



EUROPEAN COURT OF HUMAN RIGHTS  
COUR EUROPÉENNE DES DROITS DE L'HOMME

## Exchange of views with the European Committee of Social Rights

Speech by Robert Spano

*Strasbourg, 28 January 2021*

**Dear President,  
Dear Members of the Committee,  
Dear fellow Judges,**

It is a pleasure for me to be here with you today, joined by my colleagues Judges Paul Lemmens and Branko Lubarda, for an exchange of views with the European Committee of Social Rights. I am very pleased that this exchange, originally organised for March 2020, may take place today, not in person, but virtually – our new “normal”.

In my view, exchanges such as these between the European Court of Human Rights and key Council of Europe monitoring or consultative bodies are vital. They provide a space to share experiences and views from different perspectives; to reflect upon our common working methods and improve cooperation; and to identify convergences and synergies. This is why over the last two years or so, the Court has increased the frequency of such exchanges<sup>1</sup>.

Above all, the Court must not be an ivory tower: it must remain constantly attentive to what is being done within the Council of Europe. Your Committee’s work enriches our jurisprudence and in turn our case-law may also inspire your conclusions and decisions.

My short intervention this morning will be divided into two parts: firstly, I will look at the right to health as seen from the perspective of the European Convention on Human Rights, including pandemic related issues, and secondly I will speak about cross-references and knowledge-sharing.

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<sup>1</sup> Meetings have been organised with the European Commission for the efficiency of justice (CEPEJ); the Group of experts on Action against Violence against Women and Domestic Violence (GREVIO); Consultative Council of European Judges (CCJE); the European Commission against Racism and Intolerance (ECRI) and the Advisory Committee on the Framework Convention of National Minorities (FCNM), to name but a few.

At first glance it seems that there is a stark divide between us: the European Convention sets forth what are essentially civil and political rights and the European Social Charter guarantees social and economic rights. However, we know that there is no water-tight division separating these two spheres.

The Court often finds itself ruling on the direct or indirect protection of economic and social rights. Here I could refer to the case of *Lacatus v Switzerland*<sup>2</sup>, published just days ago, which found a violation of Article 8 of the Convention as a result of a sanction imposed for begging. While not referring directly to the Social Charter, the case deals with poverty, the vulnerable situation in which the applicant found herself and the right, inherent in human dignity to attempt to meet her basic needs.

Moreover, I agree with the statement made by you, President, that “the pandemic shows in practical terms the indivisibility of human rights”. The pandemic has underlined the importance of economic, social and cultural rights. It has reminded us of the need for solidarity in our communities; of the importance of social safety nets and a well-resourced healthcare system. We have realised that the younger generation needs stable and secure employment and opportunities for the future.

For today’s discussion we have chosen the theme of the right to health which lies at the heart of the response to the global pandemic we are all living through.

While there is no direct equivalent to your Article 11 of the Charter, protection of one’s health falls under various articles of the European Convention on Human Rights.

For example, under **Article 2** (the right to life) a substantive positive obligation exists on States to take appropriate steps to safeguard the lives of those within their jurisdiction. In the particular context of health care, the Court has interpreted that obligation as requiring the State to make regulations compelling hospitals, whether private or public, to adopt appropriate measures for the protection of patients’ lives<sup>3</sup>. Adequate medical care also needs to be provided in other institutions, such as care homes, psychiatric institutions as well as prisons. End of life situations fall under Article 2 and a number of very difficult cases have been brought about decisions to stop life-sustaining treatment<sup>4</sup>.

Very recently climate change litigation has also been brought to the Court under Article 2 in a case communicated against Portugal and 32 other States<sup>5</sup> concerning greenhouse gas emissions.

Under **Article 3** (the prohibition against torture and ill-treatment) the Court has dealt with cases involving the deportation of seriously ill-persons<sup>6</sup> as well as specific questions of prisoners’ health<sup>7</sup>, including mental health.

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<sup>2</sup> Application no. 14065/15, 19 January 2021.

<sup>3</sup> See two recent Grand Chamber cases: *Lopes de Sousa Fernandes v. Portugal* [GC], no. 56080/13, § 165, 19 December 2017, *Fernandes de Oliveira v. Portugal* [GC], no. 78103/14, ..., 31 January 2019

<sup>4</sup> See *Lambert and Others v. France* [GC], no. 46043/14, ECHR 2015 (extracts) and *Gard and Others v the United Kingdom*, no. 39793/17

<sup>5</sup> See *Duarte Agostinho and Others v. Portugal and 32 Other States* (no. 39371/20)

<sup>6</sup> *Paposhvili v. Belgium* [GC], no. 41738/10, 13 December 2016 and see *Savran v. Denmark*, no. 57467/15, 1 October 2019 (currently pending before the GC)

<sup>7</sup> *Mozer v. the Republic of Moldova and Russia* [GC], no. 11138/10, 23 February 2016,

Under **Article 8** of the Convention (the right to private and family life) we have case-law on the confidentiality of personal health data<sup>8</sup> and a pending case on compulsory vaccination (*Vavříčka v. Czech Republic*), as well as environmental pollution<sup>9</sup>. We also have a developed line of case-law on reproductive health rights, concerning home births, pregnancy terminations, and surrogacy<sup>10</sup>.

These non-exhaustive examples give you a flavour of the myriad of health-related issues that can fall under the European Convention.

I would now like to now say a word about health-related complaints linked to the pandemic.

The Court has received 309 requests for interim measures on the basis of Rule 39 of the Rules of Court linked to the COVID-19 pandemic. Many of these concern individuals placed in detention and migrants in hotspots, principally brought against Greece, Italy, France and Turkey, but also against the UK and Spain. The requests have been very diverse. While requests for the application of Rule 39 usually concern expulsion and extradition, those received since mid-March have mainly come from applicants asking the Court to take interim measures to remove them from their place of detention and/or to indicate measures to protect their health against the risk of being infected with COVID-19 .

Moreover, to date nine applications have been so far communicated to governments on matters relating to the pandemic. Not all touch directly upon health issues, for example, some concern restrictions to the freedom of assembly, or financial loss as a result of closed businesses. However, one case I would like to mention is *Hafeez v. UK*, 14198/20. This case concerns the risk of life imprisonment without parole and inadequate conditions of detention due to the COVID-19 pandemic in case of the extradition of an elderly person with health issues to the USA.

It is too early to have a wealth of decisions or judgments by the Court, however, we do have one inadmissibility decision against France from 3 December last year. The case of *Le Mailloux v France* (application no. 18108/20) was ultimately declared inadmissible because the applicant did not overcome an admissibility criteria – he did not show that he was directly affected by the measures about which he complained. However, it is interesting to look at his complaints. Under Articles 2, 3, 8 and 10 of the European Convention he complained of restrictions on access to diagnostic tests, preventive measures and specific types of treatments. In addition, he complained of an interference with the private lives of individuals who were dying of the virus on their own.

We will undoubtedly see more complaints such as this one brought in the coming months, even years.

## **II. Cross references and knowledge-sharing**

Now let me turn to the second part of my intervention on cross-references and knowledge-sharing.

As highlighted in your 2019 Activity Report, the European Committee of Social Rights often refers to the case-law of the Strasbourg Court, both in the framework of the reporting

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<sup>8</sup> For a recent case see *P.T. v. the Republic of Moldova*, no. 1122/12, 26 May 2020)

<sup>9</sup> see *Cordella and Others v. Italy*, nos. 54414/13 and 54264/15, 24 January 2019

<sup>10</sup> See Advisory Opinion P16-2018-001

procedure and in its decisions concerning the collective complaints. Seven prominent examples are given in your 2019 report, including *Amnesty International v. Italy, Complaint No. 178/2019*, decision on admissibility and on immediate measures of 4 July 2019. That case concerned the housing situation of Roma and Sinti in Italy, including forced evictions. Your Committee took into account case-law from our Court, including the application of an interim measure indicating to the Italian Government that it should provide temporary accommodation to certain families who were evicted from a settlement in the area of Giugliano near Naples.

Cross-references are also found in the other direction. Here I would like to refer to the recent case of *G.L. v Italy*<sup>11</sup> from September last year which dealt with the right of an autistic girl to specialised schooling. In its general principles section of the judgment, the Court refers to the right to education as set out in the Social Charter and later on in the reasoning the Court refers to Article 15 of the Revised Social Charter which concerns the right of persons with disabilities to independence, social integration and participation in the life of the community.

Given that the pandemic has accentuated the importance of social and economic rights, we may well see increasing references to your Committee's comments and decisions in the future. The advantages to referring to other European and indeed International standards are multiple. A consensus in international standards may be persuasive in leading the Court's judges to one outcome over another. At the Council of Europe level, referring to the work of other bodies of the same organization sends a coordinated and therefore stronger message to Member States.

One way to encourage further cross-references is to increase the synergies between our two bodies, through trainings, secondments and knowledge-sharing. Indeed, the Court recently seconded a lawyer to the Department of the Social Charter for over one year.

Accordingly, I would like to finish by updating you on the Court's Knowledge-sharing platform including our plans for the future.

In June 2018 an internal Knowledge Sharing Platform was launched within the Court. It was developed and is operated and maintained by the Directorate of the Jurisconsult, with the Judges and Registry members regularly contributing. The core objective of Knowledge Sharing is simple: to create and share Convention case-law knowledge, namely clear analytical materials covering all substantive Convention Articles and important transversal themes. The focus is on case law of jurisprudential significance and, crucially, it is updated on a weekly basis.

A designated group of specialist lawyers (Case-Law Coordinators), under the supervision of the Jurisconsult, create, update and enrich these materials. All is contained and managed within this one-stop-shop, the "Knowledge Sharing Platform". A similar Knowledge Sharing Platform was created for the Superior Courts Network in June 2019. This platform has the same features as the internal platform, minus of course confidential materials, and thus provides almost 100 superior courts with privileged access to this innovative and useful case-law knowledge.

The current aim and indeed priority of the Court is to create a fully public knowledge-sharing platform translated (and updated) into unofficial languages. This is a complex endeavour but one the Court is persuaded is worth exploring. The Court's Registry is working with colleagues in DG1 and hope to have an external platform in 2022.

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<sup>11</sup> Application no. 59751/15 from 10 September 2020.

Finally, with a view to optimising the Court's exchanges with the standard setting and monitoring bodies of the Council of Europe, the Directorate of the Jurisconsult is also currently exploring how to ensure more effective knowledge-sharing between the Court and those bodies. One possibility being considered is to open the SCN Knowledge Sharing platform to appointed focal points in the standard setting and monitoring bodies. In turn, these bodies could enrich the Knowledge-sharing platform by providing the Court with updated information on their areas of expertise that would be relevant for the Court's case-processing. This proposal is still being discussed. However, such a collaborative way of working could, as well as enriching our respective knowledge systems, create stronger bonds between the Court and the Council of Europe standard-setting and monitoring bodies.

**Dear President,**  
**Dear Members of the Committee,**

I do not wish to take up any further time from our discussions as I am impatient, as indeed I know we all are to listen to colleagues. I would only like to add that I am confident that this meeting will further enhance the cooperation between us. Thank you.