



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

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**The 2021 HELP Network e-Conference:
“HUMAN RIGHTS RESPONSES TO GLOBAL CHALLENGES”**

Strasbourg, 1 July 2021

**President Robert Spano
European Court of Human Rights**

Ambassador Ruz,
Ambassador Kuneva,
Deputy Secretary General,
Dear participants,

It has now become a tradition for the President of the European Court to give the keynote speech to the annual HELP Network conference. This is my second such conference as President of the Court and I am very pleased to be able participate in this hybrid event. To see some of you in Strasbourg with us today is incredibly motivating. Thank you for coming! And for those of you attending online, I hope that soon I will be greeting you in person.

I would also like to thank the Hungarian Presidency, under whose auspices this e-Conference takes place, as well as the dynamic HELP team within the Council of Europe.

Last year, the HELP conference took as its theme the European Convention on Human Rights at 70. Over seven decades, the Convention has become our common language. Although legal traditions differ within the Council of Europe, the Convention nurtures our dialogue. It is a working instrument used by every one of us – by domestic lawyers, prosecutors and judges in the first place, and on an increasingly frequent basis. Then by us in Strasbourg, since that is the role assigned to us by the Treaty.

We all know that the Convention is interpreted as “a living instrument”; this is a result of the evolutive interpretation given to it. Over the last 70 plus years, the text has constantly adapted to present-day conditions, enabling it to remain relevant. It is this crucial ability which equips the Convention to deal with the *global challenges* we are currently facing and the theme for this year’s conference.

For the purposes of my intervention this morning, I would like to highlight three such global challenges of particular relevance to our work: attacks on judicial independence and the rule of law; responses to the global pandemic and the environmental crisis.

Before turning to these, I would like to say a few introductory remarks about the role of HELP in the organisation's next big challenge for the coming decade: making subsidiarity a day-to-day reality.

Quite simply put, the future of the Convention system depends on its relationship with domestic jurisdictions, with you. This should consist of strong dialogue and meaningful, good faith cooperation between the Court in Strasbourg and the national authorities, including national judges, national Parliaments, national bar associations and non-governmental organisations.

In the 2012 Brighton Declaration, it was decided to add a recital to the Preamble of the Convention affirming that the States Parties, in accordance with the principle of subsidiarity, have the primary responsibility to secure the rights and freedoms defined in the Convention and the Protocols, and that in doing so they enjoy a margin of appreciation, subject to the supervisory jurisdiction of the Court. This recital will come into force on 1 August, now that Protocol No. 15 has been ratified by all member States.

Enhancing dialogue with national courts is a crucial aspect of the work of the Court and assists in the implementation of the European Convention at the national level. It was institutionalized six years ago with the creation of its Superior Courts Network.

The network now comprises 93 member courts from 40 member States.

A few weeks' ago, I opened the network's online annual Forum for focal points. We had over 160 participants online which is certainly a record and demonstrates, I believe, the real appetite for dialogue not just with the Strasbourg Court but also horizontally between member courts.

Through the exchange of information on the Court's case-law via the network, we are striving to create what I have called a community of European human rights judges who, each and every one of them, act as 'Strasbourg' judges at the domestic level when faced with disputes raising Convention rights.

HELP plays a very important role in the implementation of the Convention at the domestic level. To act as a Strasbourg judge at the domestic level you need to be trained in the Convention. You also need up-to-date access to case-law. Another crucial aspect of the HELP training modules is that they combine human rights standards from both the Council of Europe and the European Union. In this way they are also contributing to increased coherence within what I have called the 'symbiotic' case law of the Strasbourg and Luxembourg Courts.

I would like to underline the excellent cooperation which the Court and in particular its Registry lawyers have with the development of HELP courses. By participating in this way, human rights experts in the field are able to share their knowledge and produce high class training modules for you.

I am very pleased to see that the Court's Jurisconsult, Anna Austin, will be speaking this morning on the Court's Knowledge-Sharing platform and our plans to open up access of this internal site to the public, first in English and French, and later in many more languages. This will also be an incredibly useful resource for practitioners going forward.

Let me now turn to the first of the global challenges I wish to highlight for today's lecture.

I. Judicial independence and the rule of law

As we all know, the fundamental values of the Council of Europe are increasingly being called into question both at the European and the global level. Institutions which promote multilateralism are also vulnerable to attack, as are domestic and international judges.

This is what the Secretary General of the Council of Europe calls "democratic backsliding"¹ and is evidenced by litigation before the Court of Justice of the European Union and the Strasbourg Court on topics such as judicial independence.

¹ "State of Democracy, Human rights and the Rule of Law: a democratic renewal for Europe", Report by the Secretary General of the Council of Europe, 2021.

As we all know, an efficient, impartial and independent judiciary is the cornerstone of a functioning system of democratic checks and balances. Judges are the means by which powerful interests are restrained. They guarantee that all individuals, irrespective of their backgrounds, are treated equally before the law.

The judiciary is therefore an essential component of democratic societies and a key institution that needs to be protected. As I have said on a number of occasions: *“The principle of the rule of law is an empty vessel without independent courts embedded within a democratic structure which protects and preserves fundamental rights... Without independent judges, the Convention system cannot function.”*

I see a direct link between the HELP programmes and independent judges at the national level.

The new HELP course on judicial ethics is very relevant here. At our annual Judicial Seminar with Presidents of Supreme and Constitutional Courts a few years ago we discussed the importance of establishing confidence in the judiciary and codes of ethics play an important role. Indeed, the Court is itself looking at updating its own Resolution on Judicial Ethics first adopted in 2008.

II. Responses to the pandemic

The second global challenge is hard to ignore. It has affected our daily lives in ways we could not imagine 18 months ago. As individuals and as institutions we have all been called upon to adapt to the unprecedented situation represented by the COVID-19 crisis including the many restrictions on our lives. I see the global challenge then not so much as the pandemic itself but how we, as a society, respond to that challenge.

Courts have also been affected, at the national level and also at the international level. A number of adjustments have been necessary. From the very beginning of the lockdown in France in March 2020, the European Court reacted by taking exceptional measures to extend the time limits for bringing cases before the Court. Our aim was to take account of the difficulties faced by the parties, whilst continuing to carry out our core activities.

I am proud that all the services of the Court ran smoothly during this period and the Court was able to fulfil its public service mission by continuing to deliberate online and adopting cases.

As an international court, one of the most significant achievements has been the organisation of the hearings, which took place by videoconference and which the outside world was able to watch online. This was a major technical challenge for us, yet it enabled our work to continue.

As I have had the opportunity of saying previously, the pandemic is not only a crisis in the sanitary sense. It is a crisis for the further development of European democracy, the rule of law and for the protection of human rights.

The pandemic has put pressure on member States to fulfil their positive obligations to protect life and health. There exists, consequently, the risk of the pandemic being used as a pretext for abusing public power, imposing measures on the populace which, although intuitively persuasive in the face of an unprecedented threat to human life and well-being, is upon a closer look a manifestly disproportionate overreach which threatens the fundamentals of democratic life, societies governed by the rule of law and the protection of human rights.

Crisis situations, such as the current pandemic, should not be used as a pretext for restricting the public's access to information or clamping down on certain journalists whose views are critical of the governing powers. On the contrary, in times of crisis we need more access to reliable information. Balance is key.

Let me now turn to my third global challenge: the environment.

III. The environmental crisis

No-one would deny that environmental concerns have become more important nationally and internationally since the Convention was first adopted 70 years ago. As the Court stated in a judgment against Sweden already in 1991: *“In today’s society the protection of the environment is an increasingly important consideration”*.² Indeed, since the 1990s the Court has interpreted the rights enshrined in the Convention so as to take into account environmental issues.

The Court has developed a rich case-law on environmental issues under certain articles of the Convention, most importantly, the right to life; the right to private and family life; access to court; the right to property and freedom of information. This environmental human rights jurisprudence is contained in the new HELP course on the subject.

² *Fredin v. Sweden (no. 1)*, 18 February 1991, Series A no. 192

One challenge which we face as judges is climate change litigation which is increasingly brought before domestic and international courts. A few such cases are pending before our Court and more may be on the way.

The Council of Europe is currently reflecting on what role it should play to give a new impulse to protecting the environment. The path taken will be very important for the way in which the law will eventually develop. This is an area to follow closely.

I will now conclude my intervention by congratulating the HELP network and encouraging its continued expansion. The growing interest in the HELP courses, which has expanded considerably during the global pandemic, testifies to the real need for excellent quality training materials on European human rights standards. In this way the European community of human rights judges is step by step becoming a reality.

Thank you.