**Human Rights Protection**

**Workshop of Regional and sub-Regional Courts**

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Thank you Mr Chairman for giving me the floor.

Ladies and Gentlemen, Distinguished Guests,

Last week, as I was desperately scratching my head and wondering how I could say all I would have liked to say about the topic that has been assigned to me in just ten minutes, I asked myself this question: What is the particular or signal feature that comes immediately to mind in any public discussion on Human Rights protection in a European context? My guess – an intelligent guess, I hope – is the right of individual petition to the Strasbourg Court (ECtHR). The right of individual petition is one of the essential features of the system as we know it today, but this was not always so. Until Protocol 11 to the Convention came into force in 1998, both the compulsory jurisdiction of the Court – a Court which originally had what I would describe as an “intermediate” role between the European Commission of Human Rights on the one hand and the Committee of Minister of the Council of Europe on the other – and the right of individual petition were *optional* features of the system. When the Convention came into force in 1953, only three of the original Contracting States had accepted this right of individual petition. By 1990 all the State Parties to the Convention (then 22) had accepted it. France, for example, accepted the compulsory jurisdiction of the Court in 1974, but only accepted the right of individual petition in 1981 (with Mitterand’s election). The UK accepted both in 1966 and Italy in 1973, while Cyprus, which had signed and ratified the Convention in 1961 and 1962 respectively, accepted the compulsory jurisdiction in 1980 and individual petitions only in 1989. In other words, the system as we know it today is the result of a process, an evolution of how the States parties to the Convention understand that the system of human rights protection should be. But this leads me on to yet another reflection: what contributes to this process of evolution of the system? One possible answer is that many other entities, both in Europe and outside Europe, have contributed, directly or indirectly to make the system as we know it today – and in some instances there is almost a symbiotic relationship between some of these entities and the ECtHR. So instead of repeating what, I am sure, many of you already know, that is how the system of the European Convention and the European Court of Human Rights works in general – that is, (1) individual application after the exhaustion of effective domestic remedies, (2) adjudication by the Court and just satisfaction if necessary, and (3) supervision of the execution of that judgment by the Committee of Ministers – I thought that I would concentrate on the sidelines, as it were, that is on how this system has interacted with other human rights entities.

**The Council of Europe Commissioner for Human Rights**

It is perhaps unfortunate that the ECtHR often overshadows other Council of Europe (CoE) institutions that have human rights protection in their mandates. The Council of Europe Commissioner for Human Rights has a mandate to promote awareness of, and respect for, human rights in the 47 member-States. His activities focus on three major areas: country visits (which the Court does not undertake in the normal course of its work) and dialogue with national authorities and civil society; thematic studies and advice on systematic human rights work; awareness-raising activities[[1]](#footnote-1).

The Commissioner is not a judicial institution and he/she does not have the competence to investigate individual complaints. However, Article 36 § 3 of the Convention, which deals with third party interventions, provides that “In all cases before the Chamber or the Grand Chamber, the Council of Europe Commissioner for Human Rights may submit written comments and take part in hearings.”

There have been various occasions where the Commissioner submitted written observations and, or, intervened orally during a hearing before the Chamber or the Grand Chamber of the Court. In the case of *Hilal Mammadov v Azerbaijan*, still pending before the Court, the Commissioner published written observations submitted to the Court in which he stressed what, in his view, are the systematic deficiencies in the area of freedom of expression, including judicial harassment of critical voices, and a pattern of retaliatory measures against those who co-operate with international organisations to expose human rights violations in the country in question.[[2]](#footnote-2)

The case of *M.S.S v Belgium and Greece*[[3]](#footnote-3), decided by the Grand Chamber on 21 January 2011, highlights in a very poignant way the cooperation between the Court and the Commissioner in the protection of human rights. In this case, as some of you may recall, it was the Court that invited the Commissioner to submit written observations concerning the case relating to the transfer of an asylum seeker from Belgium to Greece under the Dublin Regulation. The Commissioner subsequently intervened orally during the hearing before the Grand Chamber[[4]](#footnote-4). There have been other cases where the Commissioner has intervened, but fewer in which he has made oral submissions during the hearings.

**The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment**

While the Convention limits the role of the Court to ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention and the Protocols thereto[[5]](#footnote-5) by adjudicating whenever a dispute arises between an individual on the one hand and a particular State on the other (I will, because of lack of time, ignore completely the very rare inter-state applications), the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (better known as “CPT”) is given the mandate to organise visits to places of detention to assess how persons deprived of their liberty are treated[[6]](#footnote-6). CPT delegations have unlimited access to places of detention and may move inside such places without restriction. They interview persons deprived of their liberty in private and communicate with anyone who can provide information[[7]](#footnote-7).

After each visit, the CPT sends a detailed report to the State concerned. This report includes the CPT’s findings, and its recommendations, comments and requests for information. The CPT also requests a detailed response to the issues raised in its report. These reports and responses form part of an ongoing dialogue with the States concerned.

The Court has not only taken judicial notice of the work of the CPT, but often relies upon it to come to its conclusions. To give one out of the hundreds of examples that could be cited, in the case of *Ramirez Sanchez v France*, decided by the Grand Chamber on 4 July 2006, the Court relied on the factual findings of the CPT in a case concerning, *inter alia*, conditions of detention[[8]](#footnote-8). Again the Court relied on the CPT’s report which confirmed the applicant’s allegations concerning prison overcrowding in *Dougoz v Greece*[[9]](#footnote-9), decided by the Third Section of the Court on 6 March 2001. More recently in *Varga and others v Hungary*, decided on 10 March of this year, the Court held that the conditions in which the applicants were detained did not satisfy the European standards established by the CPT and the Court’s case-law, and therefore found that the conditions amounted to degrading treatment in violation of Article 3 [[10]](#footnote-10).

**European Committee of Social Rights**

Although the European Convention on Human Rights deals mainly with civil and political rights, the European Social Charter, its natural complement, guarantees social and economic human rights. It was adopted in 1961 and revised in 1996. The European Committee of Social Rights, which oversees the implementation of the Charter, determines whether national law and State practice are in conformity with the said Charter[[11]](#footnote-11).

The Committee’s monitoring procedure is based on national reports through which member-States indicate how they implement the Charter in law and in practice. The Court regularly uses the opinions of the European Committee of Social Rights in cases relating, *inter alia*, to freedom of association in the context of industrial relations. It does so either just in passing[[12]](#footnote-12) or even to establish a violation of the Convention.[[13]](#footnote-13)

**Organisation for Security and Co-operation in Europe**

The Organization for Security and Co-operation in Europe (hereinafter referred to as “OSCE”) is the world's largest security-oriented intergovernmental organisation. Its mandate includes issues such as arms control and the promotion of human rights, freedom of the press and fair elections. It has its origins in the 1975 Conference on Security and Co-operation in Europe, which was held in [Helsinki](https://en.wikipedia.org/wiki/Helsinki), Finland.

The OSCE is concerned with early warning, conflict prevention, [crisis management](https://en.wikipedia.org/wiki/Crisis_management), and post-conflict rehabilitation. Its 57 participating States are located in [Europe](https://en.wikipedia.org/wiki/Europe), northern and central [Asia](https://en.wikipedia.org/wiki/Asia) and [North America](https://en.wikipedia.org/wiki/Northern_America) and cover much of the land area of the [Northern Hemisphere](https://en.wikipedia.org/wiki/Northern_Hemisphere). It was created during the [Cold War](https://en.wikipedia.org/wiki/Cold_War) era as an East–West forum.

In 2012, the OSCE Mission to Moldova organised a training event on the European Court of Human Rights for 25 lawyers, civil society representatives and journalists from Transdniestria.[[14]](#footnote-14)

In 2013, it supported training sessions for 450 judges of Ukrainian administrative courts on the application of provisions of the European Convention on Human Rights.[[15]](#footnote-15)

Moreover, in 2014 the OSCE organised an International Forum on the application of the case law of the Court addressed to legal professionals.[[16]](#footnote-16)

The OSCE also translates certain judgments of the Court to non-official languages of Council of Europe member-States, including Ukrainian and Armenian. Needless to say, this is extremely beneficial not only for the Court but also, and perhaps more, for domestic authorities in some countries and for individuals in those countries.

**Court of Justice of the European Union (the former European Court of Justice)**

It is surprising how many people, even people in public life – the present audience, of course excepted – confuse the European Court of Human Rights with the Court of Justice of the European Union, or, as it still popularly known, the ECJ. The key to the relationship between the Court in Strasbourg and the ECJ in Luxembourg is, of course, that all member-States of the EU are member-States of the Council of Europe[[17]](#footnote-17), and the ECJ interprets the Charter of Fundamental Rights of the EU: the wording of many of the Charter’s rights is based on the wording of the corresponding rights contained in the European Convention and the Protocols thereto[[18]](#footnote-18).

Both courts refer to each other’s judgments. According to former Advocate General at the ECJ, Francis Jacobs, the European Court of Justice now cites systematically, almost routinely, the case-law of the European Court of Human Rights. He describes this development as remarkable since the ECJ does not systematically cite the case-law of any other Court. In *Roquette Frères*, the ECJ appeared to reconsider its *Hoechst* case-law in the light of the ECtHR’s judgment in *Chappell* and later *Casey* concerning the search of business premises under Article 8 of the Convention. However, the traffic is not only in one direction: the European Court of Human Rights also appears to have adjusted its case-law in the light of ECJ case-law: and here I will just make a reference to one leading case, namely *Bosphorus v Ireland*, decided by the Grand Chamber on 30 June 2005, which dealt with the implementation of EU law by the respondent State. The ECtHR held that it is for national authorities to interpret and apply domestic law even when the law refers to international law or agreements. While the European Union’s organs are better placed to interpret and apply Union law, the GC nevertheless held that it was up to the ECtHR to ascertain whether the effects of such adjudication, including adjudication by the ECJ, were compatible with the Convention[[19]](#footnote-19).

**Various United Nations mechanisms**

Various UN Human Rights mechanisms are also often referred to by the Court in coming to its decision.

*UN Human Rights Committee*

In the case of *Svinarenko and Slyadnev v Russia*, where the applicants alleged that their confinement in a metal cage in the courtroom before their trial amounted to degrading treatment, the Court noted that in the communication of another case -- *Pustovoit v Ukraine* -- the UN Human Rights Committee had found that keeping a handcuffed defendant in a metal cage during his public trial amounted to degrading treatment[[20]](#footnote-20).

*Office of the High Commissioner for Human Rights*

On occasions, the Court’s work overlaps with that of the Office of the High Commissioner for Human Rights. This overlap was evident in the case of *El-Masri v The Former Yugoslav Republic of Macedonia* where the OHCHR intervened in the case. The Court also relied on the former’s Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment[[21]](#footnote-21).

*UN Human Rights Council*

In the aforementioned case of *El-Masri v The Former Yugoslav Republic of Macedonia*, the Court also referred to Resolutions 9/11 and 12/12 on the Right to the Truth of the UN Human Rights Council, which “recognised the right of the victims of gross violations of human rights and the right of their relatives to the truth about the events that have taken place, including the identification of the perpetrators of the facts that gave rise to such violations”[[22]](#footnote-22)

The UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, in his annual report submitted to the UN Human Rights Council, referred to the Court’s case of *Selmouni v France*,[[23]](#footnote-23) where the Court held that the Convention is a living instrument which must be interpreted in the light of present-day conditions and, thus, what was classified as inhuman and degrading treatment in the past could be classified as torture in the future.[[24]](#footnote-24)

*UN Security Council*

In the determination of cases before it, the Court has occasionally found itself determining whether a State had violated the Convention in implementing UN Security Council Resolutions. Thus, for example, in the case of *Al-Jedda v the United Kindgom*, a case which concerned the internment of the applicant by British troops in Iraq for around three years whilst not being charged for any offence, the Court noted that one of the purposes of the United Nations is the protection of human rights. Consequently, when interpreting Security Council Resolutions,

“there must be a presumption that the Security Council does not intend to impose any obligation on member States to breach fundamental principles of human rights. In the event of any ambiguity in the terms of a United Nations Security Council resolution, the Court must therefore choose the interpretation which is most in harmony with the requirements of the Convention and which avoids any conflict of obligations.”[[25]](#footnote-25)

**New areas of possible cooperation between sub-regional and regional courts and UN mechanisms linked to the thematic focus of the meeting**

In light of the above considerations, it is being suggested that regional and sub-regional human rights courts hold exchange-of-information sessions that would allow them to learn from each other’s experiences. This could include exchanging information on how a particular court examines complaints before it with a view to ensuring adherence by States and reducing the backlog of cases. One instance of such fruitful co-operation between courts is that which exists between the registries of the Strasbourg Court and of the Inter-American Court of Human Rights. In 2013 both courts put in place a staff exchange programme that saw a lawyer from each registry spend several months at the other registry with a view to familiarizing themselves with the working methods and case-law of each Court. In October of last year six judges of the IACtHR and its Registrar visited the ECtHR and the CoE with a view to exchanging views on issues of substantive case-law and procedure. The periodic Case-Law Information notes of our Court have started to include summaries of the most important relevant cases of the IACtHR. The institutional cooperation between both courts is very important given the similarity of the rights and freedoms protected by both Conventions, the existence of similar criteria of admissibility and principles of interpretation (for example, proportionality and an evolutive interpretation), and in recent years, the similarity of some of the issues that have to be decided by them (gross human rights violations in conflict zones, amnesties, domestic violence, independence of the judiciary). The increasing similarity of the issues brought before both courts has conferred a new relevance on their respective jurisprudence. In addition, some of the specificities of each system can inspire the other. For instance, the experience of the IACtHR in advisory opinions can be of great interest to the ECHR, in view of the future possible entry into force of Protocol No. 16. Similarly, the ECHR’s practice of pilot-judgments can be useful for the IACtHR’s role in the supervision of its own judgments, given the increasing number of repetitive cases.

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1. Resolution (99) 50 On the Council of Europe Commissioner for Human Rights *(adopted by the Committee of Ministers on 7 May 1999* *at its 104th Session)* [↑](#footnote-ref-1)
2. Council of Europe, ‘Third Party Interventions by the Commissioner for Human Rights’ (Council of Europe) <http://www.coe.int/en/web/commissioner/third-party-interventions> accessed 9 October 2015 [↑](#footnote-ref-2)
3. *M.S.S. v. Belgium and Greece* [GC], no. 30696/09, ECHR 2011 [↑](#footnote-ref-3)
4. Council of Europe, ‘Third Party Interventions by the Commissioner for Human Rights’ (Council of Europe) <http://www.coe.int/en/web/commissioner/third-party-interventions> accessed 9 October 2015 [↑](#footnote-ref-4)
5. European Convention on Human Rights, Article 19 [↑](#footnote-ref-5)
6. European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Article 1 [↑](#footnote-ref-6)
7. ibid, Article 8 [↑](#footnote-ref-7)
8. *Ramirez Sanchez v. France* [GC], no. 59450/00, § 130, ECHR 2006‑IX [↑](#footnote-ref-8)
9. *Dougoz v. Greece*, no. 40907/98, § 46, ECHR 2001‑II [↑](#footnote-ref-9)
10. *Varga and Others v. Hungary*, nos. 14097/12, 45135/12, 73712/12, 34001/13, 44055/13, and 64586/13, § 87-92, 10 March 2015 [↑](#footnote-ref-10)
11. Council of Europe, ‘The European Social Charter’ (Council of Europe) <http://www.coe.int/t/dghl/monitoring/socialcharter/Presentation/AboutCharter\_en.asp#Un\_traité> accessed 9 October 2015 [↑](#footnote-ref-11)
12. *Sigurður A. Sigurjónsson v. Iceland*, 30 June 1993, § 35, Series A no. 264 [↑](#footnote-ref-12)
13. *Demir and Baykara v. Turkey*, 12 November 2008, § 49-50, 168-170 [↑](#footnote-ref-13)
14. OSCE, ‘OSCE trains Transdniestran Lawyers on European Court of Human Rights’ (1 August 2012) <http://www.osce.org/moldova/92562> accessed 9 October 2015 [↑](#footnote-ref-14)
15. OSCE, ‘OSCE supports training for Ukrainian judges on application European Court of Human Rights case law’ (28 November 2013) <http://www.osce.org/ukraine/109030> accessed 9 October 2015 [↑](#footnote-ref-15)
16. OSCE, ‘OSCE supports discussions on the case-law of European Court of Human Rights among Ukrainian legal professionals’ (24 November 2014) <http://www.osce.org/ukraine/127180> accessed 9 October 2015 [↑](#footnote-ref-16)
17. Refer to <https://www.gov.uk/eu-eea> and <http://www.coe.int/en/web/portal/country-profiles> accessed 9 October 2015 [↑](#footnote-ref-17)
18. Council of Europe, ‘Accession by the European Union to the European Convention on Human Rights: Answers to Frequently Asked Questions’ (30 April 2013) p. 2 <http://www.coe.int/t/dghl/standardsetting/hrpolicy/Accession/Accession\_documents/EU\_accession-QA\_updated\_2013\_E.pdf> accessed 9 October 2015 [↑](#footnote-ref-18)
19. *Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* [GC], no. 45036/98, § 143, ECHR 2005‑VI [↑](#footnote-ref-19)
20. *Svinarenko and Slyadnev* *v. Russia* [GC], nos. 32541/08 and 43441/08, § 70, 132, ECHR 2014 [↑](#footnote-ref-20)
21. *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], no. 39630/09, § 96, 175, ECHR 2012 [↑](#footnote-ref-21)
22. ibid § 104 [↑](#footnote-ref-22)
23. *Selmouni v. France* [GC], no. 25803/94, § 101, ECHR 1999‑V [↑](#footnote-ref-23)
24. Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (1 February 2013) p. 4 <http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.53\_English.pd> accessed 12 October 2015 [↑](#footnote-ref-24)
25. *Al-Jedda v. the United Kingdom* [GC], no. 27021/08, § 102, ECHR 2011 [↑](#footnote-ref-25)