

Implementation of the ECHR: Key Role of the Parliament

Seminar for members of the Verkhovna Rada, Ukraine

7-8 November 2019

CONCLUDING REMARKS BY MURRAY HUNT, MODERATOR OF THE SEMINAR

1. There is a real **urgency** about the need to overcome obstacles to more effective implementation of the ECHR in Ukraine, both in giving effect to judgments of the Strasbourg Court and in checking laws for ECHR compliance.
2. There are a number of **positives** on which to build:
 - Unlike many national parliaments, the parliamentary **structures** are already in place – since 2017 the Verkhovna Rada has had the Sub-Committee on the Implementation of Judgments, and a number of other committees include human rights in their remit
 - The **political will** to improve national implementation of the ECHR also appears to be in place
 - There appears to be quite a lot of **ECHR knowledge and expertise** amongst the staff of the Verkhovna Rada, a number of whom attended an earlier seminar in Strasbourg organised by the PPSD in March this year.
3. The problem is the lack of well-functioning **mechanisms, processes and working methods** that are required to breathe life into the structures and make the most of the political will and ECHR expertise available.
4. The seminar identified a number of elements which are necessary to bring about the **step change** in implementation that participants agreed is required.
5. **Proactivity/leadership** – a lot can be achieved if even a small number of members and staff show some leadership on human rights implementation and model a much more proactive approach to the role of the parliament, taking ownership of the issue and being prepared to lead new initiatives, taking political risks where necessary.
6. **Information from the Government** – more and better-quality information from the Government is a precondition of effective parliamentary scrutiny. The Verkhovna Rada and its committees can lead the way by patiently but persistently asking the Government to provide information which it ought to be easy for the Government to provide. Eg legislation should be accompanied by an explanatory memorandum which includes detailed consideration of the ECHR implications and explains the reasons why the Government considers the law to be ECHR compliant. The Government should share with the Verkhovna Rada its analysis of what general measures a Court judgment requires, and keep it informed of how it proposes to remedy the incompatibility, including provision of action plans and

action reports so that they can be scrutinised by the parliament. The quality of that information tends to improve the more information is provided.

7. **Capacity/independent expertise** – members of the Verkhovna Rada have many demands on their time, and to be able to perform the systematic scrutiny of laws and responses to judgments that is necessary they must be assisted by an efficient, properly resourced and proactive secretariat which includes independent legal expertise on the ECHR, so that parliament and its committees are not forced to be dependent on the Government's legal advice. The independent expertise should be a pooled resource which is proactively deployed to wherever in the parliament the expertise is required.
8. **Systems for sifting and prioritising** – with the benefit of independent expertise at staff level, systems can be devised for sifting and prioritising the most significant human rights issues, to enable the parliament to conduct comprehensive and systematic scrutiny but in a way which means that members only deal with the most significant issues identified by expert staff, applying agreed criteria, and in whom there is cross-party confidence in their professionalism and independence.
9. **Dialogue with the Government** – the Verkhovna Rada and its committees should approach scrutiny of human rights implementation as a collaborative dialogue with the Government, on the basis that there is a shared responsibility on all branches of the State to implement and give effect to the ECHR. All channels of communication with the Government should remain open.
10. **An inclusive, multi-stakeholder approach** – the key to effective implementation is an open and inclusive process which involves all stakeholders from the earliest possible moment and the Verkhovna Rada should approach its role on this basis: national human rights institutions, civil society groups, parliament and its relevant committees, and the relevant Government departments should all be involved in discussions and deliberations about implementation.