



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

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## **Independence of Justice and Rule of Law**

*Strasbourg, 9 November 2020*

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

**Monsieur le Ministre de la Justice de la République Hellénique,**  
**Madame la Secrétaire Générale du Conseil de l'Europe,**  
**Monsieur le Président de l'Assemblée parlementaire,**  
**Monsieur le Commissaire européen,**  
**Monsieur le Président de la Commission de Venise,**  
**Monsieur le Président de la CEPEJ,**  
**Mesdames et Messieurs les Ministres,**  
**Excellences,**

La Présidence grecque du Comité des Ministres touche à sa fin et je me réjouis de participer à ce dernier et grand événement qu'elle organise.

Celui-ci est particulièrement important à mes yeux et ce, pour deux raisons.

D'abord, il rassemble les ministres de la justice dont le rôle est fondamental dans le cadre des travaux du Conseil de l'Europe.

Ensuite, le thème principal que vous avez choisi, à savoir l'indépendance de la Justice et l'État de droit, se trouve consacré dans l'une des dispositions centrales de la Convention européenne des droits de l'homme, l'article 6, si souvent invoqué, qui garantit le droit au procès équitable. L'État de droit est d'ailleurs un concept inhérent à tous les articles de la Convention. Surtout, l'indépendance de la Justice et l'État de droit inspirent et guident toute notre jurisprudence. Ces notions figurent au premier rang des priorités de ma présidence.

Ladies and gentlemen,

An efficient, impartial and independent judiciary is the cornerstone of a functioning system of democratic checks and balances. The judiciary's fundamental role in a democracy is to guarantee the very existence of the Rule of Law. In a democracy all persons and State authorities are bound by the law. Without the rule of law there can be no effective democracy. These are the constitutional cornerstones of the Convention system. They must not be destroyed or undermined.

Allow me now to clear up a misunderstanding I often hear. It is to consider judicial independence as sufficiently guaranteed under the Convention by formal, legal or *de jure* independence. No, that is not

sufficient. No less important is the actual or *de facto* independence of judges. What does this mean? It means that Governments cannot control the courts, the Convention does not tolerate such actions. And furthermore, no external pressure can be placed on judges while exercising their legitimate and constitutionally mandated functions. Legally adduced evidence of such pressure may be viewed very critically in cases before the Strasbourg Court. Governments have to abide by the law and by judgments which interpret those laws whether they subscribe to certain outcomes or not, including judgments of the European Court. That is the core, the quintessence, of the Rule of Law.

As President of the Court I will continuously stress the importance of the existence of an independent European community of judges, in which the notion of the separation of powers between the executive and the judiciary is scrupulously respected. As I have stated in a recent public speech, and I quote:

“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.”

The Convention system relies in other words on strong domestic courts, which are both *de jure* and *de facto* independent, embedded within a national system governed by the rule of law. The topic you have chosen for today's

conference is therefore central to the very success of the Convention system itself.

Dear Ministers of Justice,

I hope and trust that today, all of you, will convey your good faith engagements with the principles of judicial independence I have outlined and which flow from the Court's case-law. Because the Rule of Law under the Convention is non-negotiable, it is not a concept that varies from State to State, it is not a concept determined by national ideology or traditions. On the contrary it transcends boundaries and borders. It is a collective European commitment that you have all signed up for. Continue to honour your promise.

Thank you for your attention.