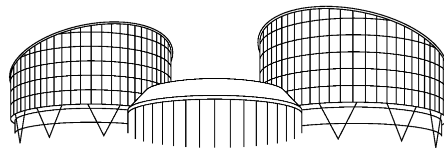

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Exchange of views with the Committee of Ministers

Speech by President Robert Spano

Strasbourg, 17 March 2021

Monsieur le Président,

Madame la Secrétaire Générale,

Mesdames et Messieurs les Ambassadeurs,

Permettez-moi, pour commencer, de saluer tout particulièrement la présidence allemande du Comité des Ministres. Elle se déroule dans des conditions inhabituelles en raison des restrictions toujours imposées par la situation sanitaire. Pourtant, on ne peut qu'être impressionné par le nombre et la qualité des évènements qui sont organisés depuis le mois de novembre.

J'ai personnellement pu le constater lors de la table ronde sur la régulation internationale, organisée en coopération avec la Représentation permanente de la Suisse et celle de l'Union européenne.

J'aimerais, encore une fois, remercier les autorités allemandes pour le soutien qu'elles ont apporté aux deux évènements organisés par la Cour qui vont avoir lieu dans les semaines qui viennent. Tout d'abord, le deuxième Forum international des droits de l'homme qui rassemblera notre Cour, la Cour interaméricaine des droits de l'homme et la Cour africaine des droits de l'homme et des peuples. Ensuite, une conférence particulièrement importante sur l'État de droit qui aura lieu le 15 avril. Je participerai également à la conférence sur les requêtes inter-étatiques organisée le 12 avril.

Même si ces évènements n'auront pas lieu avec la présence physique des participants, nous savons tous ce qu'ils représentent en terme d'organisation. J'ajoute que leur impact est considérable, car ils sont sur internet et peuvent être vus par un grand nombre de personnes.

Je voudrais évoquer avec vous aujourd'hui l'actualité de la Cour depuis notre premier échange, le 7 octobre dernier. J'aurai ensuite le plaisir de répondre à vos questions. Comme j'avais eu l'occasion de vous le dire en octobre, l'activité de la Cour s'est poursuivie depuis le début de la pandémie et nous nous sommes adaptés à la situation actuelle.

J'avais alors mentionné l'organisation des audiences de Grande Chambre en visioconférence qui avait été un défi sur le plan technique. Quatre d'entre elles avaient été organisées depuis le 16 mars.

Cela s'est poursuivi puisque, depuis le 7 octobre, quatre autres audiences de Grande Chambre se sont déroulées. Comme les précédentes, elles ont été très regardées. D'autres sont prévues au cours des prochaines semaines car, vous le comprenez bien, l'activité de la Cour ne faiblit pas. Bien au contraire. Les cinq sections ont aussi poursuivi leur travail en présentiel ou en hybride.

J'ai déjà eu l'occasion de vous dire l'importance que les nouvelles technologies ont pris à l'occasion de cette crise. Elles sont même devenues indispensables. Elles nous ont permis de continuer à travailler, même à distance et de rendre des arrêts et des décisions. Grâce à elles, notre activité a été intégralement maintenue.

Dans le même temps, la Cour a fait l'objet, au mois de décembre dernier, d'une cyber attaque massive. Elle a eu lieu dans les minutes qui ont suivi le prononcé d'une affaire de Grande Chambre importante, l'arrêt *Selahattin Demirtaş c. Turquie (n° 2)*. Cette attaque a rendu notre site internet inaccessible pendant plusieurs jours. C'est d'ailleurs la raison pour laquelle j'ai souhaité qu'un communiqué de presse soit immédiatement publié, afin que les nombreux visiteurs de notre site comprennent quelle était la situation. Je tiens à remercier les services informatiques du Conseil de l'Europe et de la Cour qui nous ont permis de remédier à cette attaque dans des délais raisonnables, quelques jours pour être précis. Je tiens à préciser que cette attaque n'a pas affecté nos données.

J'en viens maintenant à notre situation statistique. S'agissant du nombre d'affaires pendantes, il s'élève actuellement à plus de 65 000, soit une augmentation de 5 %. 74 % d'entre elles concernent cinq pays.

D'abord, la Fédération de Russie, avec 14 050 requêtes, soit 21,6 % des requêtes pendantes, puis la Turquie qui, avec 19,5 % des requêtes (un peu plus de 12 700), est désormais en deuxième position, suivie par l'Ukraine avec 16,4 % des requêtes pendantes, soit 10 650. Viennent ensuite la Roumanie qui connaît une légère baisse avec 7 450 requêtes, soit 11,4 % du volume total et l'Italie, qui ne bouge pas, avec 3 600 requêtes, soit 5,5 % du nombre de requêtes pendantes.

Ces chiffres sont relativement stables mais ils sont en augmentation et montrent que la situation reste fragile et doit constamment être surveillée.

Dear Ambassadors,

As you are aware, it has long been the tradition of the Committee of Ministers to meet twice a year with the President of the Court for an "exchange of views". These meetings provide a much-needed opportunity for the Court to inform Ambassadors of important developments which have taken place over the last six months and help maintain a crucial form of dialogue with the States Parties. They are an important event in the President's calendar.

While I will be more than willing to reply to your questions after my intervention, as President of the Court I cannot discuss the substance of a decided or pending case. When Member States decide to become members of the Council of Europe and, hence, be subjected to the jurisdiction of the Court and the obligations to protect human rights provided for by the Convention, it inevitably follows that some judgments will, from time to time, be rendered with which Member States may disagree. That is the self-evident consequence of deciding to adhere to an international human rights system. From this it follows naturally, and this I have had reason to emphasise several times recently, that judgments and decisions of the Court are to be executed whatever the respondent Government's views of the respective judgments. There are no exceptions envisaged under the Convention.

Dear Ambassadors,

For the Court, an institution which depends on its independence, the purpose of these exchanges is therefore rather to give you, the representatives of the High Contracting Parties, insights and concrete information on the workings of the Court and the challenges facing the Convention system so as to create mutual understanding and awareness, as well as answering any questions you may have on such issues.

The Court does not live in a vacuum, it is created and it operates for the benefit of the Member States of the Council of Europe and its peoples. I therefore recall that with the declarations adopted over the last decade in Interlaken, Izmir, Brighton, Brussels and Copenhagen, your States have reaffirmed their deep and abiding commitment to the Convention system and their attachment to the Court. These words must however be met with actions. For the Convention system to work, it requires commitment, support and good faith engagement by all Member States to preserve democracy, the rule of law and human rights so we can hope for a future of stability, peace and economic prosperity, not strife, increasing conflict and tragedy.

Allow me then to proceed with some concrete information on important recent developments in the work of the Court and the Convention system.

I have just recounted the statistics. During our first exchange of views in October last year, I announced the intention of the Court to continue its efforts to reduce the backlog of cases. We are now at a transformative moment in the history of the Court and the Convention system. The Interlaken reform process, which was formally concluded in Athens last November, is now behind us. The objective of that process was to prevent the Court from being engulfed by cases. As is well known, the reforms put in place have enabled us to successfully reduce the number of pending cases from 160,000 in 2011 to 65,000 today. In this respect, its goal has been achieved.

However, as I said to you in October, the Court's process of reform continues unabated. The Interlaken process focused mainly on the number of cases dealt with by the Court, which had to be reduced. In other words, the success of the reform has been measured by the declining number of total pending cases, thanks, in particular, to the filtering mechanisms, although the remaining case-load remains very challenging. However, now, at the beginning of 2021, a paradigm shift is needed. The limited resources of the Court must now, moving forward, be deployed within a hybrid case-processing structure in which the Court will increasingly focus on strengthening its prioritisation policy, focusing more on the expeditious identification of cases of impact and relevance for applicants and for the

Member States along with simplifying the processing of non-priority cases. To this end, by introducing a new case-processing strategy, which is being gradually implemented since the beginning of this year, the Court has decided to increasingly focus its energy to ensuring quality of judgments in priority cases, as well as their rapid conclusion.

I should note that the Court has thus reacted to the call made by the Member States themselves in the 2018 Copenhagen declaration where, at paragraph 50, the States noted, and I quote, the 'approach taken by the Court in seeking to focus judicial resources on the cases raising the most important issues and having the most impact as regards identifying dysfunction in national human rights protection', close quote, and then encouraged the Court, 'in co-operation and dialogue with the States Parties, to continue to explore all avenues to manage its caseload, following a clear policy of priority'.

In what follows I wish to refer to the document sent to you yesterday outlining the framework of this new case-processing policy, which will be published today on the Court's website. With this new strategy, the success of the Court will no longer be measured primarily by the total number of cases dealt with in a given period, but rather by the way it has dealt with the most important cases under our priority policy, those which are essential for applicants, each Member State and also for the wider European legal area.

So, what does this mean in practice? This new approach will entail the speeding up of the processing and resolution of what we call "impact" cases by applying more effectively the priority policy currently in force at the Court. The term "impact" speaks for itself and is in fact already found in category 2 of our existing priority policy: these are cases that are likely to have an impact at both national and European level. In a moment, I will give you some examples.

First of all, and to be clear, the underlying logic of this system is not new to the Court. On the contrary, the system of "prioritisation" of pending cases has long been a part of our overall case-processing policy. It was first adopted just under 12 years ago, in June 2009 and updated in May 2017. Systems of prioritisation are a traditional part of any judicial system which has to grapple with limited resources. I note that the criteria which are used by the Court under this new policy are similar to classical criteria applicable in domestic judicial systems when superior courts filter and prioritise appeals of lower court judgments.

Indeed, the Court's priority policy, which you should have a copy of and is published on our website, was designed, from the outset, to speed up the processing of the most serious and urgent cases by establishing seven categories ranging from extreme urgency, for example where the applicant's life is at stake, to manifest inadmissibility. There is no question of calling this policy into question. On the contrary, the idea is to make it more efficient and targeted.

The largest bulk of meritorious cases fall into category IV, currently almost 18,000 cases. Such cases decided by Chambers of seven judges may take, for some States, up to and over 6 years to process. This is not acceptable. Providing a rapid response to these applications is therefore a major challenge for us . This is the aim of our new case processing policy.

Many of these currently classified category 4 applications, although not all, are particularly important for the development of the Convention system and often raise new issues. These include, for example, cases which raise a question of the rule of law or the independence of the judiciary; cases which highlight a new issue related to the pandemic; cases which concern the environment, the rise of hate speech or other principles of democratic governance. Obviously, these examples are not exhaustive and to be clear the criteria adopted in this regard may previously have been applied under category 2 of our existing priority policy which already included cases that raise questions capable of having an impact on the effectiveness of the Convention system or those raising an important question of general interest, in particular a serious question capable of having major implications for domestic legal systems or for the European system.

Therefore, I reiterate, that although the new case-processing policy introduces a set of new tools to make the system more effective, the underlying logic of this policy is not novel.

At this stage two questions arise: why and how? Firstly, why have we chosen to adopt such a strategy now? Europe is currently going through a period of transformation. Probably the most significant since the Second World War. We are now witnessing again, as we have not for a long time, a level of polarisation and division in our Member States that may require a response from the Court in certain cases, so the legal situation becomes clear as soon as possible and the scope and level of human rights protections flowing from the Convention. This goes both ways of course, it will allow the Court to more quickly resolve questions on whether the Convention has been violated, but also of course inversely whether the Member State's actions have been in conformity with the Convention. In this regard, the global pandemic has moreover brought new challenges for the Convention system and it is important moving forward for legal questions raised by the pandemic to be dealt with expeditiously at the Court for whole of the system, hence the adoption of these necessary reforms for our case-processing.

The new case-processing policy will operate on the basis of three key principles: rapid identification, monitoring and simplification. Identification of potential "impact" cases occurring as early as possible is crucial and when identified robust monitoring of their process within the Court. Their expeditious processing will also result in an acceleration of communication of cases to the Respondent Government as we have already discussed at a recent virtual meeting with Government Agents. This has already begun. Judgments will also, logically, be delivered within a more reasonable period of time.

Finally, the strategy is based on the principle of simplification. This applies to the processing of the remaining cases, that is all non-priority and non-impact cases as there is no question of calling into question the fundamental right of individual application. As far as these remaining cases are concerned, they will, in principle, be dealt with by Committees of 3 judges, not Chambers of 7 judges, as well as being drafted in short or summary form, where possible.

Dear Ambassadors,

For this new strategy to be successful, I make no secret of the fact that the Court will need adequate resources in terms of staff. In terms of secondments, we currently have 29 seconded lawyers from 14 countries, a framework of support for which I am very grateful. You are all aware of the importance of this already well-established practice, which is both useful for the Court and for the sending country

which benefits from the experience of the lawyer on his return. You are also supporting the Court in material terms with your contributions to the special account, which was set up by the Member States after the Brighton conference in 2012, and which can be replenished by States that wish to do so. After all, it is specifically designed to tackle the backlog of cases.

In 2020, 14 States contributed to it for an amount approaching 2,600,000 euros, albeit only 3 States, Norway, Sweden and Germany, accounting for 80% of the total amount. These funds are currently being used to provide for 24 lawyers. However more is needed to give the Court the resources to successfully implement the new case-processing policy, thus fulfilling the promise laid out in the Copenhagen Declaration and preserving the fundamental principles of the Convention, democracy, rule of law and human right. If there ever was a time for the Member States to demonstrate their commitment with their actions, it is now.

Dear Ambassadors,

Allow me then to conclude with some comments on an issue of recurring importance, the election of judges. As you are all aware, the credibility of our Court depends, to a large extent, on the quality of its judges, who are elected by the Parliamentary Assembly after a long and complex procedure.

This appointment process begins, at the level of the Council of Europe, with the examination of the candidatures transmitted by States to the Advisory Panel of experts. This body, is composed of very high-ranking personalities recognised both nationally and internationally. Its activity reports show that, firstly, the quality of the candidates submitted by States has been maintained over the years; secondly, although its opinions are not binding, States have, as a general rule, responded rapidly to its requests for additional information; lastly, and most importantly, a number of governments have replaced candidates deemed unqualified by the Panel or submitted a new list to it.

Under the Convention, a judge, whose mandate has come to an end, can continue serving until he or she is replaced. I would like to take this opportunity to stress that it is imperative that Member States act in good time to begin the process of submitting lists of candidates to the Parliamentary Assembly when the mandate of a judge, elected in respect of their State, is coming to an end. When this process is delayed, often for a protracted period of time, uncertainty is created, both for the judge in question and the work of the Court.

Dear Ambassadors,

I have hopefully provided you with a useful overview of the work of the Court and our recent reforms which, as I have stated, entail a paradigm shift, the success of which is conditioned by the good faith involvement and commitment of all stakeholders. Indeed, the Convention requires of course more than blind obedience by the Member States; it also offers itself as a shared framework for the expression of respect and willing cooperation. The concept of human rights and commensurate duties can be properly understood only as an aspect of civic friendship, and the idea of a law-governed European community is fully realized only when the compliance of States by and large reflect this. The Convention attempts to sustain the fabric of moral democratic virtue which is the only truly sound basis for a law-governed polity.

Monsieur le Président,

Je vous remercie de m'avoir invité à m'exprimer aujourd'hui devant vous et je suis heureux de pouvoir maintenant répondre à vos questions avec l'aide de la greffière de la Cour, Marialena Tsirli, et du greffier adjoint, Abel Campos, pour la première fois parmi nous dans le cadre de ses nouvelles fonctions.

Merci pour votre attention.