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

"Strengthening democracy" ceremony organized by the Presidency of the Hellenic Republic and the Hellenic Parliament

The inter-State applications against the Greek dictatorship as an acquis of the ECHR case-law

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Dear President of the Hellenic Republic,
Dear President of the Hellenic Parliament,
Dear President of the Parliamentary Assembly of the Council of Europe,
Dear President of the Court of Justice of the European Union,
Dear Judge Ktistakis,
Distinguished Guests,

It gives me great pleasure and honour to address you today as President of the European Court of Human Rights. I am also delighted to lead a delegation from the Court: Vice-Presidents Arnfinn Bårdsen and Ivana Jelić; Section Presidents Mattias Guyomar and Ioannis Ktistakis; Judges Pauliine Koskelo, Ana Maria Guerra Martins and Davor Derenčinović; and the Registrar, Marialena Tsirli, whom I all warmly thank for their presence.

One of the reasons for gathering in this splendid forum today is to commemorate 50 years since the re-ratification by Greece of the European Convention on Human Rights. To re-ratify that Convention, Greece had to first denounce it. That denunciation came after a series of tragic events which saw a Convention organ being presented with one of the first inter-State applications.

Those applications had to be dealt with both speedily and fairly, but before elaborating on this, allow me to go briefly through the main events as they occurred.

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On the 9th August 1949, Greece became the eleventh State to join the Council of Europe. It ratified the Council's original Statute only a few weeks after its ten original members had done so. A year later, in 1950, it became an original signatory to the European Convention on Human Rights and, in 1952, signed up to the first Additional Protocol. In 1953, the Greek Parliament unanimously voted a law ratifying the Convention and Protocol, rendering their provisions enforceable before the Greek courts. On the 28th March of that year, Greece deposited its instrument of ratification with the Secretary-General of the Council of Europe, signifying its intent to be bound by the obligations laid down in those treaties.

Like many other States, post-war Greece had to overcome major obstacles which undermined human rights protection on its territory. The country had only just emerged from a civil war which was fuelled by internal disagreements centring - among other things - on the form of government which Greece should adopt, as well as the values and symbols it should preserve.

Regrettably, violence does not cease simply because a State joins an international organisation dedicated to human rights protection. As current events show, treaties cannot immediately heal societal divisions and psychological scars carved out by centuries of history. Consequently, it would be wrong to say that safeguarding human rights is a straightforward matter of principle for any Member of the Council of Europe.

Greece's greatest challenge after joining the Council of Europe came when a military dictatorship led by army colonels seized power on 21 April 1967. That coup occurred weeks before democratic elections were to take place to replace a caretaker government. Once in control, the Greek dictatorship made no secret of its intention to 'save the life of the nation through revolution'. In doing so, it abolished democratic institutions and implemented a plan to suppress anyone in public office who held different views to those of the regime.

That plan was applied, *inter alia*, through a widescale practice of 'preventive detention', targeting anyone who posed a threat to public security by displaying anti-patriotic behaviour. Arrests and detentions were carried out either on the own initiative of the security services or by administrative order.

In the first few months of the dictatorship, over 6,000 persons were detained under administrative order alone. From the very start, therefore, the Greek dictatorship wished to eliminate pluralism by terrorising the population.

This led four Contracting Parties - Denmark, Norway, Sweden and the Netherlands – to bring proceedings against Greece before the European Commission of Human Rights. Their applications were unique in so far as they tended towards protecting persons having no national or ethnic link to their territories. The interest of those countries in bringing the case was quite simple: they presented a 'collective action' to ensure the defence of human rights on a territory under the Convention's jurisdiction. Moreover, the breadth of the applications was very large, as they alleged violations of no less than 12 Convention provisions. Those violations were highly complex, since they were committed through a maze of legislative acts, individual measures and administrative practices that lay the foundations of a whole system of government, while also reflecting a certain conception of how power was to be exercised upon individuals.

But back in Strasbourg, the 1960s were still early days. Both the Court and the Commission were not used to dealing with elements such as those raised in the Greek Case. Obstacles to hearing inter-State cases did indeed exist, but in a form different to that which the Court is used to seeing now. I will explain the current obstacles the Court faces when hearing inter-State cases later on - but for now, I would like to say a few words on how the Greek Case filled a vacuum by offering a general framework for dealing with such cases.

In the 1960s, the system of protection established by the Convention differed significantly from what we are used to seeing today. Upon ratification, several Contracting Parties, including Greece, had not made ex-Article 25 and ex-Article 46 declarations - individuals could not yet petition the Court complaining of a violation of their human rights by Greek authorities. This meant that inter-State cases were viewed, at the time, as the principal mechanism for keeping States in check.

Another important feature of that early system was the work carried out by the European Commission of Human Rights. Article 24, now 33, allowed Contracting Parties to refer alleged breaches of the Convention to the Commission, and the Scandinavian and Dutch governments relied on that provision to bring the situation in Greece to the Commission's attention. The role of that Commission was to filter out cases and try to solve them amicably. That first filtering step had to be concluded before the parties could even take their matter to Court, or before the Committee of Ministers could pass a resolution disposing of the matter.

However, not everything was crystal clear at the time, as the Convention did not provide detailed rules on how the Commission was to approach cases involving systematic violations of human rights.

Even before the Greek Case was brought, scepticism abounded. Many doubted whether Commission members, from their 'sterile offices' in Strasbourg, were in a position to adjudicate a dispute concerning widespread violence occurring at the other end of Europe.

Equally unclear was whether this Convention organ, which took on a large portion of the Court's work, could function in an entirely impartial manner when hearing such a case. It was, after all, just one other organ within a wider Organisation composed mainly of government and parliamentary representatives.

One fundamental question going to the heart of the Convention system was whether the Commission was bound - in a similar way as a national court - by certain core tenets of the Rule of Law. What role, if any, should political arguments play in motivating the Commission's findings? Could it criticise the legitimacy of revolutionary or transitional governments? Could it ignore its previous decisions and the case law of the Court? When establishing the facts, could it infer specific violations from the general conduct of political regimes as reported in the press, or by the Parliamentary Assembly and its Committees? For human rights defenders, these issues were, of course, existential ones: for how could one ever hope to build a coherent set of principles if the organ deciding the most challenging cases did not interpret the law consistently, did not reason logically and persuasively, and did not establish facts in accordance with generally accepted rules of evidence?

Therefore, when the Greek Case came before the Commission in 1969, Europe was not only interested in what the Commission was going to decide, but how it was going to go about deciding it. This latter point was no minor one, for it would go on to determine whether a system which relies on the application of law - rather than arbitrariness - to enforce legal rights, would eventually remain true to its spirit.

In hindsight, we can say that the Commission used all means at its disposal to conduct proceedings fairly and reason its findings in accordance with what the Convention requires. All throughout the proceedings, the temptation to quickly bring things to a close was strong, as the political stakes were high and international scrutiny became fiercer by the minute. Fact-finding by the Sub-Commission proved particularly difficult. This latter organ, set up under Article 28 of the Convention with the specific purpose of gathering evidence regarding alleged violations, could visit the territories of the Contracting Parties. Yet when the Sub-Commission visited Greece, the authorities refused any form of cooperation with it. Furthermore, its members had to hear dozens of witnesses and deal with thousands of written documents originating from a plethora of sources.

Eventually, the Commission decided that Greece had not fulfilled the requirements for applying an Article 15 derogation. In its Report, it refused to pass judgment on the constitutionality or legitimacy of the government in control, much less did it infer findings from that. On the merits, the Commission went on to find that, in suspending most of the rights which individuals enjoyed under Greek law, it

had violated all the core provisions of the Convention intended to safeguard human dignity and the democratic process.[1]

When reading the 700-page Commission Report, one will see that it examined each allegation and each plea meticulously. It was rigorous in examining the evidence and reasoned out each legal criterion as exhaustively as possible. It was reluctant to rely on publicly available information that was at its disposal and ensured that ongoing debates before the Parliamentary Assembly did not influence its findings. Particularly in relation to Article 3 violations, the Commission's analysis required lots of work, as it examined each separate instance of breach which came to its attention.

Relations between Greece and the Commission deteriorated when, on the 12 December 1969, Greece denounced the Convention and its First Protocol, and declared that it "did not consider itself legally bound by the conclusions of the report". That denunciation was made around a month after the Commission report was transmitted to the Committee of Ministers for its approval. On the 15 April 1970, the Committee of Ministers noted that this situation was not 'precisely envisaged' by the Convention and concluded that there was no basis for prescribing measures which Greece must take within a given period.

However, even after Greece deposited its instrument of denunciation, Denmark, Norway and Sweden brought fresh proceedings on 10 April 1970 concerning the ill-treatment of suspects during criminal investigations which took place after the 12 December 1969. In examining its competence *ratione temporis*, the Commission found that Greece's denunciation took effect 6 months after presentation of the instrument of denunciation, meaning that Greece remained bound by the Convention after the 12th June 1970, in respect of any act which, being capable of constituting a violation of the Convention, may have been performed by Greek authorities before the date on which the denunciation became effective.

This meant that the fresh proceedings brought before the Commission could be heard, but when Greece did not take part in them the Commission refused to automatically find in favour of the applicant governments: ordinary judicial standards had to be maintained and findings had to be based on the submissions and evidence of both parties. In so ruling, the Commission considered that a respondent party could not evade the jurisdiction of a competent tribunal simply by refusing to take part in the proceedings instituted against it.

However, the refusal by Greece to participate in the proceedings led to the Commission having to discontinue further examination of the case, since it was impossible for it to carry out the judicial functions which it regarded so highly.

Once Greece re-ratified the Convention on 28 November 1974, the Commission resumed examination of the second Greek case. Those proceedings came to an end after the parties agreed that Greece had taken measures to redress alleged violations of the Convention.

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With these historical facts in mind, allow me now to get back to the present.

Through its decision in the Greek Case, the Commission filled a void by setting an example for the processing of future inter-State cases. Indeed, the Court approaches cases in much the same way as

[1] Violations : aa. 3, 5, 6, 8, 9, 10, 11, 13, 14-9, 3-P1. Non-violations : aa. 7 & A1-P1.

the Commission did in 1969. What matters, still today, is that a proper forum is provided to address systematic violations of human rights committed by a regime which bluntly disregards the most basic postulates of the Rule of Law.

It is fundamental to reply to injustice with justice, in a way that is thorough, foreseeable and persuasive. However, the current reality shows that deciding inter-State applications takes a huge amount of time and effort, not least because their number has increased in the last decade.

There are currently 62,700 applications pending before the Court. About 9,400 pending applications concern conflicts between two States, namely, Ukraine and Russia, Armenia and Azerbaijan, and Georgia and Russia. These applications are particularly complex and require special efforts, particularly in terms of dedicated staff and resources. A specific Conflicts Unit has been created within the Court to deal with these applications. There are currently 14[2] inter-State cases pending before the Court, with a total of 18 applications.

These numbers reflect the recent – I would say – tragic events in Europe. They show that when a Contracting Party invades another, the number of inter-State and closely related individual applications increase exponentially. Currently, for instance, there are five inter-State cases still pending against the Russian Federation alone, and which concern violations committed since 2014 after its military invasion of eastern Ukraine. Furthermore, there are approximately 3,850 individual applications where Russia is the sole or one of the respondent States. These directly concern conflicts in Crimea, eastern Ukraine and Russian military operations in Ukraine which commenced before the 24th February 2022.

In the Reykjavik Declaration of 2023, Contracting Parties recognised that the Court's "current resources are insufficient and unsustainable to adequately deal with the influx of new and pending applications", including inter-State applications which raise complex factual, legal and political issues affecting all the procedural stages which each case may take: from admissibility all the way up to 'just satisfaction'.[3]

They thereby echoed the plea made by the Court in its Plenary Memorandum ahead of the Reykjavik summit, which identified the issues of accountability in inter-State cases as one of the main challenges to the Convention system and which noted that:

> "It is essential that the Court's crucial mission of processing and adjudicating inter-State cases in good time in order to ensure accountability should not be endangered by insufficient resources."[4]

From the Court's end, processing inter-State applications filed against intransigent Parties remains a priority, not only because of their intrinsic nature, but because they raise serious questions of accountability under the Convention. However, we must not forget that the Court is required to process *all* cases lodged before it. It also operates under a limited budget. In view of these facts, the Court has had to devise more efficient methods for handling inter-State cases. Specialised lawyers dealing with conflict situations have been grouped into dedicated clusters, and synergies are maximised by ensuring that judicial formations and departments work in a transversal manner.

All Court staff cooperate to ensure that decisions are taken as fairly and efficiently as possible, without sacrificing the quality of the Court's analysis and without neglecting the serious consideration which

[2] Including application no. 1859/24 lodged by Ireland against the United Kingdom on 17 January 2024
[3] https://rm.coe.int/4th-summit-of-heads-of-state-and-government-of-the-council-of-europe/1680ab40c1
[4] https://www.echr.coe.int/documents/d/echr/memorandum_summit_reykjavik_2023_eng

each application deserves. In doing so, they respect the example set by the Commission in the Greek Case of 1969.

It is difficult to speculate what role, if any, the Commission decision played in restoration of a democratic regime in Greece. In the face of Russian lack of engagement with the Court and in noting the miserable situation both on the military field in Ukraine and on Russian soil, many consider that the Court's examination of those inter-State cases is futile. But on a symbolic level, law must prevail over brutal force. The situation on the ground hopefully follows.

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Allow me, therefore, to conclude on the following.

50 years ago, the Greek Case showed us that applying legal methods to assess systematic human rights violations mattered greatly. Today, the huge burden which the complex and often repetitive inter-State caseload has placed on the Court shows us that speedy processing of inter-State applications is equally important if the Convention system is to maintain its credibility.

I once again thank the Greek Presidency and Greek Parliament for allowing me to speak in this forum. It is always so good to be in Greece, the cradle of democracy. The place and topic you have allowed me to discuss are perfect to restore faith in the idea that, in the end, it is the good that always prevails.

With this thought, I wish you all a pleasant evening.