



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

Opening of the Judicial Year 2024

Solemn hearing

Speech by Didier Reynders

Strasbourg, 26 January 2024

President of the European Court of Human Rights,
Judges of the European Court of Human Rights,
Presidents of the Constitutional Courts and Supreme Courts,
President of the Ministers' Deputies,
Secretary General of the Council of Europe,
Secretary General of the Parliamentary Assembly,
Excellencies,
Ladies and gentlemen,

Thank you for inviting me to speak at today's solemn hearing in my capacity as European Commissioner for Justice.

As Jacques Delors pointed out here in Strasbourg nearly thirty years ago, when addressing the Parliamentary Assembly of the Council of Europe, we cannot forget that it was with the Council of Europe that it all began.

The European Convention on Human Rights came into force in 1953, more than seventy years ago, and it is the cornerstone of the Council of Europe's legal system.

Determined not to repeat the errors of the past, our predecessors who put so much effort into setting up the Convention and the legal system of the European Union were driven by a commitment to protect common values, namely the rule of law, fundamental rights and democracy.

Even today, the Convention constitutes a major achievement for human rights protection, allowing as it does individuals to lodge their case directly before an international court.

For many applicants, the Strasbourg Court is a ray of hope in the face of injustice.

Furthermore, the Court does not merely rule on individual cases.

Through its case-law, it clarifies and develops the rules established by the Convention, thus ensuring that they are complied with throughout the whole of the Council of Europe's legal order. The Court also ensures that the Convention remains a living instrument, adapted to the protection of rights in changing societies.

Your work is therefore essential to ensure the protection of the rule of law and fundamental rights across the European continent.

In May last year, the Heads of State and Government met at the Reykjavik Summit to renew their commitment to the Council of Europe's values and principles, and to give further direction to its work.

As President von der Leyen stated at the Summit, we wish to strengthen the democratic foundations of the European Union. And we are very much looking forward to the Union acceding to the European Convention on Human Rights as soon as possible.

Indeed, the Union's accession to the Convention is not just a legal obligation under the Lisbon Treaty. It would also represent a major achievement for the protection of fundamental rights and for the strengthening of ties between the European Union and the Council of Europe.

Complementarity between the Charter and the Convention

As you know, the European Union's legal system in the area of fundamental rights is based on the Charter, and on the complementarity between it and the Convention.

While these two instruments have their own characteristics, they are both essential in order to ensure the protection of fundamental rights in the European legal space.

It is therefore not unheard of for EU bodies and the European Court of Human Rights to address the same questions concerning the rule of law, sometimes in respect of the same country, even if those questions manifest themselves in different ways.

The Strasbourg Court's recent judgment in *Wałęsa v. Poland*, which you have just mentioned Madam President, is a good case in point.

A final judgment given by a domestic court in Mr Wałęsa's favour was reversed nine years later by the Polish Supreme Court's Chamber of Extraordinary Review, on an extraordinary appeal.

In 2021 the European Court of Human Rights had already ruled that that Chamber of Extraordinary Review was not an "independent and impartial tribunal established by law".

In its *Wałęsa* judgment, the Court found a violation of the right to an independent tribunal and of the principle of legal certainty.

Having regard to the systemic nature of the violations it had found, the Court also applied its pilot-judgment procedure to the case, and held that Poland was to take adequate measures to put an end to the systemic violations of the Convention identified by it.

As the Court noted in its judgment, the European Commission had also criticised the extraordinary review procedure before this particular Chamber of the Polish Supreme Court in its proposal to trigger the so-called "Article 7 of the Treaty on European Union" procedure, aimed at determining whether there was a clear risk of a serious breach of the rule of law by Poland.

Furthermore, in a judgment of December last year, the Court of Justice of the European Union held, in the context of a reference for a preliminary ruling, that, given the manner in which judges of the Chamber of Extraordinary Review were appointed, a panel of its judges did not constitute a "court or tribunal" within the meaning of Article 267 of the Treaty on the Functioning of the European Union.

In support of its findings, the Luxembourg Court relied on the case-law of the European Court of Human Rights.

Thus, we can see that a dialogue also exists, and that a complementarity has developed between the two organisations, and particularly between the two Courts.

The Commission's Rule of Law Report

However, it is always preferable to prevent rule-of-law crises before they arise and have to be resolved by the courts.

The European Commission's annual Rule of Law Report is a tool which aims to prevent such crises.

The fourth edition of the Report was published last July. As in the past, it was the result of close cooperation between the Commission, the Council of Europe and its bodies.

It is now settled practice that, in the Rule of Law Report, we examine the national rules of the Member States through the lens both of EU law, in particular the case-law of the Luxembourg Court of Justice, and of European standards, such as the recommendations of the Committee of Ministers, the opinions of the Venice Commission or GRECO and, of course, the judgments of the European Court of Human Rights.

The 2023 Report included recommendations for each Member State. These recommendations are aimed at encouraging the States to launch the necessary reforms.

Where applicable, our recommendations also refer to the European standards developed by the Council of Europe. This is particularly true for the composition of councils for the judiciary, whatever name they go by.

Following the announcement by President von der Leyen in her 2023 State of the Union address, this year the Commission will open the Reports to those candidate countries which are making the most progress in rule-of-law terms in their EU accession process, namely Albania, Montenegro, North Macedonia and Serbia.

By inviting those countries to participate in the yearly Report, the European Union is re-emphasising the importance it places on European standards across the entire continent.

The Report allows us to enter into dialogue with the Member States. Two-thirds of the recommendations we made in 2022 were wholly or partially implemented.

Advances in the rule of law can also be made through constitutional reforms, as was the case recently in the Grand Duchy of Luxembourg concerning the National Judicial Council, the majority of whose members will henceforth be judges elected by their peers, and the independence of the judiciary, in particular of the public prosecutor's office.

I will also, in the Commission's name, be opening a structured dialogue on the implementation by Spain of our recommendation related to the National Council for the Judiciary.

Dialogue always comes first.

We are currently engaged in dialogue with the new Polish government about the reforms to be implemented with a view, in particular, to re-establishing judicial independence.

When dialogue is not enough, the Commission uses the other tools at its disposal.

I have already mentioned Article 7 of the Treaty on European Union. Procedures in respect of Poland and Hungary are ongoing before the European Council.

We are bringing infringement procedures before the Court of Justice of the European Union, seeking, if necessary, the imposition of penalty payments.

More recently, we have been able to implement mechanisms linking respect for the rule of law or the Charter of Fundamental Rights to European funding paid to the Member States. The conditionality mechanism was relied upon when suspending funding to Hungary.

The Recovery and Resilience Plans adopted after the height of the COVID-19 pandemic contain obligations to introduce reforms, particularly in the fields of justice and the fight against corruption; the payment of funding is conditional on such steps. This is why no Recovery Plan payments have yet been made to Hungary and Poland, as they have not carried out the necessary reforms.

Funding of certain cohesion programmes has also been frozen for non-compliance with the Charter of Fundamental Rights.

The aim is not to punish, but to encourage reforms. If they are carried out, the budgetary measures can be lifted.

I should like now to talk about another issue, that of compliance with the judgments of your Court.

As President O'Leary recently observed: "In a State governed by the rule of law ... judgments of national courts must be executed without exception and in a timely manner. The same requirement applies to the judgments issued by the Strasbourg Court ..."

I wholeheartedly agree.

For the last two years, the Rule of Law Reports have also contained, for each Member State, an overview of the implementation of the key cases of the European Court of Human Rights. And this will of course be the case for this year's Report as well.

Robust national judicial systems are essential

Generally speaking, the national courts are at the forefront in the fight against arbitrary decisions, discrimination or abuse of authority. They are called upon to give full effect to the rights set out in the Convention.

This is why it is essential to have robust national judicial systems which can withstand pressure.

When the system is working well, the protection of human rights should be satisfactorily secured at the national level. However, we know that this is not always the case.

That is why we also need robust, effective and independent institutions at the European level, such as the European Court of Human Rights, to promote and protect those values.

Ladies and gentlemen,

As your Court has pointed out, the rule of law is inherent in all the Articles of the Convention, and the Convention itself is based on that principle. It is compliance with the rule of law which confers on the actions of public authorities the legitimacy required in a democratic society.

The values which underpin the Convention, and the Charter of Fundamental Rights, are universal.

However, we can see that they are subjected to numerous and constantly changing challenges.

We see it in our Rule of Law Reports: every Member State could do better, in one way or another, and we make recommendations to them all, even if the scale of the risk differs from one State to another.

We also see it in the developments of the case-law of the European Court of Human Rights, for example regarding the independence of the judiciary.

And, far more seriously, we have been painfully reminded of the importance of these core values by the war of aggression being waged by Russia against Ukraine.

The inter-State cases pending before the Court against Russia, or the more than 7,400 individual applications concerning the events which occurred in the context of the invasion of Crimea or following the attack of February 2022 also attest to the importance of these core values.

The European Commission is fully committed to supporting Ukraine. We are contributing to the start-up costs of the Register of Damage created by the Council of Europe. We are monitoring the implementation of the sanctions imposed against Russia by the European Union, and are working in close cooperation with the International Criminal Court, the Ukrainian Prosecutor General, the Member States and Eurojust to ensure that the international crimes committed in Ukraine do not go unpunished.

Conclusion

Ladies and gentlemen,

Over the past judicial year, the European Court of Human Rights has once again delivered a number of key judgments which have enriched the European legal space.

Over the coming judicial year, your Court will once again be called upon to rule on questions that are central to the rule of law, the protection of human rights, and democracy.

I wish you all the best for your work to come, and I thank you again for having invited me today.