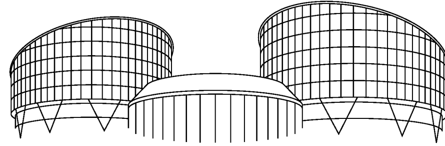

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

"Forging a culture of human rights in national parliaments"

Speech by Robert Spano

Lithuanian Parliament
Vilnius, 28 April 2022

Dear Speaker,
Dear Members of the Seimas of the Republic of Lithuania,

Firstly, let me say what an honour it is, as President of the European Court of Human Rights, to address you today. This visit was initially supposed to take place in September 2020. However the global pandemic prevented my travel at that time. Eighteen months later I am all the more appreciative of being here amongst you on this occasion.

I would like to thank very warmly the Speaker of the House for this special invitation. I firmly believe in the importance of dialogue and cooperation with domestic institutions and especially national parliaments who are key partners in the Convention system.

The topic I have chosen for my address this morning is the role of national parliaments in forging a culture of human rights at the domestic level. In particular, I would like to focus on the duties and opportunities that exist for you as parliamentarians to protect and realise human rights as part of your commitment to the values of democracy, human rights and the rule of law.

However, before I begin to discuss the main topic of my speech, I would like to evoke with you the transformative period in European history which we are currently living through - a period when the relative peace and security which we have taken for granted on our continent has been shattered by Russia's war and atrocities in Ukraine.

When we celebrated the European Convention on Human Rights' 70th anniversary in 2020, we highlighted that the Convention constituted one of the greatest peace projects in human history. Indeed, the very Preamble to the Convention refers to human rights and fundamental freedoms as the foundation of justice and peace in the world. The work of the Council of Europe and its judicial control mechanism, the Court, has contributed to the stability, security and peace in Europe up to this point. However, it can certainly be questioned whether we have failed in our mission when witnessing a war waged by a former Council of Europe member State against a current member State. It is for others to debate that question.

I still maintain my view that the Council of Europe has and will continue to play an essential role in protecting human rights and fundamental freedoms to pave the way for peace again. In particular, the Court ensures the maintenance of a pluralistic democracy by guaranteeing respect for basic democratic principles in areas such as participation in free elections, freedom of expression, religion,

association and assembly, and non-discrimination. It promotes the rule of law, which provides the essential framework for the development of effective political democracy. When these freedoms are eroded we see the catastrophic consequences of unbridled totalitarianism and ultimately the violence which we are now witnessing.

The Court also sets legal standards for the administration of justice, for the personal liberty and security of each individual, and for other safeguards that protect the individual against arbitrariness, injustice, and abuse of power.

The Court reinforces respect for human dignity by ensuring the observance of fundamental guarantees such as the right to life, the prohibition of ill-treatment, the protection of private and family life and the prohibition against discrimination. I have recently had the opportunity of underlining this in two conferences on gender-based violence and discrimination against women, an extremely important theme which the Court can address through the prism of the European Convention on Human Rights and the Council of Europe's own Istanbul Convention, the importance of which is steadily growing. In the face of threats of all kinds, the defence of peace, the promotion of democracy, human rights and the rule of law remains essential and the Court's mission to make Europe a continent of peace is more essential than ever.

Let me now come to the role of national parliaments in human rights protection within the Convention system. Within the Council of Europe, the Parliamentary Assembly has been most vocal in calling upon parliamentarians to fulfil their obligation to promote the realisation of human rights.

I would like to refer to an extremely useful Handbook for Parliamentarians[1] which was published a few years ago by the Council of Europe entitled "*The role of national parliaments as guarantors of human rights in Europe*" which I would recommend.

Why do I use the terms *duties* and *opportunities* for Parliamentarians?

Duties because under the principle of subsidiarity, member States are first and foremost responsible for the effective implementation of the international human rights norms they have voluntarily signed up to. By virtue of Article 1 of the European Convention on Human Rights, states Parties undertake to secure to everyone within their jurisdiction the rights and freedoms enshrined in the Convention. That obligation is binding on all branches of State – the executive, the judiciary and you, the legislative.

Opportunities because to my mind there is still scope for parliaments to play an even more useful and proactive role in this regard. As I have previously written, we may deepen the framework of cooperation.

At the high-level Brussels conference entitled "*Implementation of the European Convention on Human Rights, our Shared Responsibility*", organised in 2015 as part of the reform process of the Convention system, the 47 governments explicitly acknowledged the value of parliamentary involvement in the execution of Court judgments.
However, the point I would like to make today is that in fact your role is more far-reaching than that. You fulfil your duty to protect human rights through legislating (including the vetting of draft legislation); through your involvement in the ratification of international human rights treaties;
through holding the executive to account; liaising with national human rights institutions and fostering the creation of a pervasive human rights culture.[2]

[1] http://www.assembly.coe.int/LifeRay/JUR/Pdf/Handbook/HumanRightsHandbook-EN.pdf

Let me give you one concrete example. After the Court's judgment in *Matiošaitis and others*[3] concerning life prisoners, the Lithuanian legislation was amended here in the Seimas and in the follow-up case of *Dardanskis and Others* the Court acknowledged that the life sentence commutation procedure and its requirements rectified the violation found under Article 3 and provided an adequate and sufficient remedy for the complaints.

Some politicians may feel as if their democratic mandates are being threatened by international judges allegedly imposing their will on the peoples of Europe. As such, they consider that important elements of social and economic policy are being determined outside of national democratic or judicial processes. This is a debate which is occurring in a number of European States and which I have addressed in several of my recent missions as President. Yet I firmly believe that this approach to the European human rights architecture is misconceived. The Convention system is based on a bottom-up strategy which aims to empower national rights-holders and decision-makers to take the lead in securing human rights, albeit ultimately subject to the supervision of the Strasbourg Court. That supervision aims at being respectful and responsive to national, constitutional, historical and cultural specificities but it is based upon Europe's shared human rights heritage – to which national constitutional systems of Member States shall be committed.

Dialogue between national authorities and the Strasbourg Court is essential and was enhanced in recent years through the adoption of Protocol No. 16 to the Convention. This Protocol provides the possibility for the highest courts and tribunals to request an advisory opinion from the Court. Indeed, such a request was sought by the Supreme Administrative Court of Lithuania on the current legislation on the consequences of impeachment which is at issue in a case pending before it. On 8 April the Court delivered its opinion.[4] I note the recent adoption of the amendment to the Lithuanian Constitution regarding this sensitive matter by which the Seimas has contributed to aligning Lithuanian Constitutional Law with the European Convention.

National parliaments are well placed to carry out the role of human rights protection because of their representative, legislative and oversight functions. Why? *Firstly*, because you enjoy democratic legitimacy as elected representatives.

Secondly, because as lawmakers you can ensure that measures are taken to prevent human rights violations and domestic remedies are available if such violations have taken place. *Thirdly*, because you oversee the executive and this means that you scrutinise a government's compliance with the Convention, including its execution of judgments of the Court.

The Court is increasingly becoming attentive to the national legislative process. In the seminal case of *Animal Defenders*[5] from 2013, the applicant was a non-governmental organisation which complained about the prohibition on paid political advertising as set out in domestic legislation. The dispute arose as to whether the interference was 'necessary in a democratic society'.

In finding no violation of Article 10, the Court took into account the fact that the legislation in question had undergone extensive examination by the UK Parliament and that there had been cross-party support for the Act as well as an in-depth analysis of its compatibility with the Convention undertaken by the domestic courts. In that case, the Court said the following:

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[2] This wording is taken from PACE Resolution 1823 (2011), adopted by the Parliamentary Assembly of the Council of Europe on 23 June 2011.

[3] *Matiošaitis and Others v. Lithuania*, nos. 22662/13 and 7 others, 23 May 2017

[4] Request no. P16-2020-002

[5] *Animal Defenders International v. the United Kingdom* [GC], no. 48876/08, ECHR 2013 (extracts)

"*The quality of the parliamentary and judicial review of the necessity of the measure is of particular importance in this respect, including the operation of the relevant margin of appreciation*."

In other words, the Court will look closely at whether the national parliament, in enacting primary legislation which adversely affects Convention rights, has openly and in good faith engaged in the balancing of conflicting interests.

When former President of the Court, Sir Nicolas Bratza, appeared before the United Kingdom's Parliamentary Joint Committee on Human Rights, he acknowledged that while national judges were the 'natural partners' of the Court judges, dialogue with similar human rights committees in national parliaments was to be encouraged. I myself have given evidence to the Westminster Parliament's Joint Committee on Human Rights in respect of governmental plans to reform the domestic UK human rights legislation.

I would now like to return to a theme I mentioned in my introduction, namely the importance of pluralism, tolerance and broadmindedness as hallmarks of a "democratic society".

The Court has held that although individual interests must on occasion be subordinated to those of a group, democracy does not simply mean that the views of the majority must always prevail, public opinion is not a "trump card".

Sometimes politicians have the difficult role of standing up for the values we all cherish in the face of strong public opinion which goes in the opposite direction. A balance must be achieved that ensures the fair and proper treatment of minorities and avoids any abuse of a dominant position.[6]

The Court has often emphasised that pluralism and democracy are built on genuine recognition of, and respect for, diversity. The harmonious interaction of persons and groups with varied identities is essential for achieving social cohesion.[7] The Court has also noted the States' positive obligation to secure the effective enjoyment of the rights and freedoms under the Convention. This obligation is of particular importance for persons holding unpopular views or belonging to minorities, for example sexual minorities or religious minorities, because they are more vulnerable to victimisation.[8]

It is within this context that the Court approaches complaints of discriminatory treatment. Article 14 guarantees equal treatment before the law of the Convention. The Court has found for example that differences based on sex or on sexual orientation require particularly serious reasons by way of justification. "[D]ifferences based solely on considerations of sexual orientation are unacceptable under the Convention".[9]

Indeed, the European Court of Human Rights has been a judicial pioneer in its interpretation of the Convention in respect of LGBTI persons over the last few decades. The Court has served as a rich source of jurisprudential inspiration for other national and international courts, including regarding the recognition and defence of privacy and family rights of those persons.
I would like to mention here the important case of *Beizaras and Levickas v. Lithuania* from January 2020 which deals with *online* hate crime. Nowadays this is particularly widespread and pernicious, and unfortunately seems to have exploded in number with the popularity of social media. One of the applicants had posted a photograph of himself and his partner kissing on his Facebook page, which

[6] see *Chassagnou and Others v. France* [GC], nos. 25088/94 and 2 others, § 112, ECHR 1999-III; *S.A.S. v. France* [GC], no. 43835/11, § 128, ECHR 2014 (extracts).
[7] see *Gorzelik and Others v. Poland* [GC], no. 44158/98, § 92, 17 February 2004.
[8] see *Bączkowski and Others*, cited above, § 64.
[9] *X and Others v. Austria*,§. 99

led to hundreds of online hate comments. The applicants alleged that they had been discriminated against on the grounds of sexual orientation because of the authorities' refusal to launch a pre-trial investigation into the hate comments. The Court held that there had been a violation of Article 14 taken in conjunction with Article 8 of the Convention, finding that they had suffered discrimination on the grounds of their sexual orientation. It noted in particular that the applicants' sexual orientation had played a role in the way they had been treated by the authorities, which had quite clearly expressed disapproval of them publicly demonstrating their homosexuality when refusing to launch a pre-trial investigation.

The Court also held that there had been a violation of Article 13 of the Convention because the applicants had been denied an effective domestic remedy for their complaints. The Lithuanian case of *Beizaras and Levickas* is the Court's landmark case on these matters.

The next case – also landmark and also Lithuanian- I would like to refer to is "*Romuva" v. Lithuania*[10] from last June. That case concerned the refusal by this house to grant to the applicant association the status of a State-recognised religious association. Finding a violation of Article 14 read in conjunction with Article 9 (freedom of religion), the Court held that when refusing to grant State recognition to the applicant association, the State authorities had not provided a reasonable and objective justification for treating the applicant association differently from other religious associations that had been in a relevantly similar situation, and members of the Seimas had not remained neutral and impartial in exercising their regulatory powers.

It is worth repeating some of the language used by the Court in that case, where the Court emphasised that "*maintaining true religious pluralism is vital to the survival of a democratic society (…). The role of the authorities is not to remove the cause of tension by eliminating pluralism, but to ensure that the competing groups tolerate each other*." [11] As I have learned, this judgment is yet to be implemented.

Let me conclude by saying that in my view that the Court has demonstrated its willingness to develop a more robust and parliamentary-orientated conception of subsidiarity in recent years.[12] By strengthening the concept of subsidiarity, the Court creates incentives for member States to do a better job of fulfilling their mandate under Article 1 of the Convention – that of securing to everyone within their jurisdiction their human rights and freedoms.

Thank you for your attention.

[10] *Ancient Baltic religious association "Romuva" v. Lithuania*, no. 48329/19, 8 June 2021
[11] § 143
[12] A New Book on Parliaments and Human Rights Protection - Judge Robert Spano - UK Human Rights Blog