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President of the European Court of Human Rights, Members of the Court, Excellencies, Ladies and Gentlemen,

As a European citizen and as President of the Spanish Constitutional Court, it is a great honour for me to have been invited to this solemn ceremony for the opening of the judicial year of the European Court of Human Rights, thus giving me the opportunity to address you on this occasion.

1. THE EUROPEAN SYSTEM OF HUMAN RIGHTS PROTECTION: CORNERSTONE OF EUROPEAN IDENTITY

It is with some emotion that I take the floor because I am fully aware of how indebted we are, as European citizens, to this institution which has made a key contribution to the construction and development of the European system of human rights protection.

When, upon the ruins of the Second World War, the founding fathers of the Council of Europe signed in Rome, on 4 November 1950, the European Convention on Human Rights, whose 65th anniversary we are celebrating this year, they took a ground-breaking step in the conception of instruments of human rights protection. They did not merely issue a solemn statement, in line with the Universal Declaration of Human Rights of 1948, nor did they simply proclaim a set of superior shared values – such as democracy, respect for liberties or the rule of law – but also, precisely displaying with some eloquence their commitment to the recognition of those rights and the assertion of those values, they set up – restricting national sovereignty – an international court tasked with ensuring respect by the States parties for the fundamental rights they had recognised.

This was a revolutionary gamble, waging as it did on a system that was to guarantee the effectiveness of rights and one that has proved successful. Never have rights and public liberties been better protected in Europe. With the benefit of the considerable body of case-law of the Strasbourg Court, the Europe of rights of which those founding fathers dreamed has now become a tangible reality and its democratic principles are a common touchstone for us all.

The most telling sign that the European system for the protection of human rights is a living system is undoubtedly its capacity to adapt. It is very much a work in progress, as evidenced by the successive reforms of the Convention, which have greatly contributed to keeping it dynamic and to further improvement. These reforms, testimony as they are to the system's adaptability to its specific demands and needs and to the social and political changes in the outside world, are first and foremost an illustration of the level of stringency with which the Court carries out its own task of safeguarding rights. A task which – as President Spielmann is keen to point out – has as its cornerstone the right of individual petition, open to 800 million potential litigants. The right of individual petition is thus the instrument through which the Court has developed its own jurisprudence and the content of the rights enshrined in the Convention, while making the protection of those rights concrete and effective. Those rights, which are embodied in the protection afforded to each citizen, are thus secured through the Court's adjudication and supervision.

This, President, is what makes the European human rights protection system great. It is a system which, in my view, is the cornerstone of European identity and I believe this is worth emphasising at times such as these when Europe is undergoing a political crisis and our fellow citizens are still having to contend with the devastating effects of the latest economic crisis. There is nothing more telling or revealing about European political identity than our shared goal to make the safeguarding of human rights – the practical and effective protection of those rights – the very foundation of our political order.

As has been rightly pointed out, the human rights protection system to which the Rome Convention has given full legitimacy goes hand in hand with the fruitful and deep-rooted European school of thought which has for many years sought to make this old continent an area of political liberties while pleading for a philosophical and political conception of the person that relies on full recognition of human dignity. Today, our instruments, successors to a legacy which we are keen to claim as our own, are built on the *homo dignus* and the rights inherent therein, forming the basis and purpose of the system as a whole. Democratic dignity is the assertion of the unique, universal and irreplaceable value of each individual as such and is therefore the basic source of his or her fundamental rights. It is no coincidence that the other great European benchmark for the protection of human rights – the Charter of Fundamental Rights of the European Union, whose political importance for the Union is undeniable – reaffirms in its very first lines the inviolability of human dignity which – I quote – "must be respected and protected" (Article 1). This shared vision of the equal dignity of all human beings is, in my view, what is most valuable about the European spiritual and moral heritage.

2. INFLUENCE OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS AND THE EUROPEAN COURT OF HUMAN RIGHTS IN SPAIN

Undoubtedly, the importance of the European Convention on Human Rights and the case-law developed by this Court in interpreting and applying the Convention – an importance recognised by all – has been felt, and even experienced, all the more keenly by countries such as mine which have undergone democratic transition processes as recently as within the last few decades. For us, the Court's case-law, especially during the early years of the new democratic regime, was an outstanding benchmark and a paramount instrument of democratisation.

Spain ratified the European Convention on Human Rights on 26 September 1979, only a few months after the entry into force of the 1978 Spanish Constitution, itself largely inspired by the Convention.

This ratification was of particular significance because Article 10.2 of the Constitution provides that the fundamental rights and civil liberties enshrined in the Constitution must be interpreted in the light of the international human rights treaties and agreements ratified by Spain. Therefore, following the ratification of the Rome Convention all the *acquis* of this Court's case-law concerning the rights enshrined in the Convention became an essential hermeneutical canon for the construction of the Spanish constitution.

This canon, to which, from our earliest judgments, we have accorded "decisive importance" (STC 22/1981, F.J 3), has proved extremely fruitful for the Spanish Constitutional Court's task of interpretation. Over the past 35 years since it was set up, it has continually and consistently referred to the case-law of the European Court of Human Rights so as to define the content of the rights enshrined in the 1978 Constitution.

It would be hard to fully do justice to the scope of this permeating influence. In purely quantitative terms it has resulted in over 500 judgments of the Spanish Constitutional Court which expressly draw inspiration from Strasbourg. The figures for our case-law concerning *amparo* appeals show that, according to the available studies, approximately 60% of all judgments include references to Strasbourg jurisprudence. In qualitative terms, going more into substance, the results are no less impressive: such crucial rights as equality before the law and non-discrimination[01] (Article 14 of the Spanish Constitution, the "SC"), the right to respect for private and family life[02] (Article 18.1 of the SC), the right to the secrecy of communications[03] (Article 18.3 of the SC), freedom of expression[04] (Article 20.1 of the SC), freedom of assembly and association[05] (Article 21 of the SC), the right to a fair trial, with all its safeguards[06] (Article 24.2 of the SC), the right to defend oneself[07] (Article 24.2 of the SC) or to be presumed innocent[08] (Article 24.2 of the SC), have been defined by our case-law in accordance with the guidelines from Strasbourg.

This overview shows that the Spanish Constitutional Court has taken very seriously the necessary dialogue, as required by Article 10.2 of the Constitution, with the international human rights conventions and agreements and with the organs by which they are guaranteed, and that it has discharged, in an effective manner, the task of reception that was called for by that precept. In this sense then, it is appropriate to say that the Spanish Constitutional Court has espoused the principle of the "binding effect of interpretation" taken from the case-law of the European Court of Human Rights.

The result of this influence and, in general terms the greater internationalisation in the interpretation of the Constitution by the Constitutional Court has given rise, I believe, to a sound and *avant-garde* case-law on fundamental rights. In its turn it has permeated the ordinary courts by establishing in Spain a high and effective level of human rights protection. It is obvious that this situation alleviates the Strasbourg Court's own workload for, through the principle of subsidiarity, it transforms our courts, whether ordinary or constitutional, into the natural and efficient custodians of the rights enshrined in the Rome Convention and the Protocols thereto.

As time passes and our own case-law develops, this task of reception of European case-law has become increasingly dialogue-based and less unilateral, to the point where numerous episodes could well be consigned to a "code of best practice" in matters of dialogue between courts.

I would like to recall one particularly significant episode, concerning the protection of the right to private life and to the secrecy of communications, which gave rise, in the form of a noteworthy interaction, to a succession of judgments by our two courts. The first sequence of the case in question was the judgment of this Court in *Valenzuela Contreras v. Spain*, of 30 July 1998, where the Court found against my country, finding that the regulations on telephone tapping, which were general in nature and incomplete in regulating the conditions of interception, proved inadequate. The Court identified a problem with the quality of the law, which did not clearly establish the cases and conditions in which telephone tapping was allowed, and it found admissible the applicant's complaint about a violation of his right to respect for his private life (Article 8 of the Convention).

01 STC 22/1981, 2 July; or STC 9/2010, 27 April (*hereafter STC = judgment of the Spanish Constitutional Court*)
02 STC 119/2001, 24 May; or STC 12/2012, 30 January.
03 STC 49/1996, 26 March; or STC 184/2003, 23 October.
04 STC 62/1982, 15 October; or STC 371/1993, 13 December.
05 STC 195/2003, 27 October; or STC 170/2008, 15 December.
06 STC 167/2002, 18 September; or STC 174/2011, 7 November.
07 STC 37/1988, 3 March; or STC 184/2009, 7 September.
08 STC 303/1993, 25 October; or STC 131/1997, 15 July.

This Strasbourg case-law was fully assumed by the Spanish Constitutional Court, a few months later, in judgment STC 49/1999 of 5 April 1999, which invalidated the inadequate Spanish legislation, finding it incompatible with Article 18.3 of the Spanish Constitution. However, the Constitutional Court also indicated that the incorporation, by the ordinary courts, of the criteria derived from Article 8 of the Convention, in line with the interpretation of the European Court of Human Rights, would enable, even if the failings of the legislation persisted, the right to the secrecy of communications to be upheld.

A few years later – in 2003 to be precise – the Court found against Spain once again in the case of *Prado Bugallo*, essentially on the same grounds of defective quality of law as that which had led to its first judgment. In spite of the amendment of the legislation in question – section 579 of the Spanish Criminal Procedure Act in its 1988 version – the same shortcomings as those found in the previous text persisted: the offences that could authorise telephone tapping were not clearly defined, such interception was not limited in time, and there were no precautions concerning the manner of making recordings or safeguards to ensure that the intercept evidence reached the defence and the judge intact. While the Court did admit that Spanish case-law – that of the Constitutional Court and, above all, of the Supreme Court – had largely supplemented the legislation in the light of its own jurisprudence, that improvement had taken place after the facts of the case and the defective quality of the law once again led to a judgment against Spain.

The final sequence of this saga can be found in the decision of 25 September 2006 dismissing the *Abdulkadir Coban* application and thus heralding a significant change of attitude with regard to Spain and complaints concerning the quality of its legislation. Even though the impugned shortcomings were still present, the Court took into account the work of the Constitutional Court – of which it cited seven judgments – and of the Supreme Court in order to supplement the relevant legislation, attaching thereto the safeguards established by the Strasbourg case-law, and thus, in that case, rejected the applicant's complaints. In that decision the Court found as follows: "Even though a legislative amendment incorporating into domestic law the principles deriving from the Court's case-law would have been desirable, as the Constitutional Court has itself constantly indicated, the Court finds that section 579 of the Criminal Procedure Act, as amended by the ... Act ... and supplemented by the case-law of the Supreme Court and Constitutional Court, lays down clear and detailed rules, in principle establishing with sufficient clarity the scope and conditions of exercise of the authorities' discretion in such matters". Consequently, despite the persistence of the legislative shortcomings, the Strasbourg Court took into account the incorporation through case-law of the safeguards emanating from its own decisions and concluded that the relevant legislation, as thus supplemented, no longer breached the Convention.

Similar interaction can be found in connection with a subject that is of particular interest to the European Court, since it engages the Court's own authority. I refer to the execution of its judgments.

It is well known that the Rome Convention does not determine the manner in which States must execute the judgments of the Court and the Spanish legislator has not, in spite of a number of calls by our domestic courts, adopted any specific procedure for that purpose.

Spanish constitutional jurisprudence has been proactive in guaranteeing the effective execution of Strasbourg's judgments finding a violation of certain of the human rights protected by the Convention, and has thus partly made good the shortcomings of Spanish legislation in this area. Thus, in judgment 245/1991 of 16 December 1991, the Constitutional Court upheld the applicants' *amparo* appeal and declared null and void the criminal proceedings that had been found, in the *Barberá, Messegué and Jabardo* judgment, to be in breach of fair trial safeguards (Article 6 ECHR). It took the view that this finding of a violation had to have a genuine and effective impact on the right to liberty of the applicants, who, following the trial in question, were serving a prison sentence.

In the same vein, the Constitutional Court supported an interpretation of the Criminal Procedure Act in order to ensure that criminal convictions could be reviewed by the criminal court itself for the purpose of giving effect to judgments of the European Court of Human Rights (STC 240/2005, of 10 October 2005). This position, already asserted by the Criminal Division of the Supreme Court in a decision of 29 April 2004, has now been clearly established by an agreement of that Division to the effect that "for as long as the legal system has no express statutory provision for the effective implementation of judgments given by the European Court of Human Rights determining a violation of the fundamental rights of a person convicted by the Spanish courts, the application for review under Article 954 of the Code of Criminal Procedure will serve such purpose" (Supreme Court decision of 5 November 2014).

Appeals to the legislator by the domestic courts – both constitutional and ordinary – seem to have finally borne fruit as a bill is now before the Spanish Parliament which includes an express provision on the review of final criminal judgments when required by a judgment of the Strasbourg Court.

3. THE SYSTEM AT THE CROSSROADS: THE SO-CALLED "MULTI-LEVEL" PROTECTION OF FUNDAMENTAL RIGHTS

Mr President, the multi-level dimension of the European human rights protection system is now undoubtedly the main challenge for us. A challenge which tests the system's consistency and therefore its own legitimacy in safeguarding rights and fundamental freedoms.

Let us be frank here: if there is one thing which characterises this so-called "multi-level" protection model, it is the fact that it is complex and sophisticated. Last year on this very occasion Andreas Voßkuhle, President of the German Federal Constitutional Court and a good friend of mine, compared that model to a singular work of art, the mobile. On top of the rights recognised in national constitutions are those enshrined in the European Convention on Human Rights and, additionally today, in the member States of the European Union, those proclaimed by the EU Charter of Fundamental Rights. These are superimposing declarations of rights, each relying on the jurisdiction of a court which purports to be its ultimate interpreter.

For all our attempts to minimise the issue, the normative instruments in question are dissimilar and the rights secured therein do not always fully coincide – nor, in some cases, do the interpretations by the various courts. Unavoidably, there have been and will be discrepancies between the various case-law and this will inevitably result in differing levels and standards of protection.

Added to this diversity and relative substantive heterogeneity, the procedural issues are complex: during a single set of proceedings issues of unconstitutionality may be raised before the Constitutional Court, requests for preliminary rulings may be made before the Court of Justice of the European Union and, in the near future, we hope, requests for preliminary rulings of a discretionary non-binding nature may be submitted to the European Court of Human Rights. These are all courts which should, as part of the same system, interact with each other, but which, above all – of course – naturally tend to defend their own jurisdiction.

It is therefore hardly surprising that all this may generate a sense of confusion, or sometimes unease, among our fellow citizens, who fully understand the essential nature and universal vocation of human rights but who find it hard to accept that the content and level of protection vary depending on the court which is responsible for dealing with the case, and that there is no certainty as to which one will adjudicate on that case or when, nor, once the judgment is handed down, as to whether it will be appropriately executed.

This unease of citizens is also, quite often, shared by judges in the ordinary courts who, on account of this multi-level system, have seen their role strengthened and position redefined vis-à-vis their own Constitutional Court. All too often judges are faced with conflicting loyalties and they find themselves at a crossroads with regard to substance and/or procedure, not knowing which way to turn. How is the judge supposed to act when there is some doubt in national law not only as to constitutionality but also as to conformity with both EU law and with the European Convention on Human Rights? What supervisory organ should the judge call upon when he finds that there are different levels of protection in the case-law of his own constitutional court, in the European Court of Human Rights and in the Court of Justice of the European Union? What procedural avenue should be followed: question of unconstitutionality, question for a preliminary ruling, or perhaps both?

The lack of clear and applicable guidelines as regards the connection between both the various protection standards and the different procedural choices generates a worrying sense of uncertainty, compounded by the likely risk of an undesirable increase in the length of the proceedings. The lack of legal certainty and unreasonable delays may well end up undermining the legitimacy of the system.

Sometimes I wonder whether, out of pride in the complexity and sophistication of our model, which lends itself so well to doctrinal hair-splitting and self-referencing debate, we might not have overlooked the ultimate beneficiaries of our protection – those who are the sole justification for our existence and work – the citizens or, more generally, individuals who are the holders of rights and freedoms. As was very clearly stated at a seminar in Madrid by the Advocate General of the Court of Justice of the European Union and Emeritus President of the Spanish Constitutional Court, Pedro Cruz Villalón, the citizens are not responsible for the fact that the European human rights protection system is a multi-level one. The complexity of the system must not burden those whom it seeks to protect and still less limit their right to the effective protection of their rights and freedoms.

The crisis triggered by the recent opinion of the Court of Justice of the European Union on the EU's accession to the Rome Convention will probably prove to be beneficial, because ultimately it will make each stakeholder face up to its own responsibilities. The EU's accession to the European Convention on Human Rights, which – let us not forget – is provided for in the treaties themselves (Article 6.2 of the Treaty on the European Union) will be a landmark in the completion of the system and for the legitimacy and credibility of the Union. However, it needs to take place in the right conditions – to generate solutions rather than new conflicts. Turning a blind eye to problems has never been a way of solving them and there are limits to judicial activism that should not be ignored. The political moment has arrived because the system's problems call for in-depth political decisions which depend directly on those who, within democratic systems, have the task of representing the citizens.

Until such decisions are adopted, I am sure that we, as stakeholders in this complex situation, will proceed with the necessary sensitivity and intelligence in order to avoid or minimise any problems, as we are indeed required to do by our commitment to the protection of human rights. The principles of subsidiarity and institutional balance, and due deference for the role of the other body – which have always guided our action – must, if possible, be strengthened because they form the best guarantee of preventing and avoiding conflict. But when it does occur – conflict being inherent in the very functioning of the system –, experience shows that dialogue conducted humbly, knowledge of each other and empathy are the best means by which to address it.

In the aftermath of the First World War, Thomas Stearns Eliot, a young American poet fascinated by European culture, described the old continent as a "Waste Land", an "Unreal City / Under the brown fog of a winter dawn / A crowd flowed over London Bridge, so many / I had not thought death had undone so many…". The fact that, nearly a hundred years later, our image of Europe is quite different, is largely because, shortly after the atrocities of the Second World War, a handful of visionaries decided to proclaim "Never again!" and, in order to make this a reality, built up a system for the protection of human rights which defines us today as Europeans.

The recent attacks in Paris, which I firmly condemn – in Spain we are all too familiar with the pointless agony caused by terrorism –, highlighted the fragility and vulnerability of our system, which defends itself with difficulty against fanaticism and terror. However, at the same time, those attacks have shown its strength: the strong will of our fellow citizens to live together, with a firm and common desire to reaffirm and stand up for our values, our freedoms and our rights. It is on our shoulders – on those of us all – that this serious responsibility lies today.

Thank you for your attention.