



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

Judicial Seminar ECHR 2023

“Judges preserving democracy through the protection of human rights”

Introductory address by Judge Ivana Jelić

Strasbourg, 27 January 2023

Distinguished guests and speakers, dear colleagues and friends,

Let me greet you warmly on behalf of the Organising Committee of the Judicial Seminar 2023. It is wonderful to see you physically present in the Court and back in our old time slot.

If I had to summarise the role of the judiciary in protecting democracy in just two words, I would say it is about *guaranteeing pluralism*. The fundamental question asked in connection with this seminar’s topic is just how effective citizens’ involvement in State policy is reflected in the enjoyment of their rights, and vice versa. Most of the time, providing an answer involves looking at whether the State measure subject to our scrutiny curtails pluralism.

Guaranteeing pluralism within a society generally rests on three fundamental elements. Guaranteeing the freedom of expression protected by Article 10 forms the foundation for the other two, which are the existence of political institutions that reflect that diversity of opinion, and equal treatment of all citizens before the law.

- The protection afforded by Article 10 often entails enhanced supervision by the Court of measures restricting debate on matters of general interest, which is especially conducive to diversity of opinion within a State (see, for instance, *Couderc and Hachette Filipacchi Associés v. France* [GC], no. 40454/07, ECHR 2015). The Court’s supervision makes it possible to abolish direct or indirect measures that have a chilling effect on freedom of expression. It extends to, among other areas, the policies entailing invasive surveillance or regulation of the Internet that are an increasing feature of contemporary public policy (see *Big Brother Watch and Others v. the United Kingdom* [GC], nos. 58170/13 and 2 others, 25 May 2021, and *Delfi AS v. Estonia* [GC], no. 64569/09, ECHR 2015).
- The judges’ role in protecting democracy does not stop at the protection of freedom of expression. Individuals ought to be given the tools to take part actively and in a practical manner in the democratic process through channels created by law. Ensuring the relevance of citizens’ voices in the political life of the State requires both a right to freely establish a political organisation and effective electoral rights.
 - Interference with the freedom of assembly enshrined in Article 11 can take many forms, and the Court has had the opportunity to look at criminal-law and funding policies that have a

direct or indirect chilling effect on the exercise of this right (see *Ecodefence and Others v. Russia*, nos. 9988/13 and 60 others, 14 June 2022, and *Navalnyy v. Russia* [GC], nos. 29580/12 and 4 others, 15 November 2018). Furthermore, judges are faced with the difficult task of defining the tipping-point at which an association of citizens no longer serves democracy. Guided by the principle of pluralism, which requires a high degree of tolerance from the State, the Court has consistently found dissolution to be justified only if the organisation concerned has called for the use of force against democratic institutions and there is concrete evidence of such use of violence (compare *Vona v. Hungary*, no. 35943/10, 9 November 2013, concerning the dissolution of an association targeting a national minority and calling for paramilitary parading, AND *Moscow Branch of the Salvation Army v. Russia*, no. 72881/01, ECHR 2006-XI).

- The electoral rights enshrined in Article 3 of the Additional Protocol are a “characteristic principle of democracy” (to quote *Bakirdzi and E.C. v. Hungary*, nos. 49636/14 and 65678/14, 10 November 2022). Judges again have a special role to play, as access to effective judicial review has been found to be necessary to the organisation of fair elections (see *Mugemangango v. Belgium* [GC], no. 310/15, 10 July 2020). I won’t deal here in detail with the Court’s case-law, but it is worth noting the greater focus to be placed on minorities’ voting rights. The Court very recently had the opportunity to clarify its approach to the matter, in the case of *Bakirdzi and E.C.* (cited above). The diversity of national minorities in Europe and the disparate approaches taken by member States’ constitutions is challenging. While the Convention does not require positive discrimination in favour of minorities, States do take measures to ensure representativeness that can be beneficial but also sometimes counterproductive. International judges, with their cross-jurisdictional and comparative perspective, have a key role to play in addressing this issue.

In sum, pluralism can only be guaranteed if its guarantor reflects pluralism in its internal structure. Backsliding on pluralism within the judiciary should be of the utmost concern, including for international judges, who have the tools to help their domestic counterparts facing arbitrary disciplinary mechanisms (see *Grzęda v. Poland* [GC], no. 43572/18, 15 March 2022). These tools include the domestic courts’ ability to refer a question to the ECHR (Article 1 of Protocol No. 16) and at EU level (Article 267 of the Treaty on the Functioning of the European Union), but also individual applications to the Court itself from judges facing such proceedings.

We are all aware that reduced judicial pluralism puts society’s pluralism and tolerance at risk of irreparable harm.

Distinguished guests, dear all, I believe that the theme of today’s Judicial Seminar and the four topics that we have chosen will provide you with ample food for thought, resulting in rich discussion.

At the end of my address, I would like to warmly thank the members of the Organising Committee: Judges Armen Harutyunyan, María Elósegui, Raffaele Sabato and Saadet Yüksel, as well as our two moderators, Judges Alena Poláčková and Ioannis Ktistakis. On behalf of them and of myself, I would like to thank the Registry members for their excellent cooperation and support – in particular Mr Patrick Titiun, Ms Rachael Kondak and assistants Valérie Schwartz, Loredana Bianchi and Tatiana Kirsanova, as well as the interpreters.

Thank you for your attention!