



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

University of Istanbul

“Academic Freedom - Its Fundamental Role in a Democracy”

Robert Spano
President of the European Court of Human Rights

Istanbul, 4 September 2020

Dear President Ak,
Dear Dean Kendigelen,
Dear Colleagues,
Ladies and Gentlemen,

It has long been a tradition as a matter of protocol that Presidents of the Court accept to be awarded the title of Doctor Honoris Causa during their official visits to Member States of the Council of Europe. Such offers have not been refused. In this regard the Court must always be seen to be independent and impartial and not making distinctions between Member States.

On this basis, I accept this award from this very prestigious institution which has been in existence for centuries as it will also give me, a former academic, an opportunity to stress the fundamental role of academic freedom and free speech in a democracy governed by the rule of law. These are core values which lie at the heart of the European Convention on Human Rights, a constellation of rights and fundamental freedoms which require that Government in all their actions be balanced and proportionate. In short, the Convention does not tolerate extremes.

I have not come alone, as I am fortunate enough to lead a delegation composed of Ms Saadet Yüksel, Judge at the Court elected in respect of Turkey and Hasan Bakirci, Deputy Registrar of our Second Section.

Beyond my gratitude, I would like to explain to you the reasons why today's event is important. These are threefold.

Firstly, the years 2019 and 2020 have seen a number of important anniversaries for the system of human rights protection at whose heart beats the Convention.

Last year marked 60 years since the inauguration of the Court which took place on 20 April 1959. Judge Kemal Fikret Arık, a Turkish judge, was one of the first group of judges of the Court elected by the Consultative Assembly.

Judge Yüksel, has joined a long line of prestigious judges, becoming the third member of the single full-time Court in respect of Turkey.

I would like to thank her as a colleague, a close friend and former Chair of the Constitutional Law Department of this University, for her role in organising our visit.

2020 is also a very important year for the Convention system. We are celebrating 70 years since the European Convention on Human Rights was signed in Rome on 4 November 1950. Turkey's association with the European Convention on Human Rights has been a long one.

A founding member of the Council of Europe, Turkey was one of the original signatories, ratifying the Convention on 18 May 1954.

I am very pleased to be able to celebrate this important anniversary here with you in Turkey. What is absolutely clear is that the values of the Council of Europe as enshrined in the European Convention on Human Rights are as important and relevant as they have ever been, indeed perhaps more so. The European Court of Human Rights which, in its sixty years of existence, has made the European Convention on Human Rights a benchmark text and which, by monitoring compliance with States' commitments, continues to spur progress in fundamental rights and freedoms.

In sum, by conferring this honorary distinction you must demonstrate your attachment to the values defended by the Strasbourg Court.

Secondly, I have accepted to receive this distinction today because it gives me the opportunity to publicly discuss the importance of university teaching in the field of human rights and, in particular, to the teaching of the European Convention on Human Rights. Universities play an indispensable role in the dissemination and promotion of human rights values and universities should be a fora for free and robust debate on all issues of social concern.

I myself have a long history with academia in my own country, Iceland. I became a legal scholar at the University of Iceland 20 years ago, a full Professor of Law in 2006 and from 2010 to 2013 I was privileged to act as Dean of the Faculty of Law of that university before being elected as a Judge in Strasbourg.

Why is university teaching of human rights so crucial? In my view this stems from the principle of subsidiarity. Subsidiarity encapsulates a norm of the distribution of labour between the Court and the member States with the ultimate aim of securing to every person who finds himself or herself within the jurisdiction of a State the rights and freedoms guaranteed by the Convention. In accordance with Article 1 of the Convention, it is the national authorities who are the primary guarantors of human rights, subject to the supervision of the Court. Subsidiarity is implicit in the structure of the Convention itself.

Effective Convention implementation begins with quality University education for national judges, prosecutors and legal practitioners. Widespread knowledge of the Convention amongst judges, prosecutors, law enforcement personnel and lawyers contributes to promoting human rights and to preventing human rights violations.

In 2004, a first major step was taken in the Council of Europe with the adoption of the Recommendation Rec(2004)4 of the Committee of Ministers to member states on the European Convention on Human Rights in university education and professional training.

This text stressed the role played by education in the effective application of the Convention at national level and encouraged member States to incorporate the Convention into relevant university programmes and professional training. It emphasised the need to guarantee the effectiveness of this education as well as the need to encourage the spread of information regarding the Convention more broadly. The Recommendation was updated in 2019. The need for legal education of a high quality in all Council of Europe Member States is essential in my view.

The importance of awareness-raising activities and targeted professional training with regard to the authority of the Convention and its implementation was underlined by the Brussels Declaration (2015) and the Copenhagen Declaration (2018), adopted at their respective High level Conferences.

The Court itself provides regular training sessions and visits for groups of University students. I would like to extend an invitation to you, as students, to visit the Court and attend one of our public hearings once the health crisis is over.

Thirdly and finally, I accept this distinction from the University of Istanbul in the name of academic freedom and because it gives me the opportunity to openly and publicly underline its fundamental value and benefits for a democratic society.

Allow me to explain by describing a recent judgment of the European Court of Human Rights from 2018 lodged by a university professor against Turkey as well as a landmark judgment of the Turkish Constitutional Court.

In *Kula v. Turkey*, a case dealt with by the Strasbourg Court, the applicant, a professor specialising in the German language, taught translation at the University of Mersin. He was invited to appear on a TV show in Istanbul, and informed his superiors. However, the director of the translation course expressed doubts about the connection between the applicant's speciality and the subject of the TV programme whereupon the Faculty Dean decided that his involvement in the TV programme was inappropriate.

Having been informed of that decision, the applicant nevertheless took part in the TV programme. Two weeks later, just after a colloquy in Istanbul which he had been authorised to attend, the applicant once again spoke on the same TV show, this time without informing his superiors in advance.

The applicant was given a reprimand by the Vice-Chancellor of the University for his actions. The disciplinary board noted that, even in the case of a research professor, participation in a TV programme of this kind had to be subject to some form of scrutiny. The disciplinary transgression used as the formal basis for the administrative sanction was a breach of the statutory prohibition on leaving his "town of residence" without his superiors' authorisation.

The European Court held that the sanction imposed, however minimal, could have had an impact on the exercise of his freedom of expression, and even have had a chilling effect on it. An infringement of academic freedom must be subject to effective judicial review to prevent abuse by the administration and to also allow the Strasbourg Court to exercise effective control of compliance with Article 10.

I am happy to report that the core and logic of the European Court's judgment in this case finds its expression also in a later judgment of the Turkish Constitutional Court of July 2019.

The Constitutional Court paid special attention to the identities of the applicants as academics who enjoyed broader freedoms to express their opinions, confirming that strict protection is required for academic expressions which do not praise or glorify violence. The Constitutional Court reiterated that acts or negligence of public authorities are subjected to public scrutiny in a democratic society and that authorities have to tolerate criticism.

Ladies and gentlemen, what is the message of these judgments of the European Court of Human Rights and your Constitutional Court and why do I refer to them on the occasion of me being honoured here today with an honorary doctorate from the University of Istanbul?

The reason is this:

The academic world must play a role in a democracy. Critical and independent thought is crucial, as there can be no democracy without debate and dissent. Every human being must be able to think freely to flourish and to grow. Society cannot progress without critical engagement by its citizens.

Those in power cannot stifle freedom of speech and must be very careful in limiting a person's capacity to express his or herself. Interferences with this right are only acceptable in exceptional circumstances.

In particular, academic freedom is protected under the Article 10 of the European Convention on Human Rights. In this regard it protects freedom of expression and of action, freedom to disseminate information and freedom to conduct research and distribute knowledge and truth without restriction¹.

Dear President,
Dear Dean,
Ladies and Gentlemen,

I accept this distinction in the name of the protection of democracy, human rights and the rule of law. Thank you very much for your attention.

¹ See *Sorguç v. Turkey*, no. [17089/03](#), § 35, 23 June 2009, and *Lombardi Vallauri v. Italy*, no. [39128/05](#), § 43, 20 October 2009; see also Recommendation 1762 (2006) of the Parliamentary Assembly of the Council of Europe.