droits humains (CDDH) pour l'Estonie, Rapporteur thématique du CDDH sur les droits humains et l'intelligence artificielle*

Klaudiusz RYNGIELEWICZ
Director of Filtering and Support Services, European Court of Human Rights / *Directeur du filtrage et des services de support, Cour européenne des droits de l'homme*

La stratégie numérique mise en œuvre par la Cour européenne des droits de l'homme depuis de nombreuses années consiste à exploiter des technologies de l'information tant pour ses procédures internes que pour ses relations extérieures avec les parties à la procédure devant elle, ainsi que pour l'information du public. Compte tenu notamment de la lourde charge de travail de la Cour, il est impératif de réaliser des gains d'efficacité grâce à une utilisation optimale des technologies de l'information, mais il convient également de viser un impact positif en termes de qualité et de rapidité du service fourni aux utilisateurs (requérants et gouvernements défendeurs, mais aussi praticiens, universitaires, journalistes et grand public).

La Cour fait une différence entre automatisation et intelligence artificielle (IA). La première fournit des systèmes qui suivent des règles prédéfinies plutôt que de véritables capacités d'apprentissage automatique. La seconde est capable d'effectuer des tâches qui nécessitent généralement l'intelligence humaine, telles que l'apprentissage, le raisonnement et la prise de décision. Les deux sont utilisées et interagissent.

Nous allons voir dans un premier temps les outils d'automatisation développés par la Cour avec des détails sur leur application pratique à deux procédures, ainsi que leur utilisation en temps de crise. Nous allons ensuite voir la stratégie IA de la Cour et les projets futurs.

I. L'automatisation

L' infrastructure informatique de la Cour repose sur trois piliers :

- ✓ gestion des affaires
- ✓ production de documents
- ✓ communication et collaboration (interne et externe)

1. Gestion des affaires (*case management*)

La Cour a développé CMIS (*Court Management Information System*), qui est une base de données offrant des fonctionnalités de gestion des dossiers. Chaque demande est introduite dans le système, y compris les informations pertinentes (par exemple, les noms et coordonnées des représentants des parties, des juristes du greffe chargés de l'affaire et de la formation judiciaire à laquelle elle a été attribuée). Les différents événements de procédure sont également enregistrés. Les utilisateurs ont ainsi un accès facile et rapide à tous les détails de l'affaire et à toutes les pièces du dossier. L'écran de recherche CMIS offre de multiples possibilités pour trouver les affaires relatives à des critères définis - par exemple, toutes les affaires traitées par la section Y où le juge X est rapporteur qui ont été portées à l'attention du gouvernement défendeur entre certaines dates. En outre, le système permet aux utilisateurs de produire des rapports de gestion et des statistiques.

Il gère également les calendriers de la Cour et la gestion de l'ensemble du cycle de vie d'une affaire. Le système est doté d'un module de code barre qui permet l'enregistrement automatique de la correspondance, un suivi efficace des affaires et l'archivage électronique. Il est le point de départ de tous les outils imaginés pour le traitement des affaires.

CMIS dispose d'un module spécifique pour le Département de l'exécution des arrêts de la Cour et le Secrétariat du Comité des Ministres pour aider à l'exécution des arrêts. Cela permet le partage d'informations pertinentes entre le greffe et le secrétariat du Comité des Ministres et évite la duplication du travail déjà effectué par le greffe. Le système gère également les agendas du Comité des Ministres et enregistre les résolutions relatives à l'exécution des arrêts. Ces derniers sont ensuite publiés dans le système HUDOC de la Cour.

2. Production de documents

Une autre composante importante de l’édifice est le système de gestion des documents de la Cour (DM) relié au CMIS. Il permet aux utilisateurs de trouver, de partager et de collaborer facilement avec les documents et leur permet de les relier aux dossiers des affaires. Par exemple, les utilisateurs peuvent rechercher tous les documents - en général ou d'une catégorie spécifique - liés à une affaire. Le système indexe également automatiquement tous les documents, ce qui permet aux utilisateurs d'effectuer des recherches en texte intégral et de réduire ainsi le temps passé auparavant à rechercher des documents dans une structure de classement classique.

La Cour utilise également des modèles depuis 1996, pour automatiser la création de lettres et de documents à partir des informations saisies dans le système CMIS. Des dizaines de milliers de lettres sont ainsi crées chaque année à l'aide de ce système. Cette plateforme a été développée pour prendre en compte les nouvelles méthodes de travail, notamment en ce qui concerne les arrêts de jurisprudence bien établie. Le système a permis d'accroître la capacité de la Cour à traiter efficacement les dossiers et à produire rapidement des lettres et des documents types pour un grand nombre d'affaires. La plateforme de modèles associée aux modules de flux de travail améliore considérablement la productivité globale de la Cour, ce qui a contribué à réduire considérablement l'arriéré des requêtes. Il est évident aujourd’hui que sans cet outil informatique il serait quasi impossible de gérer le flux de la correspondance dans des dizaines de milliers de requêtes qui arrivent à la Cour chaque année et dans les dossiers déjà enregistrés. L'équipe chargée des modèles a créé plus de 2 300 modèles et macros en 40 langues, spécifiques à la Cour pour aider le personnel du greffe à produire des documents. Ce catalogue, un outil personnalisé, aide le personnel à identifier facilement le bon modèle à utiliser à tous les stades de la procédure, de la première lettre d'accusé de réception à la rédaction d'un arrêt. L'utilisateur est invité à répondre à une série de questions et, en fonction de la réponse, les parties pertinentes de la lettre ou du rapport sont complétées. En 2024, plus de 155,000 lettres ont été génères par le système.

Enfin, l'utilisation de signatures électroniques de plus en plus répandue élimine progressivement les signatures manuelles des lettres et de leur scannage. Elles sont également archivées électroniquement. Le tout est transmis électroniquement à l’aide de nombreux workflows qui opèrent à la Cour éliminant ainsi progressivement l’utilisation du papier.

3. Communication et collaboration

Le site Intranet de la Cour est un portail central d'informations internes sur la Cour, sa structure et ses méthodes de travail internes. Il contient diverses collections de savoir-faire, des nouvelles interactives et des affichages en direct sur divers sujets en rapport avec la jurisprudence de la Cour, le travail des sections et des unités nationales et les applications informatiques.

Pour diffuser l’information vers l’extérieur sur sa jurisprudence la Cour utilise sa base de données HUDOC. Celle- ci contient toute la jurisprudence de la Cour (arrêts et décisions de chambre de la Cour, rapports et décisions de la Commission européenne des droits de l'homme (jusqu'au 1er novembre 1999) et les résolutions du Comité des ministres). Les arrêts sont publiés dans HUDOC le jour de leur prononcé. Elle donne également accès à d'autres collections (exposé des faits dans les affaires communiquées, communiqués de presse et avis consultatifs).

HUDOC offre aux utilisateurs de nombreuses fonctionnalités avancées, notamment la possibilité d'accéder facilement aux arrêts qu'ils recherchent grâce à des filtres de listes de résultats. Des contenus ont été ajoutés, tels que les résumés juridiques des affaires les plus importantes. Une catégorie d'importance supplémentaire a également été créée. Les documents peuvent être téléchargés en format Word et PDF et les utilisateurs peuvent créer leurs propres flux RSS spécifiques. La diffusion de la jurisprudence joue un rôle important pour faciliter la mise en œuvre de la Convention au niveau national et pour renforcer ce rôle, des efforts ont été faits pour mettre à disposition via HUDOC, soit directement soit par des liens vers d'autres sites, les traductions des arrêts les plus significatifs dans un certain nombre de langues non officielles. La Cour continue à traduire les arrêts clés dans des langues autres que les deux langues officielles du Conseil de l'Europe (anglais et français) et à les rendre accessibles via HUDOC. Le système est constamment développé afin d'améliorer sa fonctionnalité globale et les fonctionnalités supplémentaires y sont régulièrement ajoutées.

Le département de Jurisconsulte de la Cour a développé la plateforme de partage des connaissances de la Cour (CEDH-KS). Elle est conçue et administrée par le greffe. Son contenu ne lie pas la Cour. Elle a pour but de faciliter une approche collaborative de la création et du partage des connaissances sur la jurisprudence découlant de la Convention, et complète les outils d'information existants. Elle permet d’accéder directement aux dernières analyses des évolutions de la jurisprudence présentées sous une forme thématique et contextualisée, par articles de la Convention et par thèmes transversaux. Les documents élaborés par le greffe sont complétés par des documents et des liens présentant un intérêt jurisprudentiel plus général. La plateforme étant mise à jour chaque semaine, elle constitue une source complète et à jour d’analyse de la jurisprudence la Convention. La CEDH-KS est disponible dans les deux langues officielles, l’anglais et le français, ainsi qu'en trois langues non officielles : roumain, turc et ukrainien. Cette démarche s’inscrit également dans le renforcement de la subsidiarité et de la responsabilité partagée car, mieux la jurisprudence de la Cour sera connue, mieux elle sera appliquée au niveau interne.

La Cour estime par ailleurs que l'exploitation continue des technologies de l'information revêt une importance stratégique, notamment en ce qui concerne la communication électronique avec les parties, afin d'améliorer et de renforcer ses mécanismes de communication et de diffusion de l'information. C'est pourquoi elle a développé des plateformes sécurisées pour communiquer par voie électronique avec les gouvernements défendeur, les représentants des requérants et d'autres parties à la procédure.

En 2005, la Cour a mis en place une plateforme destinée à faciliter la communication électronique des documents relatifs à ses dossiers avec les agents du gouvernement (Govsite). Chaque gouvernement a accès à son propre site Internet sécurisé dédié où il peut envoyer et recevoir des documents. Pour accéder à ces sites et les utiliser, les gouvernements ont seulement besoin d'une connexion Internet fiable et d'un navigateur Internet. Un courriel de vérification est envoyé chaque nuit pour informer chaque gouvernement du nombre de documents échangés ce jour-là et des liens pour télécharger ces documents. Cette procédure permet aux agents de gagner un temps considérable en termes de ressources humaines et en coûts de fonctionnement et a facilité la communication entre les gouvernements et la Cour.

En 2016, la Cour a développé son service de communication électronique (eComms) pour permettre aux représentants des requérants d'échanger des documents avec elle. Le système fournit un moyen sûr et fiable de communiquer avec la Cour, permettant aux parties de transférer des fichiers en toute sécurité et de saisir les données associées au document (telles que le nom du document, le type de document, le numéro de la requête) pour une identification aisée du document téléchargé. Les documents envoyés par les parties peuvent ensuite être facilement ajoutés dans le système de gestion des documents de la Cour sans qu'il soit nécessaire de les scanner. Ce moyen de communication a permis à la Cour de poursuivre son activité alors que les services postaux étaient paralysés par la crise sanitaire Covid-19 et aujourd'hui durant la guerre en Ukraine.

Depuis octobre 2022, la Cour met à disposition une plateforme spécialisée pour l'introduction de demandes de mesures provisoires en vertu de l'article 39 du règlement de la Cour. Le site a été conçu comme une alternative au fax. Il est accessible à partir d'un ordinateur ou d'un appareil mobile. 1,104 demandes ont été introduites en 2024 par ce biais, sur un total de 1,630 reçues. Cette technologie est un test grandeur nature pour la création du formulaire de requête électronique.

4. Rationalisation

Les outils développés, les procédures qui ont suivi et les méthodes de travail mises en place ont rendu le travail de la Cour complexe voire sophistiqué. Après une analyse de la situation et une consultation générale du greffe sur la question, il a été décidé de rationaliser les outils et les processus sans perdre en efficacité, pour répondre à la mission de la Cour.

La prochaine étape du processus d'innovation de la Cour consistera donc à créer une plateforme dédiée entièrement à la gestion des affaires (*Case processing Gateway*). Elle aura vocation à recueillir toutes les données nécessaires pour qualifier le problème juridique soulevé par une affaire entrante et à l'orienter efficacement soit vers un juge unique, soit vers un comité, soit vers une chambre de sept juges en vue d'un traitement quasi immédiat. Les données une fois recueillies seront exploitées quasi automatiquement pour préparer des projets de décisions et assurer le suivi administratif des affaires.

La plateforme assistera également le juriste, voire le guidera après la communication de l'affaire au gouvernement défendeur tout au long de l'étape de la rédaction de la décision ou de l'arrêt. Elle lui fournira toutes les données disponibles sur l'état de la jurisprudence, les informations relatives à l'exécution des arrêts de la Cour et à terme toutes les informations contenues dans les bases de données nationales. Tout au long de ces étapes essentielles de la procédure, les informations contenues dans la plateforme de partage des connaissances du Jurisconsulte (*Knowledge sharing*) seront également mises à la disposition du juriste pour l'aider à orienter l'affaire et à la traiter de la manière la plus efficace et cohérente. Très rapidement une partie au moins de ce processus sera automatisée. Elle utilisera des outils d'intelligence artificielle qui sont en cours de développement par le greffe.

La Cour est actuellement dans la phase 3 du projet. Elle consiste à développer l'interface nécessaire pour la notification des requêtes fondées aux gouvernements défendeurs. Les deux premières phases terminées du projet consistaient à développer des interfaces pour la gestion des requêtes irrecevables et répétitives :

a. requêtes irrecevables (par la formation de Juge unique)

Le traitement des affaires considérées, après le tri initial des requêtes entrantes, comme manifestement irrecevables est régi par la procédure de juge unique. Compte tenu de ce que les informations pertinentes doivent être enregistrées dans CMIS, le système développé comporte trois composantes (i) le « *Module de Juge unique* » dans le portail Gateway de CMIS, (ii) un *workflow* et (iii) les documents (décision et lettre d'accompagnement) qui en résultent.

Le module Juge unique de CMIS a été conçu pour permettre, sur la base des informations entrées par le juriste chargé de l'affaire, de créer une vraie décision de juge unique comportant des motifs de rejet plus détaillés, quoique standardisés, même si, exceptionnellement, ils peuvent être spécifiques à une affaire donnée. L'examen du formulaire en vue de la préparation d'une note de juge unique doit se faire grief par grief et s'accompagner bien sûr de l'analyse des documents et décisions pertinents Après avoir entré les renseignements disponibles, le juriste peut envoyer dans le *workflow* la proposition qui suivra alors automatiquement un circuit de contrôle, de validation et de prise de décision.

À l'issue de la procédure, une fois la décision prise par le Juge unique, des lettres sont produites à partir du Workflow. Les requérants reçoivent la lettre d'accompagnement de la décision rédigée dans leur langue. Elle les informe, notamment, de l'adoption de la décision jointe, de l'impossibilité de former un recours contre cette décision, et du fait qu'il ne sera pas fourni de traduction de la décision dans la langue nationale. La lettre est accompagnée de la décision de Juge unique, rédigée dans la langue officielle (française ou anglaise). Les résultats obtenus après la mise en œuvre de la procédure de juge unique accompagnée par les innovations numériques ont été spectaculaires. Non seulement la Cour a liquidé l'arriéré des affaires irrecevables pendantes avant 2011, mais elle a surtout accéléré le traitement de ce type de requêtes. Aujourd'hui le requérant peut compter sur une décision concernant la recevabilité dans un délai moyen de trois à six mois à compter de l'enregistrement de sa requête. 22,210 décisions d'irrecevabilité ont été rendues en 2024.

b. affaires répétitives

Un autre exemple d'automatisation réussie est l'outil de gestion des affaires répétitives relatives à un problème structurel (*Well estabished case law fast track : WFT*). Une affaire WFT est une affaire découlant d'une requête répétitive relative à un problème structurel, pour laquelle il existe une jurisprudence bien établie. À la Cour, une jurisprudence bien établie est une jurisprudence constamment appliquée par une chambre. Elle s'appuie sur des motifs de constat de violation bien établis et concerne donc principalement les griefs recevables. Par ailleurs, un arrêt de principe (arrêt pilote ou « *leading* ») peut constituer à lui seul une jurisprudence bien établie, en particulier lorsqu'il a été rendu par la Grande Chambre. C'était historiquement les affaires concernant la durée excessive des procédures civiles et, la non-exécution ou exécution tardive des décisions internes, la durée excessive de la détention provisoire, les conditions de détention inadéquates, la durée de détention.

La Cour a adopté une politique appelée « *one in one out* » (une requête traitée pour une requête reçue) pour les affaires *WECL fast track* d'un type bien défini (ainsi que pour celles irrecevables relevant de la compétence de Juge unique). Cette politique s'applique depuis le début de l'année 2015. Cela signifie concrètement que les affaires répétitives nouvellement arrivées ne doivent pas être mises de côté mais peuvent être traitées avant les affaires de l'arriéré relevant de la même catégorie.

En pratique, l'essentiel du travail doit être fait lorsque le juriste chargé du filtrage conclut qu'une nouvelle requête porte sur une question relevant d'une jurisprudence établie. La Cour a développé un outil spécifique pour gérer ce groupe très volumineux d'affaires : le *WECL FT module.* Il est utilisé pour enregistrer les informations concernant l'objet de la requête et les griefs à porter à l'attention du gouvernement défendeur, ainsi que ceux à déclarer irrecevables au stade de la notification au gouvernement défendeur. Il enregistre toutes les informations pertinentes, par ex. contreproposition faite par le Gouvernement pour régler l'affaire, griefs à déclarer irrecevables dans une décision ou un arrêt. Le module calcule automatiquement les montants de règlement amiable / satisfaction équitable et surtout génère automatiquement des rapports, lettres et déclarations de règlements amiables, décisions et arrêts. Le module est un outil flexible et évolutif qui peut être adapté aux spécificités de chaque type d'affaires et pays.

Il permet également de radier du rôle des affaires qui n'appartiennent pas à un type WFT spécifique mais qui ne soulèvent aucune question spéciale. L'affaire est ainsi rayée du rôle pour une des raisons suivantes: aucune réponse du requérant aux communications du greffe ; le retrait de l'affaire par le requérant ou le décès de ce dernier; le règlement amiable conclu entre les parties ou une déclaration unilatérale du gouvernement a été acceptée par la Cour ; et le litige a été résolu.

Par le biais d'une lettre circulaire, au moment de la création de la procédure, tous les Gouvernements ont été informés par le greffier que désormais elle serait appliquée au traitement de toutes les affaires répétitives selon la jurisprudence bien établie de la Cour. La particularité de cette procédure tient au fait que la Cour considère que les observations des gouvernements défendeurs ne sont pas nécessaires, à moins qu'elles portent sur les faits tels que présentés par le requérant.

Les gains de temps et de ressources obtenus grâce à l'utilisation de cette procédure et de ses outils ont été considérables. La Cour, tout en répondant à chaque requête introduite en vertu du droit de recours individuel, a pu se concentrer sur l'analyse et le traitement des affaires prioritaires ou celles qui soulèvent des questions importantes voire nouvelles sous l'angle de la Convention. Enfin, l'automatisation a permis de raccourcir les délais de traitement pour les ramener à un an entre le moment ou l'affaire est portée à la connaissance du gouvernement et où elle se termine par une décision ou un arrêt final.

Actuellement 205 modules couvrent tous les articles de la Convention. Ils permettent de rendre un nombre très important de décisions et d’arrêts chaque année. En 2024, 10,412 arrêts et décisions ont été rendues en utilisant les modules et 4,579 requêtes ont été notifiées aux gouvernements défendeurs.

Cette véritable base de données crée à partir des informations reçues dans les requêtes va désormais permettre des notifications plus ciblées, par problème, question juridique, juridiction, région, autorité administrative ou centre pénitencier. Ceci permettra aux autorités d’entreprendre des actions précises pour remédier à un problème bien circoncis.

5. Utilisation des technologies en temps de crise

Durant la période de crise sanitaire de COVID-19 la Cour a involontairement pu tester l’ensemble de son dispositif mis en place depuis de nombreuses années. En s'appuyant fortement sur son système informatique qui a permis à la majorité de son personnel de travailler depuis son domicile, la Cour a réussi à maintenir ses activités de base (en particulier le traitement des affaires urgentes) et a continué à recevoir des requêtes et à les attribuer aux formations judiciaires concernées. Grâce à cette activité, le stock total d'affaires pendantes est resté stable. Grâce aux améliorations et innovations entreprises, durant la crise sanitaire la Cour a pu poursuivre sa mission en testant ses méthodes de travail et en les adaptant à la nouvelle réalité. Certains projets sont devenus prioritaires et d’autres au sujet desquels il pouvait y avoir des hésitations sont désormais une évidence.

La Cour continue également d’examiner des requêtes dirigées contre la Fédération de Russie, y compris celles rédigées en langue russe après l’expulsion de la Fédération de Russie du Conseil de l’Europe, au titre de sa compétence résiduelle en utilisant tous les moyens à sa disposition et en adaptant sa procédure. En raison de l’interruption des services postaux internationaux à destination et en provenance de la Russie et de certains territoires ukrainiens et face aux situations où les décisions et arrêts de la Cour ne peuvent être communiqués aux requérants que par voie postale, la Cour a décidé à titre exceptionnel, de notifier aux requérants uniquement par l’intermédiaire de sa base de données HUDOC les décisions et arrêts adoptés par ses formations judiciaires de chambre et de comité après le 1er mars 2022.

Depuis le 1er mars 2023, la Cour traite également de manière simplifiée les requêtes russes soulevant des questions qui relèvent de sa jurisprudence bien établie et pour lesquelles aucune observation n’est requise de la part des parties. Les parties aux affaires en question ne sont plus informées par une lettre de la notification des requêtes au titre de l'article 54 § 2 b) du règlement. Au lieu de cela, un document intitulé « Objet de l’affaire et exposé des faits » est publié sur HUDOC. Ce document contient également une référence à une note d’information qui décrit toutes les modalités de la procédure en question.

Les arrêts et décisions adoptés par la Cour dans ces affaires sont notifiés aux parties par voie de publication sur HUDOC. Cette publication vaut prononcé de l'arrêt ou notification de la décision.

Le gouvernement russe a été informé par une communication postée sur son site Govsite. Les requérants ont été informés en russe, ukrainien, français et anglais sur les pages qui leurs sont dédiées sur le site internet de la Cour. Plus de 10,000 arrêts et décisions ont ainsi déjà été rendus.

II. L'intelligence artificielle

CourtAI
Artificial Intelligence at the Court

L'intelligence artificielle (IA) offre des possibilités considérables pour améliorer la gestion des requêtes, la recherche juridique et la prise de décision. Cependant, elle présente également des risques qui nécessitent une surveillance attentive.

Il n'existe pas de définition universellement acceptée de l'IA. De nombreux outils présentés comme relevant de l'IA seraient en réalité mieux classés parmi les systèmes d'automatisation, qui suivent des règles et des flux de travail prédéfinis plutôt que de faire preuve de véritables capacités d'apprentissage automatique ou cognitives. Depuis plus de deux décennies, la Cour investit massivement dans l'automatisation comme cela a été démontré ci-dessus.

Si les efforts d'automatisation resteront un élément clé de la stratégie informatique de la Cour, cette présentation se concentre spécifiquement sur le paysage émergent des applications et des services basés sur l'IA. Ces technologies exploitent des modèles avancés d'apprentissage automatique, le traitement du langage naturel et d'autres techniques sophistiquées développées ces dernières années.

1. Lignes directrices

La Cour a défini les lignes directrices suivantes concernant le développement et la mise en œuvre de l'IA :

- ✓ la supervision humaine est essentielle : l'IA doit assister, et non remplacer, la prise de décision judiciaire
- ✓ transparence et responsabilité : les applications de l'IA doivent être explicables et traçables
- ✓ protection renforcée des données : la protection des informations juridiques sensibles est une priorité ; la Cour n'autorise pas le stockage des données en dehors de la France ou de l'Europe ; elle

ne permet pas également l'utilisation des données à des fins de formation en dehors de la Cour

- ✓ politiques claires sur l'utilisation de l'IA et révision continue : l'utilisation de l'IA doit être régulièrement évaluée en termes de performances et de risques afin de respecter les normes

L'IA a le potentiel d'améliorer l'efficacité, de perfectionner la recherche juridique et d'élargir l'accès à la justice. Cependant, sa mise en œuvre doit être responsable, transparente et conforme aux principes juridiques fondamentaux. En automatisant les tâches routinières, en affinant l'analyse de la jurisprudence et en favorisant l'accessibilité, l'IA peut permettre à la Cour de se concentrer sur sa mission principale.

La CEDH doit veiller à ce que l'IA reste un outil d'aide à la décision et non un décideur. L'IA doit assister le jugement humain, et non le remplacer. En outre, les risques tels que les biais, les problèmes de sécurité et la dépendance excessive doivent être gérés de manière proactive, afin de garantir que l'IA réponde aux besoins réels du Greffe et du corps judiciaire sans complexité inutile.

Les juges jouent un rôle essentiel dans l'élaboration de la stratégie informatique de la Cour, en veillant à ce que toutes les avancées technologiques soient conformes aux valeurs judiciaires et aux besoins opérationnels de la Cour. Toutes les initiatives liées à l'IA continueront d'être développées en consultation étroite avec les juges, qui restent au cœur de ces efforts. Les groupes de travail déjà formés resteront également étroitement associés à tous les projets liés à l'IA afin de garantir que la technologie soit conforme aux besoins et aux valeurs de la Cour.

Grâce à ces mécanismes, la stratégie en matière d'IA continuera d'être développée de manière efficace et en parfaite adéquation avec les besoins et les objectifs de la Cour. Il convient toutefois de souligner deux points. l'IA a un coût important qui augmente de manière exponentielle et tous les développements actuels sont supportés par le budget de la Cour. Il est illusoire de penser que les versions gratuites disponibles sur le marché des outils basés sur l'IA pourraient être utilisées par la Cour. Elles n'offrent pas de garanties de sécurité suffisantes, utilisent les données à des fins de formation pour les sociétés qui les proposent, données stockées dans des territoires qui n'offrent pas de garanties de sécurité suffisantes. Toute diminution du budget de la Cour aura un impact direct sur l'efficacité de la justice européenne. l'IA ne remplace pas l'humain mais l'assiste de manière intelligente. La Cour a anticipé son impact sur sa politique de ressources humaines. Les compétences de certaines équipes du greffe ont été révisées, des mises à niveau organisées et le travail redistribué en conséquence. L'exemple le plus parlant est celui des assistants para juridiques qui en plus d'un travail administratifs sur les dossiers, les préparent aux juristes en faisant un certain nombre de vérifications et propositions procédurales.

2. Exemples d’utilisation de l’IA par la Cour

Certaines technologies basées sur IA sont déjà exploitées par le greffe dans son travail quotidien. D’autres font partie des projets en phase de test ou de projets futurs.

Un *chatbot* est testé pour faire des recherches dans les nombreux documents internes du greffe sur les aspects procéduraux. Il permettra à terme d’obtenir des réponses fiables et renforcera d’avantage la cohérence des manuels internes. Des agents IA spécialisés dans la cybersécurité surveillent en permanence le réseau de la Cour afin de détecter les anomalies et les menaces potentielles. Ils peuvent réagir plus rapidement que les analystes humains en cas d'incident, isoler les systèmes affectés, supprimer les logiciels malveillants et corriger les vulnérabilités. Un logiciel d'IA pour la production de vidéos permet de transcrire la parole en texte et de modifier les vidéos en modifiant le texte, comme dans un document. Les développeurs de la Cour utilisent l'IA pour écrire des codes plus rapidement et plus efficacement voire corriger des bugs ou détecter des problèmes. Enfin les ordinateurs portables de nouvelle génération équipés d'unités de traitement neuronal sont déployés progressivement.

Comme dans toutes les entreprises et organisations c’est dans le domaine linguistique que les avancées sont les plus visibles. La traduction automatique neuronale (NMT) choisie par la Cour, est une méthode permettant de traduire automatiquement un texte d'une langue vers une autre à l'aide de modèles de réseaux neuronaux. Contrairement aux méthodes de traduction traditionnelles basées sur des règles ou statistiques, la NMT exploite de grandes quantités de données textuelles bilingues pour former un seul réseau neuronal de grande taille. Ce réseau apprend à prédire la probabilité d'une séquence de mots dans la langue cible à partir d'une séquence de mots dans la langue source. La NMT a considérablement amélioré la qualité de la traduction automatique en permettant des traductions plus fluides et plus naturelles. Elle permet de saisir les nuances et les expressions idiomatiques plus efficacement que les technologies précédentes, même si des défis, tels que le traitement des mots rares, subsistent. Les récentes avancées en matière d'IA ont fait de la NMT l'approche dominante en matière de traduction automatique. Cependant, les systèmes plus traditionnels déjà utilisés par la Cour continuent de jouer un rôle important et la Cour a adopté une approche hybride afin de maximiser les avantages des deux.

Depuis 2022, les traducteurs du département linguistique testent un logiciel spécifique sélectionné comme étant celui le plus adapté aux besoins de la Cour et le nourrissent avec les informations et le langage de la Cour. Des gains de productivité sont à prévoir dans la mesure où le logiciel produit un premier brouillon de traduction rapidement, traite les traductions simples de manière correcte mais ne répond pas aux exigences de qualité requises pour les traductions complexes- par exemple les concepts issus de la jurisprudence ne sont pas rendus de manière précise ou cohérente.

L'intervention humaine d'un professionnel qualifié reste absolument indispensable. L'outil l'assiste dans son travail mais ne le remplace pas. L'impact d'une traduction inexacte d'un arrêt de la Cour sur les discussions au Comité des Ministres pourrait être trop important. L'exigence de la qualité guide toujours les services de la Cour.

3. Formulaire de requête électronique

Le développement du formulaire de requête électronique est une priorité absolue pour la Cour. Le prototype sera testé très prochainement en interne. Le greffe fera ensuite appel aux barreaux et organisations non-gouvernementales représentatives pour un test externe grandeur nature. Le formulaire initial sera la version électronique du formulaire papier actuel pour permettre aux requérants et leurs représentants d'opérer cette transition essentielle de la meilleure manière possible.

La préoccupation essentielle reste la sécurité, pour se prémunir de toutes les tentative de paralysie du système de la Cour et des attaques malveillantes. L'IA y sera intégrée progressivement afin d'aider à la fois les requérants et la Cour. Pour la Cour, elle générera des résumés automatisés des affaires, fournira des traductions en plusieurs langues, translittérera les noms (par exemple, du cyrillique vers le latin), effectuera des contrôles de sécurité et classera les griefs. Pour les requérants, l'IA fournira une aide guidée, afin de garantir l'exactitude des données fournies et leur conformité aux exigence formelles de la Cour.

C'est ainsi que nous pourrions imaginer à court terme d'avoir un système dans lequel le requérant pourrait remplir en ligne, toujours dans sa langue un formulaire et télécharger tous les documents pertinents, en étant guidé pour satisfaire aux conditions de forme pour introduire une requête. Cette dernière pourrait être automatiquement traduite vers l'une des langues officielles, voire résumée. Une telle version serait soumise au contrôle du juriste chargé de l'affaire dont le rôle sera essentiel- à savoir vérifier l'exactitude des données avec le dossier et qualifier les griefs soulevés avant de la soumettre au juge. Tous les outils d'automatisation déjà disponibles seraient alors intégrés dans ce processus et faciliteraient toutes les phases suivantes d'une affaire.

Conclusion

La Cour a pris un certain nombre d'initiatives importantes pour exploiter les technologies de l'information en vue d'accroître l'efficience et l'efficacité de ses processus tant internes qu'externes. Elle continue à développer de nouveaux domaines d'activité informatique et est convaincue qu'il sera possible d'étendre encore l'application de sa politique numérique à mesure que de nouvelles technologies apparaîtront. L'investissement dans les technologies de l'information est hautement stratégique et la Cour s'efforcera de le maintenir à un niveau approprié.

Certains pourraient s'interroger sur le rôle et la nature du travail des juges et des juristes de la Cour. Encore juristes ou déjà experts en informatique ? La réponse est sans équivoque toujours juristes et juges, experts dans le domaine de la Convention. Comme cela a été souligné à plusieurs reprises, les outils en place permettent l'accélération du traitement des requêtes et fournissent un support mais ne remplacent pas l'analyse juridique et les débats pour lesquels les juges et le greffe doivent disposer de temps et conditions nécessaires.

Mateja ĐUROVIĆ

Judge of the European Court of Human Rights elected in respect of Serbia / *Juge à la Cour européenne des droits de l'homme, élu pour la Serbie*

Dear colleagues,

It a pleasure to take part of this annual meeting, and I would like to thank the organisers for the kind invitation. As a professor of law with a focus on digital regulation and the legal implications of emerging technologies, I am particularly pleased to speak on a topic that sits at the heart of my academic and professional interests: the intersection between artificial intelligence and the judiciary.

This question is no longer a theoretical or future question. The subject of the intersection between the artificial intelligence and the judiciary is more and more important and present today. As highlighted by the European Commission for the Efficiency of Justice in its 2025 report on the use of AI in the judiciary, based on the information contained in the Resource centre on Cyberjustice and AI, over 125 tools aimed at improving judicial efficiency and accessibility have already been identified [17]. This shows the growing presence of digital solutions in the administration of justice, and the increasing relevance of AI technologies in supporting judicial work.

The subject of our discussion today—how AI can enhance the functioning of courts, and what risks its use may entail—is therefore both timely and necessary. What are the benefits we might derive from integrating AI into our case-processing methods? What are the risks we must guard against?

I will start with the advantages AI may offer in terms of efficiency, consistency and accessibility. But I will also talk on the serious challenges it raises as the issues of transparency, data privacy and preserve the human character of justice .

I. Advantages

The most immediate and obvious advantage we can see in using Artificial Intelligence in the judiciary is efficiency. The use of digital processes in the judiciary is not anymore potential but actual. The diverse courts are going more in accordance with the digital area, in the way of opening the judiciary to digital processes. The European Court of Human Rights is itself recognising the potential of digitalisation in its case law, in particular in the way of the case L*awyer Partners A.S. v. Slovakia*, where it recognised the possibility to use electronic means to file complaints, when it is necessary and proportional, and in this case to prevent the printing of millions of pages. Artificial intelligence

[17] 1st AIAB Report on the Use Of Artificial Intelligence (AI) in the Judiciary Based on the Information Contained in the Resource Centre on Cyberjustice and AI, European Commission for the Efficiency of Justice (CEPEJ), 28 February 2025

has the potential to considerably improve efficiency. Courts are often overwhelmed, faced with an increasing number of application and cases can take decades before obtaining a result. AI could help accelerating the processing of cases by taking over certain tasks that are time-consuming and repetitive, such as document review or legal research, without depriving it of its quality, and letting legal professionals focus more time on the analysis and on "*high-level tasks*"[18]. As Dory Reiling points out, "*unlike human judges, AI does not get tired and does not depend on its glucose levels to function*"[19], comforting the idea that AI could efficiently help lawyers in repetitive tasks which would take many hours, and a lot of energy. AI is not subject to fatigue or distraction, in repetitive tasks, it can be both faster and more accurate than humans.

Another advantage would be the potential for more consistency in the case law of courts and therefore the increase of predictability of the judgments. AI can help ensure that similar cases are treated similarly, which would allow to applicants to better understand the outcome their cases could have, maybe even preventing unnecessary complaints. The former President Bosjnak of the ECtHR at the Opening of the Judicial Year 2025, the theme of whose Judicial Seminar was "Protecting human rights in a world of Artificial Intelligence, algorithms and big data"[20] highlighted this. The President mentioned a study carried out by scientists and law professors, which, using AI, had been able to predict the outcomes of the Court's judgments with a reliability of 79%[21] pointing out the potential for improvement in predictions that artificial intelligence could now offer.

However, while consistency is important, the risk with AI is that it choose the most common outcome among past cases, without adapting to the particular circumstances of the case. It could not identify the specificities of the case, not choosing the most appropriate outcome to the unique case but choose to judge following the normal solution according to the case law. This risk could alter the judicial role itself. A judge is not here to confirm or invalidate a standard solution, but to resolve a dispute within its unique factual and legal context.

[18] Dr. A. SREELATHA, Dr. Gyandeep Choudhary, Exploring the use of AI in legal decision making: benefits and ethical implications, Woxsen University, September 2023

[19] A.D. (Dory) Reiling, Courts and Artificial Intelligence, (2020) 11(2) International Journal for Court Administration 8. p.3

[20] Speech by Marko Bosnjak, Opening of the Judicial Year 2025, Strasbourg, 31 January 2025

[21] Predicting Judicial Decisions of the European Court of Human Rights: A Natural Language Processing Perspective, Nikolaos Aletras, Dimitrios Tsarapatsanis, D. Preotiuc-Pietro, Vasileios Lampos, October 2016

AI could also be a great progress for accessibility to judicial process in response to the pressing need. According to the OECD, more than 5.1 billion people in the world had no meaningful access to justice in 2023[22]. Using AI in the judiciary process would mean than a bigger number of people can have access to legal advice, given for instance by a chatbot as Dr. Sreelatha and Dr. Gyandeep Choudhary suggested in their study on exploring the use of AI in legal decision making[23]. Access to judicial process can be expensive, and using AI could provide access to people who cannot afford human lawyers[24]. These tools could reduce costs, making justice more accessible to the public.

II. Threats

Even if the advantages are considerable and could help the judicial area, we can't forget that these tools can be a threat for our rights and need to be applied with caution.

Indeed, even though the use of AI could allow more accessibility to justice, it could also create a new form of marginalisation of certain groups, of groups who don't have access to digital tools, or don't know how to use them. People without internet access, or those lacking digital literacy, may find themselves even further excluded. And we also must not forget the cost of digital tools, nor the financial costs of implementing IA. As the Victorian Law Reform Commission[25] has pointed out, AI adoption involves significant investments, not only in software and infrastructure, but also in training people and ongoing maintenance. While it may reduce some costs, it may introduce others.

If we decide to use Artificial Intelligence in the resolution of cases and to introduce it to the judiciary, it also means that we are ready to digitalise every information, which could include sensitive or confidential information. Using AI would require collecting massive amounts of data and giving rise to a new risk regarding the protection of data privacy. The more we digitise, the more exposed we become. We must ask: who controls this data? How is it stored? Who has access? And how do we ensure that the rights of parties are protected?

By digitalising sensitive information regarding cases, we let more room for digital attacks and theft online. How often do we hear in the tabloids stories about millions of platforms users' data stolen, what would we do if it's the same with judicial cases?

---

[22] Recommendation of the Council on Access to Justice and People-Centred Justice Systems, OECD Legal Instruments, 12 July 2023

[23] Dr. A. SREELATHA, Dr. Gyandeep Choudhary, Exploring the use of AI in legal decision making: benefits and ethical implications, Woxsen University, September 2023

[24] AI, Judges and Judgment: Setting the Scene, Rt. Hon Sir Robert Buckland, November 2023

[25] Artificial Intelligence in Victoria's courts and Tribunals, Consultation Paper, October 17, 2024, § 3.5

Any breach would not only undermine trust in the judiciary system, but it could also do real harm to the individuals concerned.

One of the most concerning threats in using Artificial Intelligence is the lack of transparency and accountability. AI system often cannot explain how they arrive at their results. How can we be confident with the result, how the public can trust a judgment without explanation? The judgment could include bias or flawed reasoning if there is no explanation to prove the contrary. It is important that courts and tribunals can explain their decisions, and that people can understand and challenge how decisions are made. A judgment that cannot be explained is a judgment that cannot be accepted.

How a decision could be challenged if taken by AI? What happens when an AI judge is reviewed by another AI judge built on the same model? Would this mean there will be no possibility to challenge decisions? A decision should always, if challenged, be reviewed by other judges to ensure the accountability and fairness of the decisions.

We must also acknowledge the issue of the "*legal black box*"[26]. Developers are programming AI systems, and in doing so, they choose how these tools acts and responds. These persons are not elected and might not be independent. We let ourselves subject to the risk that they might alter the outcomes of the judicial proceeding, they might enter biases in the way IA function.

Lastly, Artificial Intelligence is not a sure science, it can be inaccurate. For instance, ChatGPT sometimes invent materials, information, or provide incorrect texts creating sources which do not exist. Even if everyone and everything can make errors, we should not entirely rely on a digital tool, we must, human must, be here to supervise.

Therefore, as Professor Vytautas Mizaras has said, "Th*e integration of AI in judicial processes should always strive to reinforce, rather than replace, the human elements that are essential to justice. By prioritising a judge-in-the-loop approach, we preserve the trust and confidence that society places in its legal institutions.*" [27]

The use of Artificial Intelligence could have many advantages and allow us to process quicker important and necessary cases. However, if we introduce Artificial Intelligence to the judiciary, we must guide it and articulate clear principles for its use. It would need transparency because it must be explainable, and subject to review. These tools must be applied with caution, with a continuous evaluation and safeguards. And they must be applied with

[26] Han-Wei Liu, Ching-Fu Li and Yu-Jie Chen, ‚Beyond State v Loomis: artificial intelligence, government alrgoriyhmization and accountability' (2019), 27(2) International Journal of law and information technology

[27] Speech by Vytautas Mizaras, Opening of the Judicial Year 2025, Strasbourg, 31 January 2025

human oversight, applying it as an accessory to the role of judges. AI should remain a tool to assist judges, not replace them.

Artificial Intelligence can and should be introduced to the judiciary as we must evolve with our time. But it must do so in a way that strengthens, rather than weakens the fundamental values of the judiciary, with transparency, accountability, fairness and especially humanity.

Veronika FIKFAK

Professor of Human Rights and International Law at University College London, School of Public Policy and a co-Director of the UCL Institute for Human Rights / *Professeure de droits humains et de droit international, University College London, School of Public Policy et Co-directrice de l'UCL Institute for Human Rights*

Thank you, Mr Chair,
members of the Committee,
esteemed guests.

I am a Professor of Human Rights and International Law at University College London and a co-Director of its Institute for Human Rights. I have been working on the issue of automation in the European Court of Human Rights for the past five years. Together with my colleague, Laurence Helfer, we have also written extensively on the topic, including an article in the Michigan Journal of International Law – Automating Human Rights Adjudication.

In this talk, I would like to make three points that are based on this work. First underlines how different international human rights adjudication is to normal adjudication and shows why introducing automation into this process needs to be done with extreme care. The second point relates to the concerns of how suitable such adjudicative processes are to artificial intelligence tools. Put simply, which questions can and which cannot be entrusted to the machine and what can we expect of the "human-in-the-loop". My final point will turn to the issue of accountability, specifically to the applicants who turn to the court and to human rights victims but also a more general question of how transparent the whole system of European human rights justice should be.

In my first point, I would like to highlight the specific characteristics of international human rights adjudication. These characteristics make European human rights adjudication different to domestic adjudication and thus require of us to be even more careful when introducing automation or AI into the adjudicative process.

When individuals turn to international courts and tribunals, they do this only after they have exhausted all domestic remedies available. This means that they turn to the international court as a matter of last resort, after they had been unsuccessful obtaining justice or redress at home. The European Court of Human Rights thus offers the final opportunities for these individuals to be heard and violations corrected, requiring the Court to examine each claim and its aspects carefully.

When the European Court of Human Rights renders its judgment, these decisions are final and individuals are unable to challenge decisions before the same Court. But if flawed decisions reached with the assistance of automation tools remain final, they can erroneously deny individuals their ability to seek redress for violations and to receive appropriate remedies.

The third characteristic is that European human rights court adopts an expansive approach to rights interpretation – this means that human rights law is constantly evolving as it is applied to new situations (climate change, war in Ukraine) and as legal protections increase over time. The dynamic and evolutive approach to the interpretation of the Convention therefore directly challenges the static nature of automation and use of AI.

Finally, the cross-border nature of international human rights adjudication means that the decisions rendered by the Court have an influence across 46 countries of the Council of Europe and also across different human rights bodies. All of this raises the stakes of how appropriate it is for automation and AI to be introduced into the adjudicative process. We therefore better get it right!

This brings me to my second point, which relates to whether automation tools are suitable for international human rights adjudication. Like previous speakers, in our article Larry and I distinguish between the use of automation for the purposes of digitization, for case management, and finally for the purposes of helping in the reasoning and decision-making process. We treat the first two uses of automation as uncontroversial and widely accepted in national legal systems. However, we are concerned about the introduction of AI tools into the third category – i.e. to facilitate judicial decision-making. In this respect, the issue is whether and how the tools are able to preserve judicial discretion.

It would be contrary to the *letter* and *spirit* of human rights treaties to substitute the discretionary decisions of judges even the most sophisticated AI. We should reject the use of machine learning to predict violations or decide admissibility issues involving high degrees of discretion, such as whether a claim is "sufficiently substantiated" or "manifestly ill-founded." But there are questions that could be entrusted to automation tools in a manner that would be compatible with the exercise of judicial discretion. In this regard, suggestions based on if-then rules or clustering on basis of similarly of applications or their repetitive nature, identification of missing information in the application, or calculation of deadlines or damages, questions that are often straightforward, could all be entrusted to an automation tool. These questions often involve little discretion and if tools generate suggestions that judges are free to accept, reject or modify, this would be suitable and could enhance the adjudicative process.

This, however, raises another issue of suitability – one that relates to how humans interact with automation and in particular with AI, the so-called human-in-the loop. Traditionally, we think of human-in-the-loop as a corrector of a flawed algorithm: an AI generates a recommendation, if it gets it wrong, a human will fix it. But studies have shown that this is not the case and that humans suffer from automation bias, whereby they either blindly follow the algorithm or reject its recommendations when these should in fact be followed.

We know from previous speakers that the Court is already making use of automation in how it presents certain cases to the Court and in how lawyers approach the cases. As we move ahead with CourtAI, changes to decision-making process could make everyone more efficient, but we need to know how these tools work in practice and how individual members of the Registry are reacting to such AI tools. Could they be susceptible to automation bias or other biases? We do not know the answer to this question. These questions go to the heart of the suitability issue – if we value human decision and judicial discretion, then we need to know how automation and AI tools are affecting these decisions-makers throughout the adjudicative process.

This then leads me directly into my final point on accountability. How should we ensure the Court remains accountable to its users? More specifically, how transparent should we be about the information we provide about the automation that is used in the process and what explanation should we provide to the applicants in individual cases?

As my co-author and I argue in our article, the European Court of Human Rights should follow a *structured process* for evaluating *whether* to introduce automated decision-making and *how* automation tools – including AI – are introduced. The process should begin with a human rights impact assessment that should (1) explain how automation tools are appropriate to the Court's goals and will be integrated into its decision-making processes, (2) describe the tools' anticipated benefits, the foreseeable risks involved, and the measures for mitigating them; and (3) indicate how judges and staff will be trained, including what data has been or will be gathered in the testing period to understand the interaction of lawyers with such recommendations and their ultimate impact on judicial outcomes. This is not a productivity assessment, but rather an evaluation into how human-machine interaction might be changing the adjudication process and the success or failure of applications. In this context, the Court should develop a public review process that includes *consultations* with states, lawyers, litigants, and civil society groups.

The second component of accountability focuses on the *explanations* provided when automation is used. Courts should provide *two types* of information: (1) a *general* explanation of the institutional oversight process that I just described – e.g. by publishing the human rights assessment and the training undertaken and its impact on the outcomes; and (2) *case-specific* information *to applicants* about whether automation/AI was used to generate recommendations that a complaint should be declared inadmissible or, for example, to treat it as a repetitive case, or other. Taken together, these disclosures and explanations serve to ensure that the process remains fair and that values of individual justice that are central to human rights adjudication are upheld.

It is imperative that there is transparency about what is already in place and what will be introduced. If we move too fast, this will have implications. For example, if *flawed* decisions reached with the assistance of AI become precedents for future cases against the *same country*, against *other states parties*, and even for *other* regional human rights systems, this is likely to generate calls for redress and challenge of decisions that are already final. Indeed, some scholars already now argue in favour of a *right to challenge* a decision made by or with the help of automation or argue for *a right to have a human* make the decision in the first instance (in effect, this is a right to opt out of automation altogether).

Such calls, which are likely to only grow stronger with time, open up a dilemma for human rights adjudication. An important reason for introducing automation is to expedite the processing of cases. A right to challenge decisions reached with the assistance of automation tools, or a right to opt out of those tools, would require creating multiple tracks for reviewing claims, significantly increasing time and resources. It would also impose additional burdens on international courts that are significantly over-stretched and under-resourced. It is thus better to proceed with automation slowly and transparently, whilst testing human-machine interactions and automation's impact on outcomes.

To conclude therefore: Automation and AI raise foundational questions about (1) *how* individual rights claims are adjudicated and what in this process is suitable for automation and what not, (2) *how* humans interact with machines, and (3) *how* we can ensure international institutions remain accountable to their users. These questions require of us to proceed slowly and with caution so as to ensure the necessary checks and balances are incorporated into the system and able to redress any errors.

Thank you.

Matthieu QUINIOU

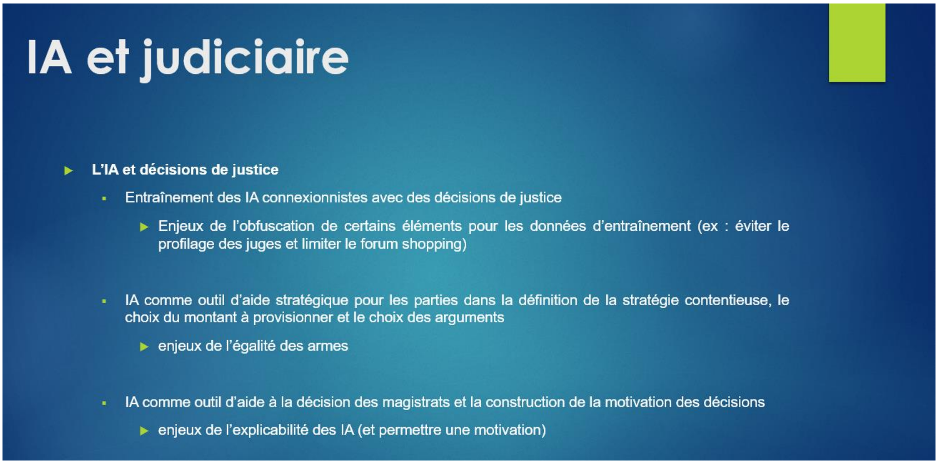
Avocat, member of the CEPEJ Artificial Intelligence Advisory Board (AIAB), Chair of UNESCO ITEN / *Avocat, membre du bureau consultatif pour l'intelligence artificielle (AIAB) de la CEPEJ, Président de UNESCO ITEN*

C'est un honneur et un plaisir d'être parmi vous pour discuter des défis et opportunités liés à l'utilisation des nouvelles technologies par la Cour et plus spécifiquement pour ma part de l'IA et monnaies numériques de banques centrales comme nouveaux défis pour le domaine judiciaire.

Mon propos sera structuré en deux temps :

Dans un premier temps je présenterai certains enjeux spécifiques de l'IA dans le domaine judiciaire sur lesquels j'ai eu l'occasion de travailler précisément, tout particulièrement l'opérationnalisation de la Charte IA de la CEPEJ.

Dans un second temps j'évoquerai les incidences potentielles de l'émergence des monnaies numériques de banque centrales pour les institutions judiciaires et le Cour européenne des droits de l'Homme.



On distingue classiquement les IA symboliques et les IA connexionnistes.

Les IA symboliques reposent sur un savoir humain modélisé avec des arbres de décisions. Ces IA aussi appelées systèmes experts sont déterministes et donc explicables. Ces IA se prêtent bien à l'automatisation de tâches standardisées.

Les IA connexionnistes suivent une approche différente, fondée sur l'entraînement de modèle sur des larges bases de données. Dès 2016, elles ont fait l'objet de réflexion et d'inquiétude dans le domaine judiciaire. Ces IA sont devenues centrales avec l'essor des modèles génératifs.

Ces IA non déterministes et parfois non explicables invitent à une réflexion approfondie sur l'acceptabilité de certains de leurs usages.

Les politiques d'Open Access des décisions de justice conçues à des fins de transparence démocratiques se retrouvent à servir d'autres fins comme le profilage des juges et le forum shopping.

L'IA est également devenu un outil d'aide stratégique pour les parties dans la définition de la stratégie contentieuse, le choix du montant à provisionner et le choix des arguments. Mais ces outils sont généralement payants et peuvent amplifier les distorsions et risques d'atteintes au principe d'égalité des armes. Au-delà de ces enjeux, la principale question que se posent les magistrats est celle de l'IA comme outil d'aide à la décision ou à la rédaction des décisions de justice. Ce point est particulièrement délicat dans un contexte où les juridictions sont souvent engorgées de dossiers et à court de moyens humains. Pour autant, l'IA connexionniste, non déterministe et non explicable paraît difficilement compatible avec la nécessité de motivation des décisions de justice.

Dans ce contexte, différents travaux ont été menés pour tenter d'établir des bonnes pratiques, chartes et manuels à destination des professionnels du droit et des magistrats.

Je retiendrai deux outils : la Charte éthique de la CEPEJ et le manuel de formation de l'UNESCO.

La Charte éthique de la CEPEJ a été adoptée en 2018 et repose sur 5 principes non contraignants :

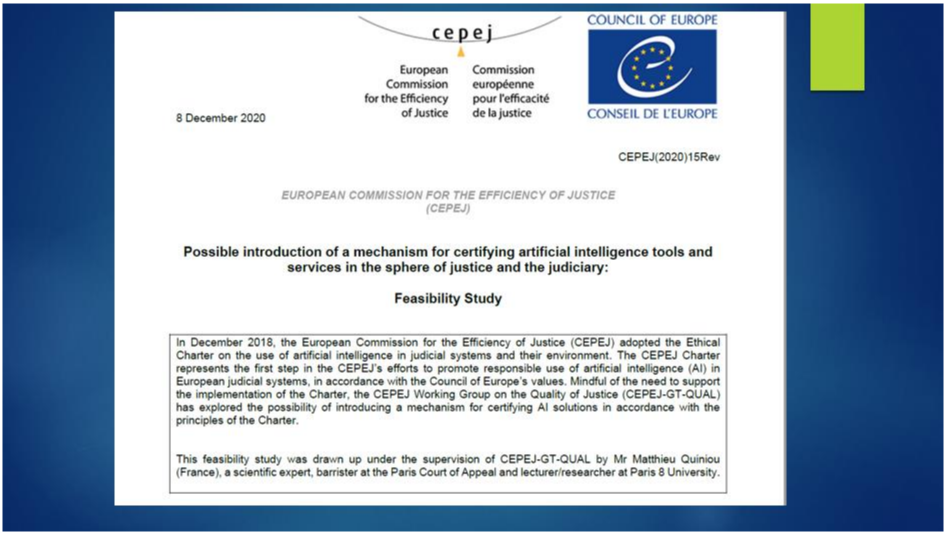
- Le Principe de respect des droits fondamentaux
- Le Principe de non-discrimination
- Le Principe de qualité et sécurité
- Le Principe de transparence, impartialité et équité
- Le Principe contrôle par l'utilisateur

Cette Charte propose également de retenir la notion de Droit de l'Homme dès la conception comme fil directeur. Dans ce contexte j'ai eu l'occasion de travailler depuis 2019 sur l'opérationnalisation de cette Charte : d'abord sur une étude de faisabilité sur la certification des systèmes d'IA puis sur différents outils d'opérationnalisations comme le Centre de ressource IA de la CEPEJ ou l'outil d'auto-évaluation des systèmes d'IA à destination des juridictions.

Ces travaux d'opérationnalisation visent à aider les juridictions à utiliser l'IA en respectant les droits fondamentaux et à évaluer les outils qu'elles souhaitent utiliser ou développer.

Un travail délicat a été de transcrire les 5 principes de la Charte sous forme de critères techniques et opérationnels : en somme passer de droits de l'Homme compréhensibles pour des humains à des spécifications techniques applicables à des algorithmes.

Les travaux de la CEPEJ se sont axés sur les cas d'usages les plus sensibles d'abord la justice prédictive puis les IA génératives.



cepej

European Commission for the Efficiency of Justice | Commission européenne pour l'efficacité de la justice

COUNCIL OF EUROPE | CONSEIL DE L'EUROPE

8 December 2020

CEPEJ(2020)15Rev

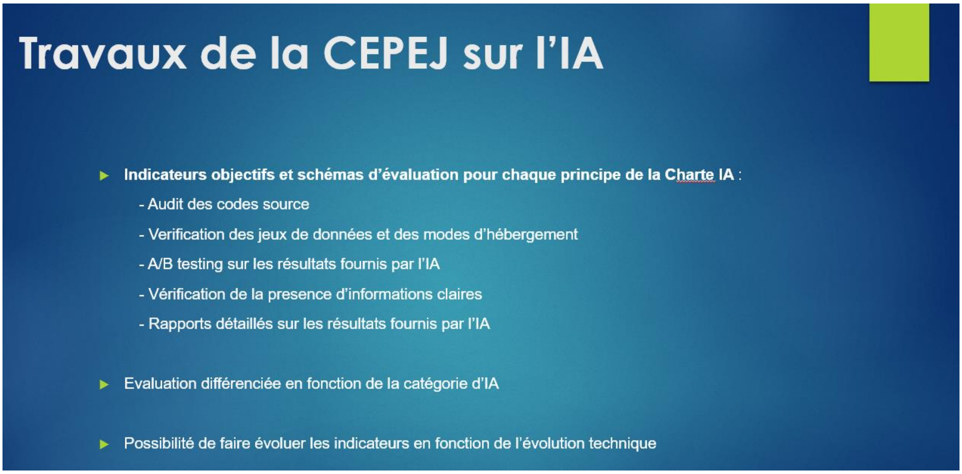
EUROPEAN COMMISSION FOR THE EFFICIENCY OF JUSTICE (CEPEJ)

Possible introduction of a mechanism for certifying artificial intelligence tools and services in the sphere of justice and the judiciary:

Feasibility Study

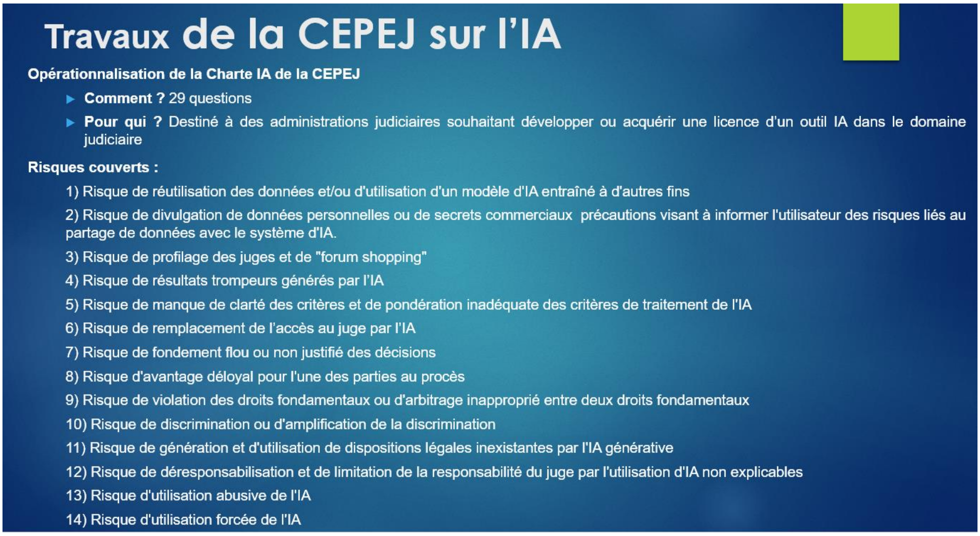
In December 2018, the European Commission for the Efficiency of Justice (CEPEJ) adopted the Ethical Charter on the use of artificial intelligence in judicial systems and their environment. The CEPEJ Charter represents the first step in the CEPEJ's efforts to promote responsible use of artificial intelligence (AI) in European judicial systems, in accordance with the Council of Europe's values. Mindful of the need to support the implementation of the Charter, the CEPEJ Working Group on the Quality of Justice (CEPEJ-GT-QUAL) has explored the possibility of introducing a mechanism for certifying AI solutions in accordance with the principles of the Charter.

This feasibility study was drawn up under the supervision of CEPEJ-GT-QUAL by Mr Matthieu Quiniou (France), a scientific expert, barrister at the Paris Court of Appeal and lecturer/researcher at Paris 8 University.

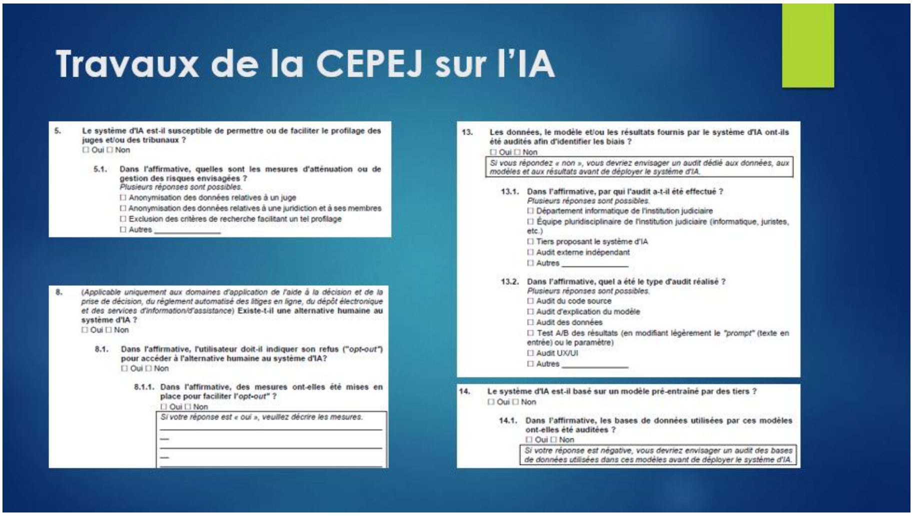


Ce travail d'opérationnalisation s'est appuyé sur différents indicateurs et schémas d'évaluation adaptés aux principes de la charte comme l'audit des codes sources, l'analyse des interfaces ou l'A/B testing des résultats des IA non déterministes pour apprécier les biais des IA par tâtonnement.

Ces évaluations sont par natures différentes en fonction des types d'IA et des types d'usages et ne sont pas figées en raison de l'évolution rapide de la technique.



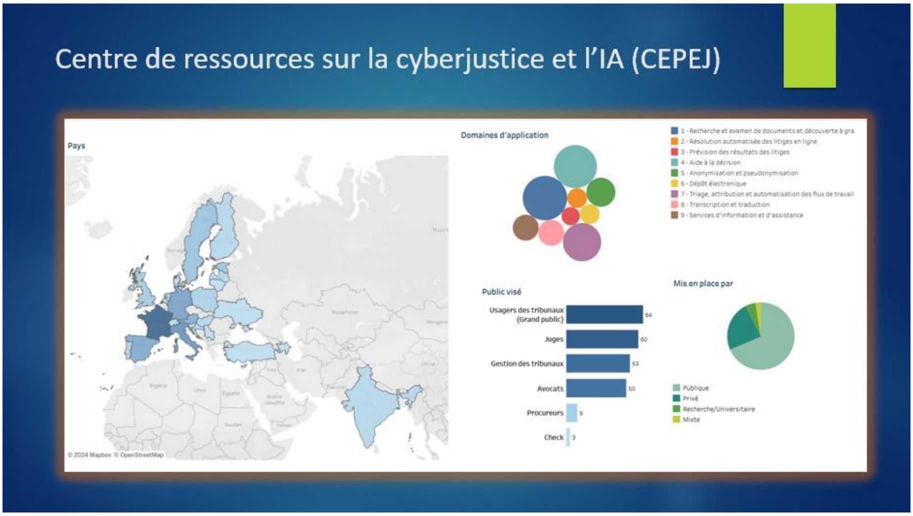
29 questions ont ainsi été structurées pour passer en revue les systèmes d'IA envisagés. Ces questions visent à baliser les risques et à aider à expliciter les éventuelles mesures correctives qui pourraient être mises en place.
Par exemple la question numéro 5 porte sur le risque de profilage des juges et invite les répondants indiquant un risque de profilage à préciser dans une sous-question les mesures d'atténuation des risques mises en place : Anonymisation des données relatives au juge, exclusion des critères de recherche facilitant le profilage.



Cet outil d'auto-évaluation a été expérimenté auprès de 4 juridictions nationales suprêmes.

Autre outil que je souhaiterais évoquer brièvement : le Centre de ressources sur la cyberjustice et l'IA de la CEPEJ qui répertorie les outils d'IA destinés aux juges dans différentes catégories d'usages : recherche documentaire, aide à la décision, triage, anonymisation, etc. Ces ressources et éléments de data visualisation peuvent permettre à des ministères de la justice ou des juridictions d'identifier des outils étrangers pertinents et de faciliter la coopération technologique judiciaire européenne.

Dans une logique convergente des travaux de la CEPEJ du Conseil de l'Europe, l'UNESCO a travaillé sur un manuel de formation mondial de l'IA, j'ai eu l'occasion de donner des formations à partir de cet outil au Congo et au Qatar auprès de magistrats et ce manuel a pour intérêt d'être structuré en atelier avec des mises en situations pour les magistrats.



Avant d'évoquer le second thème, je souhaiterais ouvrir une question pour les débats ultérieurs. Les réflexions au niveau européen sont très axées aujourd'hui sur le Règlement européen sur l'IA qui se réfère aux droits fondamentaux et suit une approche par les risques avec des IA interdites ou à haut risque.

On peut se demander dans ce contexte la place que jouera la CEDH dans le cadre de saisines éventuelles portant sur l'usage de l'IA par les juridictions et les éventuelles différences entre son approche et celle de la CJUE.

L’autre thème que je voulais évoquer avec vous est celui de la blockchain et tout particulièrement des monnaies numériques de banques centrales, les MNBC. Ces MNBC sont des registres monétaires programmables, à l’images de crypto-monnaies sur blockchain. La programmabilité des MNBC tient aux smartcontracts, des instructions informatiques permettant d’exécuter automatiquement des stipulations contractuelles ou éventuellement des décisions de justice.

Actuellement, plusieurs pays ont implémenté des MNBC. La Banque Centrale européenne envisage une accélération de l’euro numérique avec une ambition affirmée pour un prototype dès cette année.

D’un point de vue judiciaire, les monnaies numériques généralisent et amplifient les conséquences du phénomène d’extraterritorialité judiciaire par la monnaie déjà connu avec le dollar.

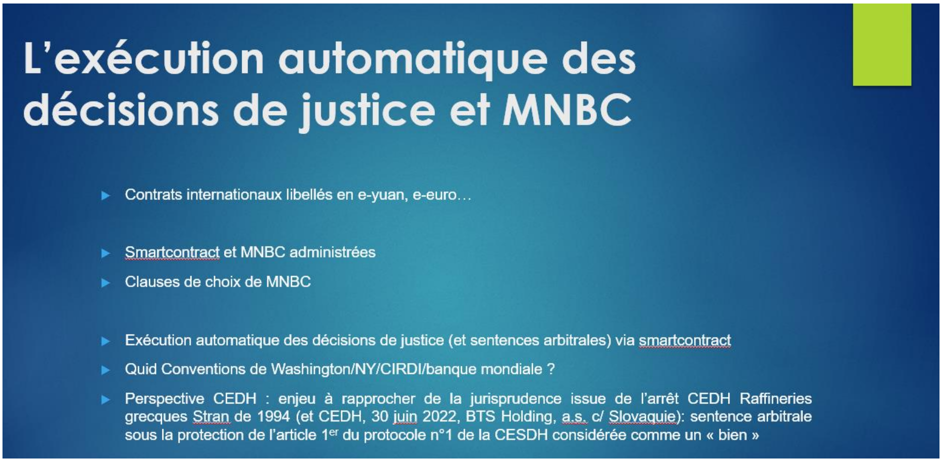
Avec des contrats et leur pendant technique, les smartcontract, libellés en MNBC, les clauses de choix de MNBC risquent de devenir aussi voir plus importantes que les clauses de choix de juridictions dans la mesure où elles conditionneront potentiellement l’exécution immédiate d’une décision ou d’une sentence.

Cette exécution automatique des décisions de justice via smartcontract invite à s’interroger par exemple sur l’évolution du rôle du CIRDI face à cette nouveauté technologique.

Dans une même logique, il paraît intéressant de rapprocher ce phénomène de la reconnaissance par la CEDH de la sentence arbitrale comme bien protégé par l’article 1er du protocole n°1 de la CESDH.

Ainsi, l’infrastructure même des MNBC et des blockchains publiques ou permissionnées pourrait devenir un enjeu contentieux, non plus seulement en termes de conformité technique ou financière, mais en tant que vecteur ou obstacle à l’effectivité des droits fondamentaux.

La neutralité supposée des protocoles serait alors mise à l’épreuve par leur rôle croissant dans la fabrique du droit, voire dans sa mise en œuvre algorithmique. Une telle évolution invite à repenser l’équilibre entre souveraineté monétaire, autonomie contractuelle et effectivité juridictionnelle dans un espace juridico-technique évolutif.



Merci.

PANEL / SESSION 3

The European Court of Human Rights in 2025 and beyond

La Cour européenne des droits de l'homme en 2025 et au-delà

Moderator / *Modératrice : Tonje MEINICH,* Vice-chairperson of the CDDH, Chairperson of the ad hoc Negotiation Group ("46+1") on the Accession of the EU to the ECHR / *Vice-présidente du CDDH, Présidente du Groupe de négociation ad hoc du CDDH (« 46+1») sur l'adhésion de l'UE à la CEDH*

Alex TALLON
Vice-president of the Council of Bars and Law Societies of Europe / *Vice-président du Conseil des barreaux européens* (CCBE)

Mesdames et Messieurs, chers collègues,

Tout d'abord, permettez-moi de vous remercier chaleureusement de m'avoir invité à participer à ce panel aujourd'hui. C'est un honneur pour le CCBE de pouvoir contribuer à cette discussion importante sur l'avenir de la Convention européenne des droits de l'homme.

Permettez-moi maintenant de vous présenter le Conseil des barreaux européens (CCBE), qui représente les barreaux et ordres d'avocats de 46 pays et, à travers eux, plus d'un million d'avocats européens.

Comme vous le savez, le CCBE s'engage profondément dans la protection et la promotion des droits de l'homme, de l'État de droit et de l'indépendance de la profession d'avocat. Il convient de souligner que le CCBE entretient une relation de longue date et constructive avec le Conseil de l'Europe et la Cour européenne des droits de l'homme (CEDH), participant notamment en tant qu'observateur au Comité directeur pour les droits de l'homme (CDDH). Par ailleurs, le CCBE maintient également une relation de travail étroite avec la CEDH, notamment par la publication et la mise à jour régulière de son guide "Questions & Réponses pour les avocats" et des réunions régulières avec la Cour pour discuter des questions importantes pour la profession d'avocat.

Positions et contributions du CCBE au système CEDH

Afin d'éclairer notre discussion d'aujourd'hui, je souhaiterais souligner certaines positions et initiatives adoptées par le CCBE ces dernières années :
Premièrement, les Propositions du CCBE pour la réforme du mécanisme CEDH (28 juin 2019) : Ce document présente des recommandations pratiques pour accélérer les procédures, améliorer la transparence et renforcer l'efficacité tant de la Cour que de la supervision par le Comité des Ministres de l'exécution des arrêts. Les propositions clés comprenaient notamment la judiciarisation du tri des nouvelles requêtes, la simplification des procédures pour les affaires répétitives et de jurisprudence bien établie (WECL), et l'augmentation de la transparité et de l'efficacité du travail du CMDH.
Deuxièmement, les Propositions du CCBE au DH-SYSC-V sur l'amélioration de la mise en œuvre nationale et de l'exécution (13 novembre 2020) : S'appuyant sur les propositions de 2019, ce document de position traite de la façon dont la profession d'avocat peut soutenir une meilleure mise en œuvre nationale de la Convention et une exécution plus efficace des arrêts de la CEDH, plaidant pour une plus grande implication des avocats et des barreaux dans le processus d'exécution et pour des procédures plus claires et transparentes aux niveaux national et européen.

Troisièmement, les Propositions du CCBE pour une réforme supplémentaire du mécanisme CEDH (21 mai 2021) : Ce document appelle à des mesures concrètes pour remédier aux retards persistants dans l'exécution des arrêts, notamment la modification de la Règle 9 du Règlement du Comité des Ministres pour permettre aux barreaux et ordres d'avocats de faire des soumissions sur tous les aspects de l'exécution, et pour permettre l'exécution forcée des indemnités CEDH comme créances devant les tribunaux nationaux.

Enfin, concernant le dialogue et engagement continus : Je tiens à préciser que le CCBE participe régulièrement aux réunions bilatérales avec la CEDH et les agents gouvernementaux, a contribué aux groupes de travail du Conseil de l'Europe, et met régulièrement à jour ses orientations pour les praticiens. Il est important de noter que le CCBE continue de soutenir les initiatives qui renforcent le système conventionnel. Dans ce contexte, le CCBE se réunira à nouveau avec la Cour et les représentants des barreaux des États membres du Conseil de l'Europe le 21 novembre prochain.

Défis persistants et émergents pour le système CEDH

Mesdames et Messieurs, le CCBE reconnaît pleinement les réalisations du système conventionnel et le dévouement de la Cour et du Conseil de l'Europe à cet égard. Cependant, nous souhaiterions attirer l'attention sur plusieurs défis persistants et émergents :

Tout d'abord, concernant les retards et arriérés : Malgré des réformes significatives, un arriéré substantiel d'affaires graves demeure, certaines requêtes attendant un examen judiciaire depuis plus d'une décennie. De plus, les retards dans l'exécution des arrêts, particulièrement dans les affaires complexes ou pilotes, compromettent davantage l'efficacité du système et la délivrance rapide de la justice.

Ensuite, s'agissant de la transparence et participation : Bien que le CCBE salue les améliorations récentes, nous encourageons une transparence accrue dans l'attribution et la priorisation des affaires sous supervision renforcée.

Par ailleurs, les contraintes de ressources constituent un défi majeur : La Cour et le CMDH font face à des demandes croissantes. C'est pourquoi le CCBE soutient les initiatives de détachement d'avocats formés de la pratique privée pour assister le Greffe et le Secrétariat, ainsi que le développement de programmes de formation ciblés.

Enfin, la modernisation numérique : Je souligne que le CCBE et ses membres souhaitent soutenir la transition de la Cour vers le dépôt électronique et le développement de formulaires de requête en ligne accessible.

S'adapter aux demandes futures et maintenir des standards élevés

Permettez-moi maintenant d'aborder la façon dont le CCBE croit que les requérants, leurs représentants et la Cour peuvent anticiper et s'adapter aux demandes futures :

1. Exécution nationale des indemnités pécuniaires

   Nous estimons que les États membres devraient permettre que les indemnités de compensation CEDH et les règlements amiables soient exécutés comme créances devant les tribunaux nationaux. Cette approche exploiterait les cadres juridiques existants pour accélérer la conformité et soulager le CMDH des tâches d'exécution routinières, garantissant que les requérants reçoivent une réparation rapide et que le système conventionnel reste efficace.

2. Soutenir la Cour et le CMDH

   Concernant le détachement et la formation : Je tiens à souligner que le CCBE soutient le développement d'une formation spécialisée pour les avocats afin d'assister le Greffe de la CEDH et le Secrétariat du CMDH. Cette initiative aiderait à traiter l'arriéré et garantirait que des ressources supplémentaires soient disponibles là où elles sont le plus nécessaires. À cet égard, le CCBE a récemment soumis en collaboration avec la Cour un appel de financement UE pour organiser des stages de jeunes avocats expérimentés devant la Cour.

S'agissant de l'implication des praticiens dans la réduction de l'arriéré : Pour les affaires "oubliées" de Catégorie IV, le CCBE avait notamment suggéré comme initiative de permettre aux avocats des requérants de résumer à nouveau les anciennes affaires en utilisant des formulaires standardisés. Cette méthode permettrait une communication plus rapide avec les gouvernements défendeurs et réduirait les retards, tirant parti de l'expertise unique de ceux qui connaissent le mieux les affaires.

Quant au renforcement du rôle des barreaux et ordres d'avocats dans l'exécution des arrêts : Grâce à la récente mise à jour de la Règle 9 du Règlement du Comité des Ministres, le CCBE travaille actuellement à élargir le rôle des barreaux et ordres d'avocats dans la formation, les soumissions selon la Règle 9, et la mise en œuvre nationale des mesures générales. Dans ce contexte, le CCBE a commencé une phase d'essai en étroite collaboration avec l'European Implementation Network (EIN) et avec quelques barreaux volontaires pour faire de telles soumissions de manière plus structurelle.

3. Traiter les coûts juridiques et la transition numérique

   Concernant la compensation pour le travail d'exécution : Actuellement, le CCBE réfléchit à la possibilité de suggérer à la Cour de considérer l'attribution d'honoraires fixes ou d'une compensation par lettre aux avocats qui doivent faire exécuter les arrêts en raison de la non-conformité de l'État, s'appuyant sur la pratique existante de la Cour d'attribuer des intérêts pour les paiements retardés. Cette mesure garantirait que les avocats ne soient pas pénalisés financièrement pour soutenir l'exécution des arrêts de droits de l'homme et améliorerait donc l'exécution des arrêts.

Pour ce qui est du système de dépôt électronique : Je précise que le CCBE et ses membres accueilleraient favorablement des mises à jour sur la mise en œuvre du système de dépôt électronique et plaident pour la prise en compte des retours des praticiens dans le processus de requête en ligne. Ceci est essentiel pour s'assurer que la transition numérique réponde aux besoins tant des requérants que de leurs représentants.

Domaines potentiels pour le travail futur

En regardant vers l'avenir, le CCBE suggère les domaines suivants pour une coopération et une réforme supplémentaires :

Premièrement, améliorer la transparence et la communication : Publication systématique des critères de priorisation des affaires et notification préalable aux représentants des requérants concernant les débats du CMDH.

Deuxièmement, autonomiser la profession d'avocat : Élargir le rôle des barreaux et ordres d'avocats dans la formation, les soumissions et la mise en œuvre nationale des arrêts.

Troisièmement, sécuriser des ressources adéquates : Garantir un financement suffisant pour les détachements, la modernisation numérique et le fonctionnement efficace de la Cour et du CMDH.

Enfin, soutenir la mise en œuvre nationale : Promouvoir les meilleures pratiques pour que les tribunaux nationaux énoncent clairement les raisons de rejeter les arguments conventionnels, facilitant la transparence et l'examen efficace par la CEDH.

Pour conclure, Mesdames et Messieurs, le CCBE valorise sa relation constructive et de longue date avec le Conseil de l'Europe et la Cour européenne des droits de l'homme. Nous restons fermement engagés à soutenir des réformes pragmatiques et conformes à la Convention qui renforcent la transparence, l'efficacité et la responsabilité. En travaillant ensemble et en autonomisant la profession d'avocat comme partenaire clé, nous pouvons nous assurer que le système CEDH continue de relever les défis futurs tout en maintenant les plus hauts standards de protection des droits de l'homme en Europe.

Je vous remercie de votre attention et reste à votre disposition pour répondre à vos questions.

Babette KOOPMAN

Agent to the European Court of Human Rights, Member of the CDDH / *Agente du gouvernement néerlandais auprès de la Cour européenne des droits de l'homme, Membre du CDDH*

I will discuss two developments at the European Court of Human Rights (ECtHR) and suggest some ways forward as fruit for discussion. First the inter-state cases and the influx of these cases in the last decades. Second the oral hearings; How does the Court organise these hearings? And what are possible solutions for parties and for the Court to have a meaningful dialogue instead of a ceremonial dance in which all parties are just going through the motions.

I. The influx of interstate cases in the last decades

In the two decades, there has been a dramatic increase in interstate procedures: during the first 50 or so years there were approximately 10 interstate cases before the ECtHR.[28] By contrast, during the last 20 years there have been 25 interstate cases submitted.

Many of them stem from Russian aggression. However, not all of them can be attributed to conflicts. The increase of interstate cases is in line with a global trend. For example, during the first 50 years, the ICJ delivered 76 judgements.[29] The last 25 years there have been 115 judgements and there are 22 cases pending. There are several explanations given for this.

1. Litigation has been normalised in the past years.[30] States increasingly see international courts as legitimate arenas for political and legal disputes. Where international courts used to be an *ultimum remedium* for disputes, nowadays it seems that states use litigation as a strategic tool—even where outcomes may be uncertain or long-term.
2. Interstate dispute settlement before courts (at least before the ECtHR) can also be used to signal the commitment to human rights. This was one of the predominant reasons for the founders of the European Convention on Human Rights.[31] These interstate cases in the past meant to vindicate of the European public order. One or more states would take action seeking to uphold the rights of the Convention. Some believe that this type of interstate cases is what interstate procedure was designed for.

[28] See for a list of inter-state applications: Inter-State applications - ECHR Case-Law - ECHR - ECHR / CEDH.
[29] See for a list of cases before the ICJ: INTERNATIONAL COURT OF JUSTICE.
[30] Galand, The Changing Character of International Dispute Settlement: Challenges and Prospects, The Law & Practice of International Courts and Tribunals, 23(3), p. 516.
[31] See, among others, the preambule of the European Convention on Human Rights.

A striking example is the *First Greek* case that was lodged in 1967 by Denmark, Norway, Sweden together with the Netherlands. They condemned the human rights violations committed by the Greek government.[32]

However, most of the recently introduced cases were not for the good of upholding human rights within the Council of Europe, but more so driven by the interest of the applicant state. An example thereof is the MH17 case, lodged by the Netherlands against Russia concerning the role of Russia in the downing of Flight MH17. In this downing, almost 300 persons died, 80 of were children and almost 200 were Dutch citizens. This downing has had a deep impact in the Netherlands. Immediately after the downing a Dutch society cried out for truth, justice and accountability. A case before the European Court of Human Rights was one of the roads to fulfil this.

3. The requirements to file an interstate application may have become less stringent. Any interstate procedure has to comply with the admissibility requirements of article 35 paragraph 1 of the Convention. Most notably: the requirement to exhaust domestic remedies and the requirement to file the application "*6* [now 4] *months after the final decision was taken*". These requirements are not always easily met in interstate cases. However, more recently, this has not always been an obstacle for admissibility before the Court.

    a. During the 20th century, the Court already made a general exception on the requirement of exhaustion for applications where the applicant State complains of legislative measures or an administrative practice, because then there is no final judgement for the 4-month period to start.[33] In the event of continuing (ongoing) violations the 4-month period does not start (or starts anew every day).

    b. The discussion on the application of these admissibility requirements also played a large role in the MH17-case. The next of kin did not use any domestic remedies, mainly because there were no genuine remedies available and arguably no judge in Russia would have held Russia responsible. Fortunately, the Court agreed to this. The (then still) 6-month rule was also problematic in this case. Flight MH17 was downed on 17 July 2014. Only in May 2018 was the evidence so conclusive that the Netherlands (and Australia) held Russia internationally responsible for the downing of Flight MH17. But: The Netherlands did not file the interstate application until July 2020. One could argue that this is too late. In this context, the Netherlands argued extensively that this downing should be

[32] Council of Europe European Commission of Human Rights, The Greek Case, report of the Sub-Commission, 4 October 1969.

[33] Ireland v. United Kingdom (I) (no. 5310/71) and Denmark v. Turkey (no. 34382/97.

seen as a hybrid interstate case: somewhere between a case of "*so-called diplomatic protection*" and an administrative practice. This was due to the large group of victims and next of kin, and the policy of denial and official tolerance of Russia. In the end, the Court did underline the novelty of the interstate cases but did not follow the argument of the Netherlands on the hybrid character of our interstate application.[34] Of course there were also other arguments: the international negotiations that started after May 2018 and the cautious approach of Then Netherlands since it did not want to lodge an interstate-procedure lightly. The Court concluded that in the exceptional circumstances of the application the complaint under the substantive limb of Article 2 had been lodged in time.[35] Those exceptional circumstances were, in part, the denial of involvement by Russia; the research into Russia's involvement took long; and the research was a meticulous process of fact-finding. The other complaints (under the procedural limb of Article 2, under Article 3 and under Article 13) in the MH17-case were regarded by the Court as having been lodged in time since the incidents were seen as continuing.

Thus, the threshold for interstate applications does seem rather low. Whereas interstate cases absorb a large amount of funds and resources of the Court (staff, translation, admissibility assessments, fact-finding missions). Many of the cases involve complex fact patterns across multiple years and require parallel handling of hundreds or thousands of linked individual cases - which are (in line with the Copenhagen declaration) put on hold until the "overarching issues" are dealt with in the interstate application.[36]

There are at least two possible ways to raise the threshold for filing of an interstate application:

1. Parties must first try and find a friendly settlement. This is in line with international state practice and the practice of the Court in the individual applications. Although reaching a friendly settlement in inter-state disputes will most likely be quite difficult, it would be for the parties to prove than an genuine attempt has been made to settle the case. Also, maybe the Court of the Registry could play a part therein.

2. Introduce a filing fee. This would reduce frivolous or symbolic filings of interstate applications and it would help the Court directly with their costs. However, there are a lot of considerations to take into account when deciding on such a new requirement:

[34] Case of Ukraine and the Netherlands v. Russia (no. 8019/16, 43800/14 and 28525/20), decision, 30 November 2022, paras. 788-790.
[35] *ibid*, para. 816.
[36] Para 45 of the Copenhagen Declaration.

a. Such a fee can be interpreted as discouraging accountability and it may prevent smaller or less wealthy member states for filing an interstate application, even in cases of gross human rights violations.

b. No other comparable international court levies filing fees. But on the other hand, no other comparable court is overwhelmed by the amount of cases that the Court deals with.

c. What constitutes a reasonable amount? Some options would be: a symbolic fee (of for instance €10,000–€20,000), a substantive fee to align the application with the actual costs (e.g., €100,000+) or a gradual system with reductions for developing or smaller member states.

II. The practice surrounding oral hearings

I have been an agent before the European Court of Justice of the EU (ECJ). In the years that I pleaded cases, the ECJ developed the oral handling of these cases. There are some interesting aspects of oral hearings that I would want to highlight:

- Very often before the ECJ, there seems to be room for a genuine dialogue between the court and the parties: questions can be posed and answers can be given back and forth. However, in Strasbourg there is one round of questions and one round of answers. This does not allow for genuine dialogue between the Court and the parties.

- Before the ECJ, a large case with many parties or interveners may take up several days. Whereas the Court in Strasbourg prefers to handle the case in half a day or maybe a little more. In the case of Duarte, the Court insisted on awarding the 33 respondent states together the same amount of time as the single applicant Duarte.[37] This seems odd since all these states were respondent states. They should have been given the possibility to plead. They could have been given the instruction not to repeat and to be concise. More time for oral hearings is required in order to allow for a meaningful dialogue where judges can ask all their questions – instead of holding an oral dissertation on their preferred issue - and parties can explain their points. An example of some progress in this respect: at the Duarte hearing former President O'Leary asked her colleagues whether the answers given by the parties were fulfilling and whether they gave rise to further questions. O'Leary has a history with the ECJ, which might explain this attempt to deepen the

[37] For the hearing, see cedh - 20230927/1 (EN).

dialogue. Some specific improvements that would make oral hearings before the Court more meaningful and fulfilling for all parties could be:

- The time for the pleaders should be significantly shortened to approximately 15 minutes. After all, parties and the judges may be assumed to have read the submissions. The oral hearing could then be confined to highlighting key issues and elaborating on recent developments. Such a highlight should not require more than 15 minutes.

- The time reserved for questions and answers should be lengthened. Judges should ask simple and focused questions and should not let parties get away with non-answers.

- The timing and planning of the Court should be more flexible. Large cases may take more than one morning. To illustrate, before the ICJ an oral hearing[38] can last more than a week and before the Court of Justice EU an oral hearing may last more days.[39]

[38] For instance the hearing on Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem took over a week.

[39] For instance the hearing on the Opinion 2/13 took two days: 5 and 6 May 2014.

Philip LEACH

Professor of Human Rights Law, Middlesex University, London / *Professeur en droits humains, Université de Middlesex, Londres*

My focus is to reflect on the core functions of the Council of Europe (CoE) and the European Court of Human Rights (the Court), in the light of state pushback against the European human rights system, and the dangers of the rise of populist autocracy or authoritarianism which denies fundamental concepts of the rule of law and human rights and sidelines democratic safeguards.

It is also essential that we learn lessons from the situation of Russia.

In a number of European states, there is pushback, even hostility towards the CoE and the Court, amidst febrile domestic politicking whipping up animosity towards migrants. In my opinion, the recent nine states' letter is another example of an attempt to exert political pressure on the Court, which undermines it. Furthermore, discussions within and about states leaving the CoE are not a rare occurrence.

It is more than three years since the unprecedented expulsion of Russia from the Council of Europe, and it is absolutely vital that we look back over the last quarter of a century when Russia was a member state of the Council of Europe, to see what we have learned, or should have learned.

In response, for example, to the several hundred judgments calling out the Russian security forces for gross violations in Chechnya and the north Caucasus, including enforced disappearances and extra-judicial executions, what more could have been done, or could we have done things differently? Russia was required to, and did, pay financial damages in those cases, but did nothing else (and certainly continually failed to carry out investigations into unresolved disappearances and killings).

More recently, we have had to witness the illegal occupation of Crimea in 2014 and the deconstruction of democracy in Russia, including the crushing of civil society, the obliteration of freedom of speech and any vestige of independent political activity and the persecution of dissident voices.

As we look back, could the CoE and its various entities have been more effective? For example the former President of the Court, Siofra O'Leary, has herself since acknowledged that the Court took too long (8 years+) in deciding the *Ecodefence* case, concerning the Foreign Agents law in Russia. Could a much earlier decision have prevented some of the Russian NGOs from going to the wall, and made copycatting less likely (I reference for example the very bleak situation in Georgia as regards 'their' foreign agents law)?

The Court's *Novaya Gazeta* judgment in February 2025 included a separate opinion from Judge Pavli who took a step back and focused a wide lens on Russia's record in Strasbourg. Addressing the Court's case-by-case approach, Judge Pavli argued that 'it makes little sense….. to focus on the health of individual trees if a fire is raging in the forest'.

He also questioned whether it was in fact necessary for the Court to develop entirely new tools in relation to democratically-challenged national systems:

> '..with the benefit of some hindsight and a large body of case-law behind us, can it be said that the Court sounded the alarm loudly enough, and early enough? And more importantly for the future, is it now prepared to do so in relation to other European political systems whose democratic protections might be eroding in ascertainable ways?'

Judge Pavli is entirely right to be asking those questions.

The threat of autocracy is a very serious one. In recent years, we have seen the Court taking unprecedented action, for example, by invoking interim measures with the aim of protecting the independence of judges in Poland. It has also applied Article 18 of the European Convention on Human Rights (the Convention) in a series of political prosecutions involving politicians, human rights activists, journalists and judges. The Committee of Ministers has twice invoked the infringement proceedings mechanism in respect of Azerbaijan and Turkey, but even now after more than seven years, Osman Kavala still languishes in prison in spite of two Court judgments requiring his release.

Turning back to Russia, could the Committee of Ministers have taken more concrete steps as regards their Convention duty to supervise the implementation of judgments in the Chechen cases? Or should we simply accept the manifest limitations of the Committee of Ministers' peer review process of supervision?

Could inter-state proceedings have been instigated, with Council of Europe states stepping up to fulfil a broader 'policing' role in line with another of their Convention duties - as reflected in the preamble to the Convention - to ensure the collective enforcement of its rights?

The endemic problem of the failure of states (some in particular) to fully implement Strasbourg judgments was a priority for the High Level Reflection Group, led by Mary Robinson, whose 2022 report made a number of specific recommendations, including formalising the practice of calling ministers or other senior government officials of states whose judgments are not implemented on a systematic basis to attend meetings of the Committee of Ministers. We should also learn from the experience of the Inter-American human rights institutions in conducting hearings on implementation. Another idea proposed at the time of the Council of Europe Heads of Summit meeting in Reykjavik in 2023, was to create a special representative on the implementation of the Court's judgments. I would support calls for a greater judicialisation of the implementation process, meaning that the Court would, exceptionally, have the capability to intervene after a certain period of supervision by the Committee of Ministers, when it proves ineffective.

I also agree with those such as the High-Level Reflection Group, former Court judge Helen Keller, and others, who have called for the imposition of graduated sanctions for serious, persistent non-compliance. The relevant factors to assess such measures could include the gravity of the violation, the rights concerned, the impact on victims, the duration and wider public interests.

We should, as Judge Pavli has advocated, be looking at new tools. But as ever, we should also re-examine already existing tools. For example, infringement proceedings have only ever been utilised twice, and the system seems to be floored by a state which ignores an infringement proceedings judgment. Accordingly, what is needed is a clear system of close, high-level supervision, backed up by clear, graduated sanctions. The complementary joint procedure was established five years ago, as a means of bringing states into compliance with their Convention obligations, but it has never once been used.

It is extremely regrettable that some member states are scapegoating the Court over immigration, rather than taking collective responsibility.

I sincerely hope that we will have the foresight and courage to see the bigger, long-term picture and act creatively to ensure that the CoE and Court do not become increasingly ineffective and irrelevant. Are governments prepared to take action against member states which flout their Convention obligations, in spite of their perceived regional, geopolitical importance?

As the debate rages about European states taking responsibility for the continent's security, it must not be forgotten that true human security also encompasses respect for the rule of law, democracy and human rights. Council of Europe states must reconsider carefully how and when they should be purposefully sounding the alarm. This should include bolstering the European Court of Human Rights as a bastion of judicial independence for the continent, and genuinely championing a rules-based international order.

Ioulietta BISIOULI

Director, European Implementation Network / *Directrice, European Implementation Network*

I am humbled to be part of this panel and grateful for the opportunity given to the European Implementation Network to contribute its insights to the important work of this Committee.

I am also happy, on a personal level, to finally see implementation deeply embedded in all discussions concerning the future of the Convention mechanism. I believe we will all agree that this has not always been the case. It took us considerable time -several decades, to be more precise- to reach this understanding: Namely that, what happens after a violation-finding judgment is rendered, is at least as important as the fact of the finding of the violation itself, if not even more important. It took us equally significant time to understand that, in the context of the Convention mechanism, the effectiveness-related challenges faced by the Court at any given moment are, with mathematical accuracy, the same challenges facing the Committee of Ministers a few years later. And that, therefore, there can be no meaningful discussion about the sustainability and long-term effectiveness of the Convention, if the implementation challenges are not looked into with rigor, but also with a solution-oriented approach that honors both the spirit of the Convention and its unparalleled *acquis*.

For those of you who might not be familiar with the European Implementation Network, please allow me to briefly introduce our work to you. EIN, based in Strasbourg, is the only international civil society organisation focusing exclusively on the effective implementation of judgments of the European Court of Human Rights (ECtHR or the Court). Founded in 2016, EIN counts toady 41 members in 25 Council of Europe (CoE) member States, while supporting a few hundreds of Non-Governmental Organisations (NGOs) as well as National Human Rights Institutions (NHRIs) and Bar Associations in their implementation advocacy. Admittedly, the network has been instrumental in placing implementation on the Convention-related advocacy map, not only in Strasbourg, but also in Brussels and Luxembourg.[40] In the eight years of its existence, EIN has successfully advocated for effective implementation of

[40] In 2022, EIN, in partnership with Democracy Reporting International (DRI), led calls for the European Union's rule of law reporting to include data on the non-implementation of judgments from the two key European courts: the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU), including through the publication and the publication of a report '*Justice Delayed and Justice Denied: Non-Implementation of European Court Judgments and the Rule of Law*'. In July 2022, the European Commission took up EIN's proposals, including an assessment of the overall levels of implementation of ECtHR judgments in each of the 27 country chapters and noting the importance of the implementation of ECtHR judgments to the rule of law.

judgments through improved structures and processes and through enhanced transparency. It has furthermore built the capacity of hundreds of civil society representatives to effectively engage in implementation processes both in the Council of Europe and at national level. It is noteworthy, in this respect, that, while less than seven per cent of the leading cases pending implementational were benefitting from civil society engagement through Rule 9 submissions in 2017, i.e. before the creation of EIN, in 2023, input through such submissions was received in more than twenty-two per cent of such cases. EIN has also shaped strategic cooperations and partnerships with key European networks, including the European Network of NHRIs (ENNHRI) and the Council of Bars and Law Societies of Europe (CCBE), to increase synergies on implementation-related work.

At the same time, EIN has established its reputation as a trusted researcher on implementation-related statistical data. It is important to refer, at this juncture, to the most recent, main findings of EIN's flagship report on the level of implementation of Strasbourg Court judgments in European Union (EU) member States:[41]

As of 1 January 2024, there were 624 leading Strasbourg Court judgments waiting to be fully implemented across the EU member States, a slight increase in comparison with the respective figures for January 2023 (616 at the time) and January 2022 (with 602 cases). This consistent increase, although small, indicates that our Court is delivering judgments faster than the national authorities can implement them. Furthermore, forty-four per cent of the leading judgments of the ECtHR pronounced in respect of EU States in the last ten years were still pending implementation at the end of 2023, compared to 40 per cent at the end of 2022, and 37.5 per cent at the end of 2021. The average length of time leading ECtHR judgments concerning EU States remain pending also increases continuously. In 2023, it was 5 years and 2 months, compared to 5 years and 1 month in 2022, and 4 years and 4 months in 2021. Although, undeniably, reforms in connection with many of the judgments in question are underway or have been partially completed, the inability to fully resolve the underlying problems means that new repetitive violations plague the lives of European citizens and continue elevating the problem of the Court' backlog to an unsolvable riddle.

Please allow me to be very clear at this critical juncture, dear Colleagues: The above findings *are not to be interpreted as pointing at a failed mechanism*. Quite on the contrary, they only serve to sound the alarm over the nefarious consequences chronic implementation challenges can have on the reputation, reliability and viability of a precious mechanism, which is capable -when working effectively- of generating positive impact for the benefit of millions of people in a way that no other human rights mechanism can. But it is imperative

[41] The following data have been extracted from the 2024 iteration of the report '*Justice Delayed and Justice Denied: Non-Implementation of European Courts' Judgments and the Rule of Law*'.

that the implementation process cease to let down those who believe in it and aspire to its protection, and that we also collectively cease to let down the implementation mechanism by allowing or enabling its weakening and erosion.

Against this backdrop, please allow me to focus on the following fundamental question: What does *not* constitute a solution, in the common effort to respond to the important challenges the implementation mechanism is currently faced with?

To name but a few:

Paying our way out of our implementation obligations *does not* constitute a solution. Undeniably, the friendly settlements procedure is a valuable process: Not only is it capable of offering a faster redress to the applicants through the formal acknowledgement of the prejudice caused by the state; but the increasing recourse to friendly settlements has also played an instrumental role in the important reduction of the Court's backlog. Nevertheless, its beneficial impact is neutralised, if not transformed into a predicament for the Convention mechanism at its implementation phase when abused. I.e., when recourse to friendly settlements to resolve repetitive cases in the context of a diagnosed, systemic human rights problems becomes the strategic, "go-to" option of respondent States, standing in the way of necessary structural reforms that are crucial to ensure that such systemic sources of violations are effectively tackled.

For reasons deriving from the same underlying principle, new financial sanctions for persistent non-implementation would *not* be a solution either. The introduction of punitive damages as a new measure in the arsenal of the Committee of Ministers when confronted with recalcitrant respondent States is a recurrent proposal. This proposal, we respectfully argue, deserves to be put aside once and for all, as it disregards both the nature and the *ratio* of the Convention system. The latter is based on the willful honouring of obligations undertaken freely by member States. If implementation spirit or performance -or both- are lacking, then it is up to the remaining 45 member States to ensure, through effective, peer political and diplomatic pressure (and now, thanks to the procedures foreseen under Article 46 paras. 3 and 4 of the Convention, through legal pressure as well), that the obligations undertaken be respected. Simply put, if there exist financial resources to be contributed to the implementation mechanism, let them pay for the necessary reforms rather than for potential non-implementation fines.

Unnecessarily restricting civil society's accessibility to and involvement in the implementation mechanisms both at national and at international levels is *not* a solution. Member States are and will remain the privileged interlocutor of the Committee of Ministers regarding implementation, because the Convention willed it so. But the implementation mechanism and the authorities of the respondent States can only gain from an approach that allows civil society expertise from the field to meaningfully contribute to achieving the required reforms. We are not playing for opposing or competing teams, dear colleagues. We are all playing for team Convention -or, at least, we hope that we are. At EIN, we are proud of the innovative debate forum we have created: Our civil society briefings allow civil society experts from the field to directly raise their concerns with the Ministers' Deputies in selected cases ahead of each CM-DH meeting. But our civil society briefings should no longer be the only -unofficial still but nevertheless established- platform for direct exchanges on implementation matters between the Committee of Minsters and civil society at Strasbourg level. Nor should standing committees for execution organised around the coordination authorities, at national level, be diminished to mere window-dressing exercises, while they can constitute a genuine agora forum, creating the necessary space for substantive contributions to the joint exploration of sustainable implementation solutions.

Finally, vociferous pledges for support to the Convention system proffered at international level through structures like this one, through processes like the Interlaken process and summits like the 2023 Reykjavík summit, are definitely *not* contributing to any sustainable solution, when directly contrasting with the recourse to populist rhetoric undermining public trust to the Convention system and to politically motivated critiques that deliberately convey factual and legal inaccuracies about the history and effect of the Convention mechanism. I will fully agree with Professor Leach: Challenges to the authority of the Convention have not been a rarity since its entry into force. But, there is one particularity in this most recent wave of attacks against the Convention mechanism, that sets them apart from all other challenges encountered to this day: Words have never been twisted so much, to the extent of losing their true meaning, in the effort to compromise the Convention *acquis*. To name but one recent, telling example: In the infamous by now letter of May 2025, through which nine CoE member States openly questioned the Court's legitimacy, by calling for "a new and open-minded conversation about the interpretation of the European Convention on Human Rights", I cannot help but wonder: Where exactly does the novelty and open-mindedness lie, against a background where people are divided into the right and wrong kind, to quote another chilling phrase of that letter? And where does this downward spiral stop? What makes us confident that we will not wake up tomorrow only to find out that it is now ourselves that are counted into the wrong kind of people?

But I am an optimist by nature, so I will not further dwell on challenges. I will now rather focus on solutions. So, what does constitute a solution, in our humble view, dear Colleagues?

At national level, improved implementation mechanisms is the key answer to this question, as the recent multi-study of the Council of Europe on good implementation practice[42] has shown. Robust coordination authorities, established on an express legal basis, well-resourced, well-integrated into the state apparatus, and with sufficient status to ensure their authority *vis-a-vis* other arms of government, *is* part of the solution. Specialised parliamentary structures which effectively oversee the execution of the Court's judgments *is* part of the solution. Strengthening judicial integration, in other words domestic courts actively engaging with Strasbourg jurisprudence—not as optional guidance but as binding precedent- *is* part of the solution.

At international level, robust Council of Europe institutions that engage in honest dialogue with member States while unequivocally and consistently upholding the Convention *acquis is* a solution. Ever-increasing cooperation activities to improve domestic implementation mechanisms, like the most recent, excellent initiative of the creation of the Execution Coordinators Network (ExCN), *is* a solution, whereas the unequivocal -both material and political- support to the crucial work of the Department for the Execution of Judgments (DEJ) and of other CoE bodies of independent experts that indirectly support implementation work in the general context of their important mandates, such as the European Commission against Racism and Intolerance (ECRI), is a solution.

Last but not least: building not only national but also individual ownership of the Convention system; calibrating Convention reforms not to weaken, but to empower; rebuilding public trust through transparency and outreach, in other words emphasising how the Strasbourg mechanisms protect *everyone*—our children, our parents, our very selves, and not just foreign criminals, like populist voices try to convince us- is, in the long-run, the only true, viable and effective, in the long run, solution.

Let's take Convention matters personally, dear Colleagues. In these times of trial, let us not be afraid to voice, from our respective positions of responsibility, our support to the Convention system and the implementation mechanism, at least as loud as the forces seeking to compromise it. It is our individual civic duty, and our collective responsibility.

Thank you.

[42] "*Good practice in human rights implementation: Multi-country study on domestic capacity for rapid execution of the judgments and decisions of the European Court of Human Rights*", Alice Donald and Philip Leach, with Ioulietta Bisiouli, Kanstantsin Dzehtsiarou, Ioana Iliescu, Maria-Andriani Kostopoulou, Vincent Lefebvre, Jeremy McBride, November 2024.

Marius EMBERLAND
Professor, Department of Law and Governance, Norwegian Business School / *Professeur, Service de droit et gouvernance, Norwegian Business School*

Thank you very much for being invited to this conference. It is greatly appreciated.

I wish to offer my reflections on something that has intrigued me for some time, notably the European Convention system's institutional and procedural resilience against subversive tactics by its adversaries.

You may have heard that the United States administration in February this year decided to impose sanctions on the chief prosecutor of the International Criminal Court,[43] and as recent as this month additional sanctions were imposed on four ICC judges.[44] The moves included the freezing of assets that the officials in question might have, even indirectly, in the United States. It was also suggested that the United States authorities could direct American telecommunications providers to disconnect ICC officials' use of their services.

This incident made me think about our Convention system – its institutional make-up – and its institutional and procedural resilience against subversive forces – from within Europe itself but also from beyond – that may use law and legal institutions as both means and targets.[45] We know that illiberal movements are on the rise, and that they can exert real influence, including by circumventing rules and procedures we think of as firmly established. We also know that many of the Member States of the Council of Europe are already subject to certain foreign powers' various hybrid tactics. Institutions across Europe experience occasional disruption of their cyber and other infrastructure. Disinformation and influence campaigns are deployed. Sabotage and attacks can and do happen. These activities are designed to undermine stability, exploit vulnerabilities, and erode public trust. The objective is to delegitimise our society and its core values.

[43] See https://www.whitehouse.gov/presidential-actions/2025/02/imposing-sanctions-on-the-international-criminal-court/ (last visited 29 June 2025).
[44] https://www.state.gov/imposing-sanctions-in-response-to-the-iccs-illegitimate-actions-targeting-the-united-states-and-israel/ (last visited 29 June 2025).
[45] For an introduction of the use of law and legal institutions in hybrid operations, see, e.g., Aurel Sari: "Legal Resilience in an Era of Grey Zone Conflicts and Hybrid Threats," 33 *Cambridge Review of International Affairs* (2020) 846.

The Convention system – with its mandate to safeguard individual freedom, rule of law, democracy, and international cooperation – is globally a very prominent representative not only of core European values but also of the international legal order. For that very reason, and this is my contention, the European human rights system – with the Court at centre stage – is a particularly well-suited target for illiberal and foreign subversive operations. A European human rights system that does not function effectively is a human rights system with reduced legitimacy. Targeting the legitimacy of the ECHR system can be a viable operational addition to subversive strategies employed at the domestic level. It is wise not to assume that the Convention system, including the Court itself, is immune from the attention of forces working against the European liberal order.

Actions may not be as apparent as that of the ICC example this year. But I admit that it would be interesting to know how our Convention system would or could respond to a comparable situation. There is the question whether the Court and its Member States have or should have a contingency plan for such an event – and other subversive operations.

Hybrid techniques will be oblique and deployed individually and gradually with a long-term objective to destabilise and to erode legitimacy. If you allow me, I will point to some scenarios that could be relevant to the ECHR system – without sounding too conspiratorial. I should add that I am currently chairing a committee established by the Norwegian government to assess whether the new Foreign Intelligence Service Act works as intended by the Norwegian parliament. The work has been eye-opening in terms of what is going on out there.

An obvious hybrid technique is to compromise the Court's IT system in several ways, for intelligence gathering or to disrupt its functioning. Coincidentally, the organisers just informed me that the Court's website has been inaccessible for several hours today. I am not at all suggesting that cyber security is not taken care of at the Court. But it is a fact that disruption of IT services – which cater case processing, internal reasoning, and even provide the public with access to case law – will have imminent consequences for the system's effectiveness, and it would quickly erode confidence in it. The Court's new AI project – which we were introduced to earlier today – is impressive. I hope the system overall is financially equipped to be sufficiently resilient to withstand hybrid cyber threats against, and including manipulation of, its cyber infrastructure.

Another scenario takes us to the Court's great institutional strength, which is also its greatest vulnerability, notably its very accessible nature and the case workload that naturally flows from it. In August 2022, the Court introduced a new Practice Direction on the processing of applications in the event of mass influx of cases.[46] I do not know if the events that inspired the introduction of new rules originated in operations from bad faith actors. But mass submission of applications certainly would be an effective way of clogging the Court, and it would contribute to undermining trust in its capacity to do its job. The Court should be commended for introducing the new Practice Direction. The question however is whether it was the result of a coherent and proactive resilience strategy, and whether the system needs this kind of policy.

The new Practice Direction is in any event probably not the right tool to address, say, AI generation of applications that are based on fictitious or semi-fictitious events and that rely on fake or distorted domestic court decisions or invented national law – not in their thousands but in a more piecemeal fashion. As sophisticated as AI has become now, it is amazingly easy to make an application with credible assertions based on fake facts and even fake law. I do not discard the thought that the Court could initially process and even communicate a case built on pure, but very sophisticated, invention. That would obviously be detected at one point, not the least when a case is communicated to the respondent State. But then the blow to the Court's credibility will already have been dealt. The question is whether the Convention system *is* prepared for this contingency or – at least – whether it *should be* prepared for it.

Another hybrid technique is also worth mentioning. The system of third-party intervention in Article 36 § 2 provides an opportunity for non-governmental organisations to seek to influence the Court's jurisprudence. Third party intervention is on the rise, and the Court is open – and rightly so – to accept submissions from organisations representing a multitude of political and ideological views. I do not think we should disregard the idea that some non-governmental organisations are in fact influenced by foreign powers. And several legitimate non-governmental organisations do openly have illiberal agendas, which begs the question whether such organisations should be heard or not at the Court. Of course, non-State third-party interventions are not sufficiently powerful to change the system's course in and by itself. But they may introduce perspectives that in the long term – or to some extent – are subversive. And keeping with the logic of hybrid operations and of ideological movements, immediate effectiveness is not necessarily the main point. It is well-known that the process of accepting third-party submissions does have some built-in bona fide guarantees. The question is nonetheless whether the system recognises the third-party intervention mechanism as a vulnerability, and whether it has developed a coherent programme for tackling it. Or at least whether it should do so.

[46] Practice Direction on the processing of applications in the event of a mass influx issued by the President of the Court in accordance with Rule 32 of the Rules of Court on 25 August 2022. Available at https://www.echr.coe.int/practice-directions (visited 29 June 2025).

To conclude: the Convention system itself represents a coherent programme against illiberal forces and the undermining of democracy and the rule of law. Article 17 of the Convention – on the prohibition of the abuse of rights – naturally comes to mind. But the entire range of Convention rights and freedoms, and the Court's safeguarding of them, is a powerful tool to withstand fundamental threats. And the Court has in its practice provided us with benchmarks for what a democratic society can and should accept. This is a powerful shield. It is hopefully also a sufficiently resilient programme in terms of substantive law.[47]

My question is whether the Convention system should have a comprehensive policy in place to solidify the Convention's underlying values also on a procedural and infrastructural level, to ensure its resilience against subversive forces of illiberal movements and foreign adversaries.

These were my thoughts for today. I thank you for your attention.

[47] See, e.g., Simon P. West and Lisen Schultz: "Learning for Resilience in the European Court of Human Rights: Adjudication as an Adaptive Governance Practice", 20 *Ecology and Society* (2015) 31, and generally, Salvatore Caserta and Pola Cebulak: "Resilience Techniques of International Courts in Times of Resistance to International Law", 70 *International and Comparative Law Quarterly* (2021) 737.

Vassilis TZEVELEKOS

Reader in Law (Associate Professor) at Liverpool University School of Law and Social Justice, Co-Editor-in-Chief of The European Convention on Human Rights Law Review / *Maître de conférence en droit (professeur associé) à la faculté de droit et de justice sociale, Université de Liverpool, co-rédacteur en chef, The European Convention on Human Rights Law Review*

The road to the European Union's (EU) accession to the European Convention on Human Rights (ECHR, or the Convention) remains relatively long. The recent production of a revised accession agreement[48] in 2023 marks an important and positive step forward, but this must still be transformed into a treaty that has entered into force. This short critical reflection seeks to identify and briefly examine select challenges that the accession poses for the ECHR system and for the European Court of Human Rights (ECtHR, or the Court). Inevitably, most of these issues involve speculation, as they concern the post-accession landscape. One question, however, concerns the role of the Court in the process leading up to accession. Although not strictly a 'challenge', it is nevertheless significant, as it raises important questions about whether the ECtHR can or cannot, as a matter of law, and should or should not, as a matter of institutional positioning, opine on the accession process. The remaining challenges arise in the post-accession context. The first two concern core features of the accession agreement, namely the co-respondent mechanism and the joint responsibility of the EU and its member states. The final two relate to the nature of cases likely to come before the ECtHR once accession has taken place.

1) Can and should the ECHR Deliver an Opinion on the EU Accession Agreement?

The accession process will almost certainly[49] involve an opinion from the Court of Justice of the European Union (CJEU) on the compatibility of the accession agreement with the Union's legal order, followed by ratification by Council of Europe member states. Against this background, the question

[48] Council of Europe, 'Final Consolidated Version of the Draft Accession Instruments', 17 March 2023, 46+1(2023)36. For literature on the accession agreement see the special issue by S.Ø. Johansen, G. Ulfstein, A. Follesdal, and R.A. Wessel, titled 'The Revised Draft Agreement on the Accession of the EU to the ECHR', (2024) 9(2) *European Papers*, p. 641, and the special issue by K. Dzehtsiarou and V.P. Tzevelekos, titled 'The New Agreement on the EU Accession to the ECHR: Can It Succeed?', (2025) 6(1) *ECHR Law Review*, p. 1.

[49] European Union, 'Commission decision on a request for an opinion of the Court of Justice pursuant to article 218(11)TFEU in relation to the draft agreement providing for the accession of the European Union to the Convention for the Protection of Human Rights and Fundamental Freedoms', C(2025)3950, 25 July 2025, Register of Commission Documents.

arises whether the ECtHR can, and indeed should, issue its own opinion on the accession agreement.

Under Article 47 ECHR, the Court may deliver advisory opinions at the request of the Committee of Ministers, but its competence is subject to limitations. First, Article 47(1) specifies that the opinion must concern a legal question,[50] not any question the Committee of Ministers may wish to pose. Second, Article 47(2) excludes questions relating to the content or scope of the rights and freedoms enshrined in the Convention and its Protocols, as well as any question the Court or the Committee of Ministers might later have to consider in connection with proceedings under the Convention.[51] While the accession agreement does not alter the substance of the Convention's rights and freedoms, it does envisage changes to the functioning of the Convention system in respect of proceedings against the EU and its member states. For example, the co-respondent mechanism[52] provided for in the agreement may give rise to legal issues that the Court will eventually be required to determine in concrete cases. This would suggest that such questions fall outside the scope of the Court's advisory jurisdiction under Article 47.

A further difficulty lies in the wording of Article 47(1), which confines advisory opinions to "legal questions concerning the interpretation of the Convention and the Protocols thereto". This can be read as limiting the Court's competence to interpreting the Convention and its Protocols as they stand, not as they might be amended in the future. The Convention remains an international treaty, the text of which can only be amended by its contracting parties, who are its 'masters'. As a treaty body, the Court is not empowered to pronounce on how its treaty, the Convention, may be amended, its future provisions, or the design and architecture of its institutional system. That said, this interpretation is not unassailable. Ultimately, if the Committee of Ministers were to request an opinion, it would be for the Court itself to determine the extent of its competence. Moreover, the imperative of safeguarding "the proper functioning of the Convention system"[53] could arguably support a more flexible reading of Article 47, one that would enable the Court to provide such an opinion.

[50] ECtHR, *Decision on the competence of the Court to give an advisory opinion*, 2 June 2004, para. 24 and *Advisory opinion on certain legal questions concerning the lists of candidates submitted with a view to the election of judges to the European Court of Human Rights*, 12 February 2008, paras 36-38.
[51] ECtHR, *Decision on the competence of the Court to give an advisory opinion*, n. 3, paras 25-28 and 35, and *Advisory opinion on certain legal questions concerning the lists of candidates submitted with a view to the election of judges to the European Court of Human Rights*, n. 3, para. 37.
[52] 46+1(2023)36, n. 1, Article 3.
[53] ECtHR, *Advisory opinion on certain legal questions concerning the lists of candidates submitted with a view to the election of judges to the European Court of Human Rights*, n. 3, para 39.

Even if these issues of legal competence were resolved in favour of the Court's power to act, a separate question arises: would it be wise, institutionally, for the Court to exercise such a power? Here, the asymmetry between the roles of the CJEU and the ECtHR must be recalled. The CJEU's task, in reviewing the accession agreement, resembles that of a domestic (constitutional) court, ensuring that the Union's internal legal order is respected before accepting external oversight. The ECtHR, however, does not perform an analogous function. Were it to deliver an advisory opinion on the accession agreement, it might risk committing itself in advance to certain positions and interpretations, thereby constraining its freedom when adjudicating concrete cases arising under the agreement after accession.[54] This risk of self-limitation suggests that, even if the Court could lawfully issue an advisory opinion, it may not be institutionally prudent for it to do so.

2) Some Challenges Arising After the Accession

a) Consistency in the Application of the Co-respondent Mechanism

Moving now to the post-accession era and the challenges it may bring, a key feature of the accession agreement is the mechanism setting the conditions under which the EU and its member states may become co-respondents in proceedings before the ECtHR.[55] The aim of the co-respondent mechanism is to safeguard the autonomy of the EU legal order by preventing the ECtHR from interfering with the allocation of powers between the EU and its member states. For that purpose –and this is the very logic behind the co-respondent mechanism– if the ECtHR finds a violation of the Convention in proceedings under this mechanism, the EU and the member state(s) concerned will be held jointly responsible.[56] As such, the ECtHR effectively refrains from allocating responsibility between the EU and its member states.

While this arrangement may give rise to several challenges, it remains an essential and well-justified feature of the accession agreement, particularly as it constitutes a key tool for safeguarding the EU's autonomy –a core precondition for accession. Unlike all other ECHR parties, the EU is not a sovereign entity. For it to fit within the ECHR system without sacrificing or compromising certain of its 'constitutional' features, 'reasonable adjustments' were necessary.[57] The co-respondent mechanism, and the joint responsibility it entails, represent precisely such 'reasonable adjustments'.

[54] See n. 4, particularly, ECtHR, *Decision on the competence of the Court to give an advisory opinion*, n. 3, para. 28.
[55] 46+1(2023)36, n. 1, Article 3.
[56] Ibid., Article 3(8).
[57] Ibid., Explanatory Report, paras 3 and 7.

The revised accession agreement provides that the decision to activate the co-respondent mechanism rests with the EU.[58] This ensures that the ECtHR does not interfere with the EU's autonomy. Consistent application of the co-respondent mechanism is therefore critical. However, it is to be expected that the EU and its member states will not always have aligned interests, and that the EU's decisions may reflect its own reasoning or calculations. Divergent interests, attempts to avoid responsibility, or even human error may all lead to inconsistencies. It is reasonable to anticipate that the actors involved will seek to influence the decision to apply –or not apply– the co-respondent mechanism in line with their own interests. Nevertheless, EU member states and all other actors who can, directly or indirectly, contribute to this decision shall look beyond their self-interest and, acting in good faith, prioritise the integrity of the accession's structural design by preserving consistency in the application of the co-respondent mechanism.[59]

Consistency is essential not only to preserve EU autonomy through joint responsibility, but also to ensure legal certainty and to avoid double standards. A lack of legal certainty arising from inconsistencies in the activation of the co-respondent mechanism can be particularly detrimental to applicants. Applicants may feel dissatisfied when they direct their application against a single actor –either a specific EU member state or the EU– but ultimately find themselves facing two co-respondents, in a case that has become far more complex than they initially expected, without the possibility of assigning responsibility solely to one of the two co-respondents. Continuity, stability, and certainty in the application of the mechanism are therefore crucial to ensure uniform treatment for all applicants in similar cases.

Ways to tackle this challenge and mitigate the risk of inconsistency include providing clear guidance to all involved actors. The website of the Convention system could offer information and guidance (such as guides, procedure flowcharts and diagrams) enabling all actors, including applicants, to make informed decisions and understand what to expect. Moreover, the EU member states may, and indeed should, play a role by requesting consistency from the EU in the application of the co-respondent mechanism.

Finally, a delicate question is whether the ECtHR should monitor consistency and have a say in its application.[60] However, doing so could interfere with, and undermine, the EU's power to decide if and when the co-respondent mechanism should be applied, which the drafters of the accession agreement appear to regard as essential, as a means for the EU to preserve the autonomy of its legal order.

---

[58] Ibid., Article 3(5) and Explanatory Report, para. 61.

[59] D.L. Franklin and V.P. Tzevelekos, 'The 2023 Draft Agreement on the EU Accession to the ECHR: Possible "Gaps" and "Cracks" in the Co-respondent Mechanism and the Implications for the *Bosphorus* Doctrine', (2024) 9(2) *European Papers*, p. 745, at pp. 759-763.

[60] Ibid., p. 759.

b) Ensuring the Integrity of Joint Responsibility

Another challenge connected with the co-respondent mechanism is maintaining joint responsibility intact. This is again essential to preserve the autonomy of the EU legal order. However, it may not be as straightforward as it appears at first glance. The EU is not a state; it is rather a *sui generis* polity –not a full federation, but a supranational order with federal elements. The logic of joint responsibility is to treat the EU and its member states as a single entity for the purposes of a case before the ECtHR. However, there is inevitably an element of artificiality in treating two distinct but entangled and intricately connected actors –the EU and its member states– as one. Thus, ensuring the integrity of joint responsibility and avoiding the allocation of responsibility between the EU and its member states, in accordance with the logic and requirements of the co-respondent mechanism, may present challenges for the ECHR system.

To tackle these challenges, the Court is expected, in the judgments it will deliver under the co-respondent mechanism, to refrain from allocating responsibility between the EU and its member states. Effort will be required to ensure that, even if the Court attributes[61] certain conduct to one of the co-respondents or identifies in its reasoning incompatibilities with the Convention that concern or can be connected solely with one of the co-respondents, the judgment as a whole does not jeopardise joint responsibility. Preservation of joint responsibility will also require effort at the execution stage before the Committee of Ministers, which brings us back to the role of states, including non-EU member states. Both non-EU and EU member states have an essential role to play in upholding the integrity of the accession agreement. In this regard, a key responsibility lies in the execution of judgments involving the co-respondent mechanism. It is vital to maintain joint responsibility before the Committee of Ministers, even where execution measures must be carried out either by the EU or by its member state(s) held jointly responsible. To that end, it will be essential to give the necessary leeway to the EU and its member state(s) found jointly responsible to decide between them who shall take which measures to comply with the judgment, in terms of both individual and general measures.

c) *Quantitative and Qualitative Workload Increase*

Beyond joint responsibility, new challenges will arise simply from the fact that the EU will become subject to the ECtHR's jurisdiction. The EU holds wide-ranging competences in areas of major importance, which may give rise to questions of high legal complexity under the ECHR. Thus, a challenge after accession is that it will likely increase the ECtHR's caseload, both quantitatively and qualitatively.

[61] 46+1(2023)36, n. 1, Article 1(4) and Explanatory Report, paras 27-29.

Starting with the quantitative increase, at present EU law can only be scrutinised indirectly and exceptionally, when the *Bosphorus* presumption of equivalent protection 'filter' allows it.[62] After accession, this scrutiny will be direct. Adding any new party to the ECHR system –and enabling the ECtHR to assess the compatibility of its rules, practices, and conduct, including domestic judicial practice, with the Convention– will contribute to the Court's workload. However, in the case of the EU this increase may be considerable, not least because of its size. One only needs to consider the breadth of the EU's competences, and the scale of the current accountability gap, to appreciate that the increase in workload might not be insignificant.

The qualitative increase in case law is equally, if not more, challenging. First, EU law is highly technical and involves sophisticated regulatory frameworks (e.g., GDPR or digital services), which may raise ECHR-related concerns. While the Court has dealt with aspects of such law,[63] new areas and novel questions will arise, involving complex issues concerning the compatibility of EU law with the ECHR. Second, ECtHR Judges are not necessarily specialists in EU law, yet they may need to assess it in new contexts. This may result in a steep learning curve, greater reliance on comparative legal analysis (including CJEU case law), and longer deliberation times –compounded by extra procedural steps, such as activating the co-respondent mechanism where applicable.

The Court will require additional resources to manage this quantitative and qualitative workload. It will also need to develop expertise in EU law, which may require specialised EU law training for Judges and Registry lawyers. Capacity-building will be essential. Yet, this challenge also presents a significant opportunity. It will allow the Court to deliver judgments in areas that are not only technically complex but also raise novel, socially and politically sensitive, or morally charged questions. These are precisely the kinds of questions that emerge within the regulatory frameworks of contemporary governance (e.g., technology regulation regimes) that shape the daily lives of millions of Europeans. In other words, the Court will increasingly be called upon to address issues arising from technology-regulating and market-shaping legal frameworks. By engaging with areas that until now have largely escaped external direct human rights scrutiny, the Court will be in a position to set standards and provide guidance. This, ultimately, will reinforce the Court's meta-function: its central mission of developing human rights standards that foster the integration of Europe around the shared principles of democracy, the rule of law, and human rights. To facilitate this role, it may also be useful to consider updating the Court's case prioritisation policy, to better support and enable the effective exercise of its meta-function.

[62] ECtHR, *Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* [GC], 45036/98, 30 June 2005, paras 152-158.
[63] E.g., on intermediary liability for online harmful speech, ECtHR, *Delfi AS v. Estonia* [GC], 64569/09, 16 June 2015 and *Sanchez v. France* [GC], 45581/15, 15 May 2023.

d) *Shifting Landscape of Litigants*

Moving to another challenge, cases against the EU may also be brought by new types of litigants, such as powerful corporations, including but not limited to Big Tech (e.g., social media, artificial intelligence, or neurotechnology). Transnational regulatory disputes in highly specialised areas regulated by EU law may give rise to applications before the ECtHR. Such companies already litigate extensively before the CJEU, but the ECtHR would offer them an external forum in which to raise concerns from a human rights angle, framed –or even disguised– as human rights complaints. Corporations may pursue such litigation for symbolic victories, as part of corporate legal strategy, or to generate public scrutiny of regulatory actions and frameworks. An ECtHR judgment against the EU would carry significant political, economic, and reputational weight.

There are two perspectives on this challenge. One is that the ECtHR already addresses similar questions. Moreover, all claims must, in any event, be brought under one of the substantive provisions of the ECHR. For example, a competition law dispute will most likely be translated into Article 6 and/or Article 1 of Protocol No. 1 claims.[64] As a result, the Court will not become a competition law court. Rather, it will be called upon to adjudicate complaints that originate in competition law disputes but are transformed into ECHR disputes raising issues in areas where its case law is already well developed. On the other hand, powerful private economic actors will gain direct access to the ECtHR and may use it as a venue for corporate legal strategy. Such applicants possess not only vast financial resources but also political clout, media influence, and the capacity to sustain complex, long-term litigation. The Court may face considerable challenges in handling cases involving billions of Euros, transnational regulatory disputes, or highly specialised areas of law. Nevertheless, however demanding such cases may prove to be, the Court has already demonstrated its ability to manage them.[65]

3) Final Word: The True Problem Lies in the *Status Quo*

While some of the challenges identified in this short critical reflection may appear significant, the ECHR system is well equipped and has repeatedly demonstrated its adaptability in meeting challenges. The ECtHR's case law on the EU legal order will, in time, secure the continued compatibility of EU law and practice with Convention standards. For instance, the Court will be able to exercise full and direct scrutiny over weighty matters such as migration,

---

[64] E.g., ECtHR, *Senator Lines GmbH v. Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden and the United Kingdom* [GC], 56672/00, 10 March 2004 (decision) and *A. Menarini Diagnostics S.R.L. v. Italy*, 43509/08, 27 September 2011.

[65] E.g., ECtHR, *OAO Neftyanaya Kompaniya Yukos v. Russia*, 14902/04, 20 September 2011 (merits) and 31 July 2014 (just satisfaction, adjudicating, *inter alia*, 1,866,104,634 Euros for pecuniary damage).

non-refoulement, and judicial co-operation –areas in which it has already elaborated standards through its scrutiny of other ECHR parties. Moreover, cases concerning the EU legal order will enable the Court to shape and expand its case law in innovative ways and new directions. These are not the only benefits of accession. The broader advantages are well known and need not be repeated here; foremost among them is ensuring accountability and access to justice for victims of human rights violations arising from the EU legal order. Given the breadth of the EU's powers, and the fact that these areas currently escape direct ECtHR scrutiny, the dimensions of the accountability gap and the urgent need for protection of victims are readily apparent.

EU accession should therefore be seen both as an opportunity and as an urgent necessity: an opportunity to address the current accountability gap and to foster closer integration, in part by promoting direct dialogue between the CJEU, other EU institutions, and the ECHR system; and a necessity because that accountability gap will otherwise remain unresolved. The greatest challenge –not for the ECHR system, but for Europe and its citizens– would be if accession once again fails to materialise. In that scenario, scrutiny of the EU legal order would remain partial and indirect at best (even if the *Bosphorus* doctrine were to be modified or abandoned), and therefore insufficient to close the accountability gap. Despite the difficulties that accession may entail for all actors involved, and even if it pushes them outside their 'comfort zone', it remains necessary to strengthen the effective protection of human rights in Europe.

CLOSING REMARKS

ALLOCUTION DE CLÔTURE

John Finbarr (Barra) LYSAGHT
Chairperson of the Committee of Experts on the System of the European Convention on Human Rights / *Président du Comité d'experts sur le système de la Convention européenne des droits de l'homme (DH-SYSC)*

Colleagues, distinguished guests and participants,

As chair of the DH-SYSC, I have the pleasure of making some brief concluding remarks.

The purpose of this conference has been to reflect on the challenges facing the Court and the Convention system.

It seems to me that this discussion has been both timely and necessary as we approach the 75th anniversary of the opening for signature of the Convention. We have heard contributions today from members of the Court and its Registry, Government agents, academics, legal practitioners, and civil society.

It is clear to me that each of us has a role to play in ensuring the continued effectiveness of the Convention system.

Indeed, today's conference has underlined for me the value of continued dialogue between the various actors that are involved in that system.

The Convention is – as the Court famously held in *Tyrer* – a living instrument, which must be interpreted in the light of present day conditions.

What are the present day conditions in which we find ourselves? We find ourselves in the midst of a triple planetary crisis, with conflict once again raging in Europe, democratic institutions under attack, and the multilateral system being called into question.

These challenges have resulted in an increase in strategic litigation and inter-state applications, which pose not only substantive but also procedural challenges for the Court and those who appear before it.

We have heard today how the Court has sought to adapt to meet these challenges, not only in its case law, but also by refining its existing procedures and adopting new technologies.

It seems to me that the Court, when compared not only with other international courts, but also with the national courts, has shown itself to be highly dynamic and responsive to these emerging challenges.

We must acknowledge however that the answers to some of the questions posed today do not necessarily rest in the Court's hands.

I am reminded that the Preamble to the Convention affirms that the observance of human rights and fundamental freedoms depends on an effective political democracy.

I will conclude my remarks, if I may, by quoting Ireland's national poet, WB Yeats, who wrote:

> "Things fall apart; the centre cannot hold;
> The best lack all conviction, while the worst
> Are full of passionate intensity"

It seems to me that Yeats' words resonate for the times in which we find ourselves.

We must not be found lacking in conviction when facing the challenges which the Convention system undoubtedly faces.

I would like to conclude by expressing my sincere thanks to –

- Judge Hüseynov and Judge Đurović
- Moderators and panel members
- The Secretariat
- The translators, for helping us to understand each other.

Amid evolving litigation trends and accelerating technological innovation, the system of the European Convention on Human Rights continues to adapt. This publication presents the proceedings of the Conference "The System of the European Convention on Human Rights: Responding to New Trends and Challenges," held in Strasbourg on 24 June 2025 on the occasion of the 7th Plenary Meeting of the Committee of Experts on the System of the European Convention on Human Rights (DH-SYSC).

The Conference brought together judges of the European Court of Human Rights, members of the Court's Registry, government agents, legal practitioners, civil society representatives, and leading academics. It informed intergovernmental work on two future reports – on new litigation trends before the Court and on the Court's use of new technologies – and served as a platform to identify possible areas for future work on the Convention system.

This publication offers an overview of the challenges and opportunities discussed during the event and reflects the shared commitment of all participants to support the Convention system.

Le système de la Convention européenne des droits de l'homme continue de s'adapter à l'évolution des tendances en matière de litiges et à l'accélération de l'innovation technologique. Cette publication présente les actes de la Conférence « Le système de la Convention européenne des droits de l'homme : Répondre aux nouvelles tendances et aux nouveaux défis », qui s'est tenue à Strasbourg le 24 juin 2025 lors de la 7e réunion plénière du Comité d'experts sur le système de la Convention européenne des droits de l'homme (DH-SYSC).

La conférence a réuni des juges de la Cour européenne des droits de l'homme, des membres du greffe de la Cour, des agents gouvernementaux, des praticiens du droit, des représentants de la société civile et d'éminents universitaires. Elle a alimenté les travaux intergouvernementaux sur deux futurs rapports – sur les nouvelles tendances en matière de litiges devant la Cour et sur l'utilisation des nouvelles technologies par la Cour – et a servi de plateforme pour identifier les éventuels domaines d'activités futures sur le système de la Convention.

Cette publication offre une vue d'ensemble des défis et des opportunités examinés lors de l'événement et reflète l'engagement commun de tous les participants à soutenir le système de la Convention.

PREMS 088825

ENG
FRA

www.coe.int

The Council of Europe is the continent's leading human rights organisation. It comprises 46 member states, including all members of the European Union. All Council of Europe member states have signed up to the European Convention on Human Rights, a treaty designed to protect human rights, democracy and the rule of law. The European Court of Human Rights oversees the implementation of the Convention in the member states.

Le Conseil de l'Europe est la principale organisation de défense des droits humains du continent. Il comprend 46 États membres, dont l'ensemble des membres de l'Union européenne. Tous les États membres du Conseil de l'Europe ont signé la Convention européenne des droits de l'homme, un traité visant à protéger les droits humains, la démocratie et l'État de droit. La Cour européenne des droits de l'homme contrôle la mise en œuvre de la Convention dans les États membres.

COUNCIL OF EUROPE

CONSEIL DE L'EUROPE