

Seminar on the occasion of the 20th Anniversary of the New Court

Organised by the Finnish Presidency of the Committee of Ministers in cooperation with the European Court of Human Rights and the Steering Committee for Human Rights (CDDH)

Monday 26 November 2018, 15:15 – 18:30, Human Rights Building

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It is a great pleasure to be participating in this event to mark the twentieth anniversary of the new Court. I am speaking on behalf of the European Implementation Network, which provides a new civil society presence and impetus here in Strasbourg, and whose aims are to support and engage with the supervision process of the implementation of judgments, and enhance civil society access to, and inclusion in, that process.

After 20 years, the Court continues to act as a beacon of global justice, and as we've already heard, its decisions have led to myriad changes in law and practice across the continent. However, the implementation process has become more complex, as the Court has moved to stipulate more specific remedial measures in certain areas, and has stepped up its use of pilot and Article 46 judgments, using individual applications to identify systemic violations, and in some cases provide a comprehensive diagnosis and a range of recommendations for reform. In tandem, it is a welcome development that supervision is no longer the exclusive purview of the Committee of Ministers, as other Council of Europe actors (the Parliamentary Assembly, the Commissioner, and the Secretary-General) have taken up implementation, as part of a multi-layered process.

We need to acknowledge that implementation has certain significant problems - pockets of resistance, as they have been described. But it goes much wider than that - encompassing both particular issues such as abuses by the security forces in the north Caucasus, and systemic or structural problems, such as the failure to enforce domestic court judgments.

The reputation of this mechanism is brought into disrepute by slow, partial and even non-implementation. Of the Court's leading judgments in the last 10 years, 45% are still pending full implementation. For the cases that are implemented, full execution is taking longer and longer. The average time taken to implement a leading case has risen from 3 ½ years in 2013, to 5.3 years in 2017.

Unimplemented cases reached between 10,000 and 11,000 from 2012-2015. The latest annual report on the implementation of judgments suggests that the declining number of pending judgments is a positive sign, but this is a result of the new policy of 'partial closure' - a change in the method of calculating the numbers of cases which are closed where individual measures have been met, but general measures have not yet been resolved. It does not indicate a higher rate of implementation.

NGOs and NHRIs still submit information in only about 5% of leading cases. EIN is working to enable NGOs to engage much more, and to make the process more transparent, as we believe that there is a need for greater civil society involvement in implementation monitoring, as this would enhance

the process, by providing information, which may not be available elsewhere, which is vital in order to make a genuine assessment of the extent of the implementation of a judgment of the Court.

There have been changes. Since 2011 a greater degree of prioritization was introduced into the monitoring, through the enhanced procedure. In 2017, the infringement procedure mechanism was, finally, invoked for the first time, as regards Ilgar Mammadov's continued detention in Baku, leading to his release in August. We welcome the new HUDOC-EXEC database, which has made it easier to access information about the process. However, more needs to be done to strengthen the Committee of Ministers' supervision.

The contributions of other bodies should also be upgraded – for example, high level state representatives should be invited to the hearings on implementation held by the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly, with NGOs also being called to give evidence, where appropriate.

In discussing reform of the system, we should move beyond the usual focus on the Court, and also hone in on implementation. For all of these reasons, EIN considers that the stock-taking exercise relating to the Interlaken process should incorporate a thorough analysis of the general state of the implementation monitoring system, so that it can be made more transparent and more effective, and further steps should be taken to enhance civil society involvement.

We need to take a long term view. As the very notion of human rights, and of the rule of law, seem to be increasingly under threat across the globe, we must strive to ensure that the European human rights system continues to be a guiding light – by reforming the implementation monitoring process, and by being more inclusive of civil society, we ensure the greater effectiveness and legitimacy of that system for the next twenty years and beyond.

Thank you.