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# *High-level Conference on the "Implementation of the European Convention on Human Rights: our shared responsibility"*

Intervention by Nils Muižnieks
Council of Europe Commissioner for Human Rights

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Ministers,
Excellencies,
Ladies and Gentlemen,

When we gathered three years ago in Brighton, I had just taken up office and could not yet refer to insights gained from my own country visits. Now at mid-term of my mandate, I have conducted full country visits followed by a report in 26 member states. In most of these country contexts, the picture I saw was a mixed one. Alongside steps that have enhanced human rights protection, I have witnessed numerous negative developments:

- migrants (many with clear protection needs) being pushed back at Europe's doorstep;

- an extremely grave humanitarian crisis as a result of the conflict in Eastern Ukraine, where the most vulnerable (including civilians living near the line of conflict, those who have been displaced, children, the elderly and those with disabilities) have suffered enormously;

- human rights defenders and journalists being prosecuted because of their work.

For all these persons, and many others, the European Court of Human Rights is often seen as the last resort, the last hope to get redress for human rights violations.

However, the Court is a purely legal mechanism: it can only deal with legal aspects of the case at stake. What I have tried to do as Commissioner, is to complement the work of the Court by looking at the broader context that enables changes in line with the European Convention on Human Rights. This often requires finding ways to overcome the status quo, insecurity, prejudices or a lack of political will or interest.

In this context, I would like to outline three aspects of my work.

**Prevention**

Prevention of human rights violations lies at the heart of my mandate. I have tried to raise awareness about possible consequences - from a human rights point of view - of the adoption of legislative proposals. I have notably warned the authorities that they should abstain from creating situations which could potentially generate a number of applications before the Court.

In Spain, I have actively engaged in dialogue with the authorities since December last year on problematic amendments to legislation aimed at legalising immediate forced returns (push-backs) of migrants at the borders of the two enclave cities of Ceuta and Melilla. The amendments now include a reminder of the need for returns at the borders to be carried out in full compliance with Spain's international human rights and refugee protection standards.

Another recent example concerns Turkey and the proposals, made last February, to increase the powers of the Turkish police. Based on the findings of a report I published in 2013 (which dealt with the excessive use of force by the police during demonstrations, but also covered other areas where the wide powers of the police can lead to human rights violations, as highlighted by the case-law of the European Court), I urged the authorities to reconsider these proposals. In my view, any widening of the powers of the police to use firearms, to use force during demonstrations, to stop and check, or to apprehend suspects at their own initiative without judicial authorisation, would increase the likelihood of human rights violations and consequently generate an even greater number of applications before the Court.

**Intervention**

Third party interventions in the Court's proceedings represent an additional tool at my disposal to help promote and protect human rights. They are foreseen by the European Convention and Protocol n° 14 to the Convention gave me the right to intervene in pending cases on my own initiative.

In September 2013, I took part in a hearing before the Grand Chamber in the case of *The Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania*, concerning the treatment of a person with disabilities who died at 18 in a psychiatric hospital in Romania after having spent his all life in institutions. In my intervention, I stressed that in exceptional circumstances, non-governmental organisations should be allowed to lodge applications with the Court on behalf of victims, in particular in cases concerning vulnerable groups of people, such as persons with intellectual and psychosocial disabilities. This case resulted in a ground-breaking judgment, issued in July 2014, setting the position of the Court with regard to access to justice of particularly vulnerable people. The Court found that, in the exceptional circumstances of the case, and bearing in mind the serious nature of the allegations, it was open to the NGO to act as a representative of Mr Câmpeanu, even though the organisation was not itself a victim of the alleged violations of the Convention.

I am now intervening in five cases concerning the situation of human rights defenders in Azerbaijan, a country I visited in November 2012, May 2013 and October 2014. These cases illustrate a serious and systemic human rights problem in Azerbaijan, where critical voices are often subject to reprisals and judicially harassed. Two interventions have already been submitted to the Court and concern the cases of Hilal Mammadov and Intigam Aliyev. The next ones will concern the cases of Rasul Jafarov, Anar Mammadli and Leyla and Arif Yunus.

With cases currently pending before the Court precisely on this issue, the Court has a crucial role not only in redressing possible violations of the Convention, but also in preventing any further deterioration of the situation of civil society.

**Execution**

Finally, many judgments delivered by the Court bring to light systemic problems in the member states concerned. I see it as my role to encourage the rapid and effective execution of these judgments and to assist the governments in their efforts to remedy these shortcomings (in law or practice). During my country visits, I have often been faced with persistent structural problems which have led to the finding of a violation of the Convention

by the Court. When these problems are not addressed they generate new applications and flood the Court with repetitive cases.

The execution of certain judgments of the Court has been the subject of specific recommendations in reports following my visits to member states, in cases where these judgments brought to light a more general issue dealt with in my report. For example, in the report based on my visit to the Czech Republic in November 2012, I called on the authorities to fully execute the *D.H.* judgment which condemned the Czech Republic for the segregation of Roma children in schools. I regretted that five years on from this judgment delivered by the Grand Chamber, the authorities had still not eliminated the cause of the violations which were found.

On occasion, I have also expressed my point of view concerning the execution of certain judgments and their political and legal implications. In a memorandum addressed to the UK parliament in October 2013, I emphasised the obligation for member states to fully and effectively execute the judgments of the Court and the importance of such compliance for safeguarding the European system of human rights protection as a whole.

In this context, pilot judgments are in my view particularly important. They are not judgments like any other because they group together many similar cases. Their effective execution is absolutely essential to coping with the backlog of similar cases in the Court. I have therefore sought to raise awareness in member states, the Committee of Ministers and with other partners on this subject and to have the execution of pilot judgments included on the agenda of the European Union in both its member states and candidate countries.

To conclude with the aspects related to the execution, I would like to insist on the role that NGOs and national institutions for the promotion and protection of human rights play in the context of the execution of judgments. They are often the most knowledgeable about the real impact of measures adopted (or the absence of such measures) by a state in order to remedy violations found by the Court. Information received from these organisations should be better taken into account by the Committee of Ministers in the framework of the supervision of the execution of judgments.

A last point I wanted to make is mentioned in the draft declaration and concerns inadmissibility decisions. In the past years my Office received an increasing number of complaints emanating from applicants before the Court who could not accept that their cases had been declared inadmissible by a single judge, without any reason being given. While I cannot deal with such individual complaints, I think they may be symptomatic of a more general problem that can affect the relation of trust between applicants and the Court. I therefore welcome the intention expressed by the Court to provide brief reasons for the inadmissibility decisions of a single judge in a near future.

A good dialogue between applicants and the Court is essential to its effective functioning, as is the dialogue between national courts and authorities and the European Court. I will, for my part, continue the fruitful dialogue I have engaged with the Court.

Thank you for your attention.