



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

Exchange of views with the Committee of Ministers

Speech by Robert Spano

19 October 2022

Mr President,
dear Ambassadors,
dear colleagues,

Let me begin by saluting the Irish Chairmanship of the Committee of Ministers for its outstanding work. A few days ago, we had the honour of receiving a visit to the Court from President Michael D. Higgins, who came for the second time to lend our institution his personal support. The Court was particularly appreciative.

Ireland is decidedly in the spotlight this morning, since I have the pleasure of being accompanied by my successor and friend, Siofra O'Leary, the judge elected in respect of Ireland, who in a few days' time will become the first female President of the European Court of Human Rights.

I am delighted by her election, and I should like to state that I have the utmost confidence in her ability to carry out the heavy task that has now been entrusted to her.

I also know that, like me, she will be able to count on your support in that mission.

Indeed, I am appearing before you today for the fifth and last time in the context of these twice-yearly exchanges between the President of the Court and the Committee of Ministers.

I should like to thank you for the quality of the dialogue and exchanges that have taken place in this room.

Above all, I think it is essential to reaffirm to you once again how much the Court appreciates the support it receives from the member States.

I have observed this myself during my term of office, and I wish to express my gratitude to you as I prepare to leave the Court.

You have supported us in many ways.

Firstly, there have been your contributions to the special account which, over the two and a half years of my term of office, have exceeded 7 million euros. This is a considerable amount, and I am aware of

the financial efforts that this represents for you. But you know that these sums are essential for our proper functioning and that they are put to good use, in order to recruit the lawyers that we need.

Secondly, there are the secondments of lawyers to the Registry of the Court.

These enable lawyers and judges to bring us their expertise for a few years and then leave, enriched by the experience they have acquired in Strasbourg. We currently have no fewer than 36 secondments, which is one of the highest numbers we have ever achieved. Many thanks to all of you.

I should like to say a few words, if you will permit me, about the Court's activity since the beginning of 2022.

We have been very busy, as you will see.

Between 1 January and 30 September 2022, the Court ruled on over 30,000 applications.

The number of applications which have given rise to a judgment in 2022 is 2,303, of which 1,900 were decided by a three-judge committee. Single-judge formations ruled on almost 24,300 applications.

At the end of 2021, there were 70,150 pending applications. By the end of September 2022, this figure was over 74,500.

More than 76% of the pending cases concern five countries. Firstly, Türkiye, with around 19,300 applications, which became our largest case-count country on 1 August 2022, then the Russian Federation with around 17,550 applications, followed by Ukraine with around 10,950 applications, and Romania with around 5,050 applications. Then there is Italy, against which 3,850 applications have been lodged.

I will come back to the situation of applications against the Russian Federation shortly.

Compared to 1 January 2022, there has been a 10% increase in the number of pending applications allocated to a Chamber (33,700). The number of applications assigned to committees has increased by 8% to 34,350, and the number of applications assigned to a single judge has decreased by 16% to approximately 6,450.

Almost 10,400 pending applications concern tensions between two member States (Russia/Ukraine, Armenia/Azerbaijan and Georgia/Russia). As I have already said in the past, these cases are onerous and complex and require special efforts, particularly in terms of dedicated staff. As I indicated to you at our meeting last March, a specific unit has been created within the Court to deal with these cases. I should add that there are currently 16 inter-State cases pending before the Court. When one considers that in the entire history of the Convention there have only been about 20 inter-State cases, it becomes clear how high the number of such cases is at present.

Of all the pending applications, we have about 24,000 which are priority cases. Many of these applications are, in fact, repetitive, as they concern individuals who complain about prison overcrowding.

However, they raise issues under Article 3 of the Convention, which justifies their priority status. Generally speaking, they concern problems that can only be solved in a sustainable way if efforts are made at the national level.

89% of the pending priority applications come from 5 countries, namely Russia (39%), Türkiye (19%), Romania (15%), Ukraine (8%) and Greece (8%). It is important to note that for Russia, Romania and Greece, these applications mainly concern conditions of detention and, in the case of Türkiye, unlawful detention.

Dear Ambassadors,

One of the main areas of reform of the Court's work during my mandate has been the impact strategy. I presented it to you at our first meeting in 2020 and I also took the opportunity during our many bilateral talks to describe it to you in greater detail.

Now, a little less than two years after the launch of this strategy, the time has come for an initial assessment. Before giving you some statistics, let me begin with the following: there is no question in our view that the new case-processing model was a necessary and transformative step to enable the Court to fulfil its mandate, as emphasised by the Member States in several intergovernmental declarations in the course of the Interlaken process, as you are all aware. We are beginning to see the fruits of our labours over the past two years. It has been an immense task.

As of 1 January 2022, of the 21,483 pending category IV cases, 528 had been identified as "impact". As of 1 October 2022, 507 applications identified as being "impact" cases were pending, and 79% of these have already been communicated to the respondent Governments.

From January 2021 to date, 476 "impact" applications have been examined:

- 143 applications have resulted in a judgment,
- 33 applications have been declared inadmissible or struck out of the list of cases and
- 300 applications have been communicated.

By definition, impact cases cannot exceed a few hundred in number, but they are truly the cases that need to be dealt with quickly and which make the Strasbourg Court "a Court that matters". No longer will these cases take many, many years to be decided, but will be dealt with as a matter of priority. Once again, allow me to thank all of you and all Governments for your active and vital support for the Court's efforts and for our many bilateral conversations on this issue. The energy and vision I encountered during our talks was inspiring and it conveyed to me your passion for the Council of Europe and the Court and it is that passion, that belief, ladies and gentlemen, that will bring us through these turbulent times, I am sure of that.

Allow me now to turn the state of play in relation to the processing of the pending Russian cases. For the sake of time, as mentioned during our bilateral talks, I will make some general, but important, remarks at this point to give you the necessary insights but will of course be ready to add some elements during the Q&A if you so wish.

As you know, since 16 September of this year, Russia is no longer a High Contracting Party to the European Convention on Human Rights, as was laid down by the Plenary Court in our Resolution of 22 March.

Moreover, the judge elected in respect of that State ceased to exercise his functions as a judge on that same date, as noted by the Plenary Court in another Resolution adopted on 5 September 2022.

Immediately after Russia's expulsion from the Council of Europe on 16 March, the Court initiated an integrated process of reflection in order to decide on how it would deal with the many Russian cases

which are currently pending. Since the beginning of the conflict, these cases have continued to be dealt with by the competent Section. We have taken many important steps internally over these past few months and continued to decide important Russian cases. I can mention here the judgment in the case of Ecodefence and Others on the application of the Foreign Agents ACT to NGOs and Taganrog LRO and Others on the authorities' crackdown of Jehovah's witnesses.

In this regard, it is important for me to clarify at the outset that for an international court confronted with 17,000-18,000 pending Russian cases, the way forward requires time and reflection. For one thing, procedural solutions must have a sound legal basis in accordance with the rule of law and it is this that has been our main focus in the last few months. The European Court of Human Rights must, after all, itself be the pre-eminent example of the rule of law in practice.

Secondly, as a Court, final and binding resolution of these cases will have to be made by judicial compositions, as reflected in the Plenary Court's Resolution of 22 March.

Over the coming months and years, a number of principles will guide us.

Firstly, I wish to emphasise that the Court, faithful to its mission, will continue to ensure that the most serious violations of human rights by the Russian Federation are subject to judicial examination for the benefit of the victims themselves and of the international legal order. It is clear that the Convention system is based on the principle that a former Member State, like Russia, cannot retroactively absolve itself of its obligations under international law. Furthermore, the existence of a reasoned judgment in important cases will facilitate the task of the Committee of Ministers in the future execution of these cases. This is also the natural consequence of the rule on residual jurisdiction, as provided for in Article 58 of the Convention, concerning a High Contracting Party whose membership of the Convention system has ceased to exist.

As regards inter-State applications or applications related to an inter-State conflict, which I know is one of the main issues of concern within the Committee of Ministers, allow me to be very clear, these will remain a priority and will all be dealt with.

Secondly, with regard to ongoing Russian cases, the Court will select those that merit to be dealt with by Chambers of seven judges. These cases will be very limited, but will be selected in relation to their marked importance for Russia's international law responsibility under the Convention, for example cases related to the activity of civil society and on fundamental principles of democratic governance.

Finally, less important cases will be dealt with in a summary way using the case-processing tools that we have put in place. These cases will be processed in phases, depending on the work on the cases selected for the Chambers of seven judges and the availability of resources. Flexibility will be required and I emphasise that any final disposition of cases will be decided by the judicial composition seized of the case or groups of cases in question as we made clear in our Plenary Resolution of 22 March this year. This will take time, a number of years for sure, depending on developments, but the timeline is of course uncertain at this stage.

In sum, the Court, after much reflection and internal assessment, will overall proceed with a well prepared middle ground approach that takes account of the realities of the situation and the Court's limited resources but attempts at the same time to robustly safeguard the fundamental principle of the right to individual petition under the Convention.

As you will understand, we are moving forward in a measured way, and are trying to make the best use of the resources available to us. Not all practical issues can be further outlined at this point, but I

am confident that under the leadership of the new President, Siofra O’Leary, the Court will be successful in implementing the approach I have outlined.

Turning now to a different, albeit very important, development in the Court which is part of a wider overall and strategic policy of increased external communication. As you have often heard me say, a modern court, not least an international court, must be an active participant in society, constantly ready to open and transparently explain its functions and its worth for the people it serves. In this vein, I would like to mention yesterday’s launch of the Knowledge Sharing Platform. This new tool for disseminating the Court's case-law is absolutely essential.

It is part of a communication policy that the Court has been pursuing for the past two years. A more lively and attractive communication approach, which reports on the Court's news but which also informs the general public about our case-law and all the innovations being introduced at the Court, such as the very recent launch of the Rule 39 digital platform.

On behalf of the Court and the Registrar, Marialena Tsirli, I am immensely grateful to the Secretary General, the Deputy Secretary General, and the Director General of DG1, for your cooperation and common vision in this endeavour. This ongoing synergy between the Court and the Council of Europe as a whole is absolutely vital for the further strengthening of this living organism of protection of the democracy, human rights and the rule of law which has now, more than ever, become fundamental for the lives and prosperity of all the peoples of Europe.

Mr President,

Ambassadors,

I cannot end this speech without emphasising once again that I could not have achieved anything without the help of my fellow judges, who are totally dedicated to their task, and a very remarkable Registry. It is this teamwork that has made – and will continue to make – the Court a success. The support of the diplomatic community has also been invaluable. I am sure that you will continue to provide it, as you have done so far.

Dear friends,

In a little less than two weeks, I will have left the Court and whilst my journey here in Strasbourg is coming to an end, I am certain that the future of the Council of Europe and the Court is bright and strong. Again, all we need is passion, vision and belief.

Thank you.