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

Monday 18 February 2013

Seminar on Impact of ECHR in Eastern Europe
Strasbourg, 18 February 2013
President's Opening Remarks

Dear guests, dear colleagues, Ladies and Gentlemen

I wish you all a very warm welcome here to the Court this morning, and especially those who have travelled from far to take part in today's seminar on the impact of the European Convention on Human Rights on democratic changes and developments in Eastern Europe.

Let me say a special word of thanks at the outset to Judge Ineta Ziemele, who has been the moving force behind this event. We can look forward to a very high-level discussion throughout the day, from panellists who are uniquely qualified to comment on the impact of the Convention in the 14 States that are the focus of the seminar.

It hardly needs to be said how extraordinary a time the years 1989, 1990 and 1991 were for Europe, as one totalitarian system after another collapsed and the cold war in Europe came to an abrupt and unexpected end.

There were lives lost in some countries, but for most States the transition, though sudden and dramatic, was largely a non-violent one. Inevitably, there followed a time of turmoil and uncertainty. The birth (or re-birth) of a democratic system cannot always be smooth or serene. Transition is a long process, whose duration and outcome cannot be predicted.

That moment in Europe's history was – to borrow a phrase from the wartime context – the Council of Europe's finest hour. A historic rendez-vous between the nations of west and east, after decades of strict separation and ideological antagonism. With its strong and developed *acquis* in matters of democracy, human rights and the rule of law, the Council embodied for the peoples of Eastern Europe a future of freedom. The same applied to the European Court of Human Rights – I would say applied *a fortiori* – being the crowning achievement of the Council of Europe.

The political decision was made by the organisation to adopt an open door approach to these candidate members – joining the Council, accepting its values and aims, integrating into its structures, and accepting its core human rights treaties would be <u>part</u> of their transition, not the reward for it. The challenges were therefore immense:

- for new democracies to rapidly accept and absorb a sophisticated body of norms and standards;
- for the competent international institutions and organs to ensure proper application and observance.

There were dissenting voices too, who warned that this was too much, too fast. There was real concern at the capacity of the international mechanisms to respond to the new demands made on them. There was concern too for the rigour and integrity of European human rights standards.

The theme of this seminar is the national experience. What I wish to comment on is the Court's experience – what was the impact of these tremendous changes on the Convention mechanism?

Wojcech Sadurski has used the term "benign paradox" when looking at the Convention system pre-1990s, the paradox lying in the system's actual use compared to what its authors had intended.[1] Not many truly grave, gross or flagrant violations of human rights came to Strasbourg during that time. In his view, "the Court settled on a role of a legal fine-tuner, acting at the boundaries of rights, setting up subtle tests of proportionality to examine restrictions aimed at legitimate ends". It established "standards which were admittedly exciting for academic lawyers, but rarely going so far as to reverse really important policy and legal choices adopted within national systems". This was to change radically after the 1990s.

Regarding the Court's response to this great challenge, my first point is that it is plain today that any concern about diluting the standards of the Convention proved to be unfounded. There was no lessening or softening of States' obligations under the Convention. There was no variable geometry. The principles developed during the Convention's first phase, along with the principles of interpretation – above all the concern to ensure an effective and dynamic human rights guarantee – were applied in full to all new States. There was no probationary or honeymoon period.

Nor were these States subjected to stronger international scrutiny, or allowed lesser margins of appreciation. There any double standard, no "east European case-law". Just the case law applied to eastern European States.

Un poids et une mesure.

The "single standard" approach is also to be seen in the fact that in its comparative surveys looking for the degree of consensus among the Contracting States, which is a common feature of our practice, the Court quite naturally included the new Contracting States. The risk of this holding back the development of human rights law, or leading to a generally broader margin of appreciation, has not materialised.

Yet the Court was not insensitive to the context of democratic transition, or to the needs of emergent democratic systems. This is clear from, for example, the early case of *Rekvenyi v. Hungary*, in which the Grand Chamber took account of the importance for the new democratic order in Hungary to break with the previous tradition of a politicised police force. I would also refer to *Zdanoka v. Latvia*, in which the Grand Chamber accepted as valid

[1] "Partnering with Strasbourg: Constitutionalisation of the European Court of Human Rights, the Accession of Central and East European States to the Council of Europe, and the Idea of Pilot Judgments", Human Rights Law Review, Vol. 9, Issue 3 pp. 397-453.

the reasons behind the restriction on the applicant's political activities, which were a safeguard for that country's newly independent and democratic regime.

In the *Broniowski* case, to give a different type of example, the Court recognised the exceptional difficulty faced by Governments managing the transition from a command economy to a free-market one, although it did of course find that the applicant's property rights had been infringed.

What the new States brought to the system was the opportunity for the Court to apply the Convention to new situations, including flagrant and massive human rights violations. In terms of gravity of the cases decided, the European Court came to have more in common with the Inter-American Court of Human Rights, accustomed since its jurisdiction began in the late 1980s to traumatic situations.[2] It has been a quantitative and qualitative leap for European human rights law. These past 20 years have brought depth and detail to the Court's jurisprudence, specifying and concretising every Article of the Convention.

Of course, these are not the only types of case taken against these States. There are the typical routine cases coming from the east as from anywhere else. Other cases reflect more the social situation of that part of Europe than its political development. I think for example of the complaints brought against different States by, or on behalf of, the Roma. In particular, the landmark ruling by the Grand Chamber in the *D.H.* case, upholding a complaint of discrimination in the education of Roma schoolchildren.

The advent of the eastern European States transformed the life of the Court in other ways. It made this Court the largest international court in the world, and dramatically raised its international profile.

It transformed the role of Court President, as Luzius Wildhaber can confirm, adding a very important public relations role to the normal judicial aspect of it. It is a post that brings much travel, much contact and much dialogue with national authorities.

The Court today appreciates fully the importance of interacting constructively with the different national systems. The dialogue with national courts is pursued continuously, and I look forward to it being formalised in future through Protocol No. 16 on advisory opinions.

Translation of the Convention case-law is steadily increasing, thanks to the assistance of the Human Rights Trust Fund, which also supports the Court's training programme for national lawyers, with the emphasis being placed on States that we will be hearing about today.

With that I will bring these opening remarks to a close. With all of you I am looking forward to a rich and enriching exchange today.

Thank you.

[2] See "Re-evaluating regional human rights litigation in the twenty-first century: The case of the Inter-American Court", Cavallaro and Brewer, American Journal of International Law, pp. 768-827.