



COMMISSIONER FOR HUMAN RIGHTS
COMMISSAIRE AUX DROITS DE L'HOMME



CommDH/Speech(2012)5
English only

High Level Conference on the Future of the European Court of Human Rights

Intervention by Nils Muižnieks
Council of Europe Commissioner for Human Rights

Brighton, 18-20 April 2012

Ministers,
Excellencies,
Ladies and Gentlemen,

I assumed office only at the beginning of the month and this is my first official appearance as Commissioner. Thus, I cannot yet refer to insights gained from my own country visits, thematic work or third-party interventions before the Court. However, I believe all of our work is related in some way to the work of the Court – preventing human rights violations through promoting human rights awareness, addressing systemic problems in member states that lead to many complaints, pushing for implementation of human rights standards at the national level, and sharing best practices to address human rights concerns.

In my remarks today, I would like to touch upon several important issues and principles related to the nexus of our work with that of the Court.

Much has been said about the principle of subsidiarity. It has been given a number of different meanings, from the idea that domestic courts should have greater powers to interpret Convention rights to the possibility of allowing states to override decisions of the Strasbourg Court.

The principle of subsidiarity essentially means that the prime responsibility for ensuring respect for the rights enshrined in the Convention lies first and foremost with the national authorities rather than with the Court.

It is thus about effective implementation of the Convention at national level, but also about effectiveness of domestic remedies and the need to swiftly and fully execute the judgments of the Court.

For this principle to function in practice, effective and independent national human rights structures and courts, as well as effective remedies must be in place – so that each individual can find justice at national level.

Whether human rights are implemented and interpreted correctly at the national level will lastly be examined by the Court, as an instance of last recourse.

The Interlaken Declaration and Action Plan have confirmed that national authorities - governments, courts and parliaments - are key to guaranteeing and protecting human rights at national level.

The main message brought by the massive inflow of cases in Strasbourg is that the European Court of Human Rights is essential to many individuals who feel that their rights have not been protected in a European state.

In a number of country reports, my predecessor, Thomas Hammarberg, has focused on the link between the administration of justice and the protection of human rights and I intend to continue this work.

Shortcomings within the judicial system are a significant source of violations of the European Convention, including for instance violations of the right to liberty, and many of the complaints to the Court relate to excessively slow procedures and to failure of member states to enforce domestic court decisions. In several European countries, these decisions are often enforced only partly, after long delays, or sometimes not at all.

My intention is to continue to assist 'high case-count' states (that is states with the highest number of pending applications before the Court) to address the underlying causes of this phenomenon.

I would like my work to be useful in addressing the systematic failure to implement the Convention, particularly in countries where national courts simply do not provide sufficient protection to individual rights. More needs to be done in order to implement the Convention through the national courts.

This of course goes hand in hand with the need to improve domestic remedies. Recourse to an international court should be seen for what it is – essentially a failure to provide proper national remedies.

The desirability or even requirement of having effective national human rights structures was mentioned in early drafts of the Declaration. Bodies such as parliamentary ombudsmen, equality bodies, data protection commissioners, children's ombudsmen, police complaints commissions and other similar mechanisms are important partners for us. When given proper mandates and adequate funding to ensure their independence, such structures have the potential to improve the human rights situation considerably.

Some good practices exist; a couple of national human rights institutions have focused on promoting compliance with the European Convention and encouraging implementation of judgments of the Court. However, as a consequence of the economic crisis, many of these structures have been weakened through budget or staff cuts and some have been done away with altogether. This is unfortunate, as in times of crisis, they are essential sources of assistance for the most vulnerable victims of human rights violations.

Co-operation with national human rights structures should be enhanced with the aim of fostering human rights oriented policies at national level and addressing systemic shortcomings in member states. Furthermore, member states which have not yet done so should consider establishing such institutions, including at the regional or local level.

It is the member states' task to ensure a better implementation of the Convention at the national level. However, non-execution of Court's judgments remains a major problem in the current system.

Though in the majority of cases European states do comply with the Court's decisions, there are also cases of states being strikingly slow to abide by their obligation to execute the judgments. Some important judgments have remained unimplemented after several years despite clear guidance given by the Court and the Committee of Ministers.

As a consequence, many of the judgments issued by the Court concern so-called 'repetitive applications', i.e. cases raising issues that have already been the subject of Court judgments in the past, and which normally should have been resolved by the respondent member states. These 'repetitive applications' contribute to the overloading of the Court and create a risk of delayed decisions in general.

This requires a prompt, full and effective execution by member states so that recurrence of similar violations is prevented.

During the six years of my mandate, I will continue to draw the authorities' attention to the need for the prompt implementation of judgments issued by the Court. I also intend to engage not only with

governments, but also with parliaments, judiciaries, national human rights structures and civil society partners to promote more effective implementation of Convention standards by member States.

Subsidiarity should be seen together with another principle – the principle of complementarity. There should be a more intense exploration of joint efforts with other Council of Europe monitoring mechanisms, political bodies, member states, the national judiciaries, and national human rights structures. My Office is eager to work together with others in this endeavour.

My role, as I see it, complements the role of the Court. By highlighting the need for the prevention of human rights violations, identifying and sharing best practices, raising awareness on the agreed standards, and suggesting remedies for human rights violations, especially in cases of gross or systemic problems, I think my Office can play an important role in ensuring that the Convention system remains effective.