



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

**Exchange of views with the Steering Committee
for Human Rights (CDDH)**

Speech by Robert Spano

Strasbourg, 16 June 2022

Dear Chair,
Dear CDDH members,

Thank you for this invitation to address the 96th meeting of your Steering Committee, to answer your questions and to hold an exchange of views.

I find this face-to-face dialogue essential because the work of the Steering Committee for Human Rights (“CDDH”) is at the very heart of improving the effectiveness of the control mechanism of the Convention.

The Court is committed to cooperating with you in this joint endeavour. As I stated in my opening address for your on-line seminar on the execution of judgments in June last year, you can count on the Court’s full support.

Our cooperation is strong, practical and continuing. Here I could cite the input from the Court’s Registry in the ongoing work of the DH-SYSC-IV, and the Registry’s participation in the *ad hoc* negotiation Group on the EU accession to the European Convention, as well as the newly created Drafting Group on Human Rights in situations of crisis.

We all know that there are still challenges facing the Convention system, and these must be addressed, despite the formal closing of the Interlaken reform process. This is one of the reasons for the creation of the new Drafting Group on the effectiveness of the system for the selection and election of Court judges (DH-SYSC-JC). I will come back to that point a little bit later in my intervention.

As agreed, I would like to use the short time for my intervention to cover three points. Firstly, I will give you a very short review of my mandate as President so far. Secondly, I will outline the consequences of the expulsion of Russia for the work of the Court and thirdly an issue which I consider of importance to the Convention system, the length of mandate of Court judges. This ties in directly with the work of your new Drafting Group.

Turning now to review briefly my mandate so far as President of the Court which coincided with a number of transformative moments in the Convention’s history. Why do I say that?

My mandate began just a couple of months into the global COVID-19 pandemic in May 2020. Responding to that pandemic was a major challenge for our Court, as well as for all courts within the Council of Europe legal space and beyond. I am proud that the Court adapted to the unprecedented situation by taking exceptional measures to extend the time-limits for bringing cases before the Court; ensuring the continuity of its case-processing and in particular dealing with requests for

It is of immense importance that the Council of Europe and the Court reacted with speed, determination and clarity since the beginning of the war. The Court, having regard to the decisions of the Committee of Ministers and the Parliamentary Assembly and in unison with those bodies, drew the consequences of the Russian Federation's cessation of membership of the Council of Europe and decided that, as from 16 September 2022, the Russian Federation would cease to be a High Contracting Party to the Convention.

This means that the Court will continue to have jurisdiction to deal with applications concerning actions and omissions by the Russian Federation which may constitute a violation of the Convention, provided they occurred before that date.

It seems clear that thousands of applications will have to be dealt with, not to mention those that may be lodged over the coming months.

This is an immense challenge for us, and the Plenary Court is in the process of determining the most appropriate course of action for processing these cases. [The position of Russian Registry staff will also have to be considered. Obviously, the two are linked]. As the situation is continually evolving we cannot expect the Court to take any final decisions yet.

When it comes to Russian cases the current numbers are as follows: There are a total of some 17,000 cases pending in Section III, including: 1,197 Chamber cases. To the above should be added 4 applications in one case pending before the GC (*Fedotova and Others v. Russia*, nos. 40792/10 and 3 others). There are also 8 inter-state cases against Russia and one case introduced by Russia against Ukraine.

Since 25 March (for Chamber cases) and 28 March (for the pending Grand Chamber case), the Russian Government has not communicated with the Court. We have recently learnt that two Russian laws have now come into force according to which Russia will not execute any judgment which enters into force after 15 March 2022.

Many issues are also of a judicial, rather than administrative nature, such as *ratione temporis* scope of the residual jurisdiction. This will have to be decided by the Court's judicial formations in time.

Last but not least, I would like to address the situation of our Court judges: in particular the length of their mandate and post-mandate recognition of service.

It is clear that the Court stands at the centre of the societal upheavals we are witnessing and the challenges we are facing, including the war in Ukraine. It is precisely in times such as these that the Court and its judges must withstand the pressures of the times we live in and continue to deliver justice independently and impartially.

For these reasons, financial stability and continuity in the Court's work, as well as increased safeguards surrounding the status of the judges, are vital. This will increase the Court's independence as a judicial institution.

As you are aware, the non-renewable nine-year term of office for the Court's judges was introduced by Protocol No. 14 in order to reinforce independence and impartiality. However, some years of implementation and reflection, the Court has come to the conclusion that this length of mandate raises serious concerns and that a number of important arguments militate in favour of extending the mandate to 12 years. This issue has already been discussed within the CDDH in recent years. In

particular, when comparing the Strasbourg Court to other International Courts, we see that a single nine year term does not provide sufficient stability to the Court's functioning, including its governance structure, and importantly the continued coherence and consistency of its jurisprudence which often requires a long-term vision on the interaction between the Convention and day-to-day realities.

If we compare the length of the mandates of Judges at the International Court of Justice and at the Court of Justice of the European Union, it can be seen that, through renewals, their mandates are invariably much longer. A 12-year term would create the necessary stability and continuity that is essential for a judicial institution navigating a challenging international environment. This is also one of the reasons that whilst there are some variations the mandates of Justices of national constitutional courts is very often 12 years.

Your new Drafting Group on issues relating to judges of the European Court of Human Rights (DH-SYSC-JC) is to be instructed to prepare, under the authority of the DH-SYSC, a "Report evaluating the effectiveness of the system for the selection and election of the Court's judges and the means to ensure due recognition for judges' status and service on the Court and providing additional safeguards to preserve their independence and impartiality". If your Group were to evaluate within the context of its mandate a possible extension of the Judges' mandate from nine to twelve years, we consider that this would be extremely beneficial.

Former judges should be given reasonable and practical opportunities to pursue their previous domestic careers post-mandate (whether as a national judge, as a civil servant, a lawyer at the Bar, a university professor, or in another profession) with due regard to the length of their service at the Court. Career advancement domestically should take into consideration the exceptional nature of the post of judge at the Court. This should be the very minimum to be expected after spending many years in the high judicial post of judge at the Court.

If we wish to attract candidates of the highest calibre to the Court, these issues are absolutely crucial.

Dear Committee Members, the time has come for me to conclude my intervention today.

The Convention system has many challenges before it: the decline in the rule of law and challenges to the independence of the judiciary; the environmental crisis coupled with climate change litigation, and, critically, a new war in Europe which brings to the Court individual applications and inter-state litigation.

Only through cooperation and dialogue can we surmount these challenges together. Close cooperation with your Committee is essential in this respect.

Thank you.