



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

Judicial Seminar 2018
Strasbourg, 26 January 2018
Opening words by Paul Lemmens
ECHR

Dear President, dear Guido, thank you very much.

I will not take the floor for too long. We have a full programme before us.

1. I too would like first of all to extend a warm welcome to our guests, particularly our colleagues from the European judicial sphere. From my vantage point up here I can clearly see that the *crème de la crème* of the judicial world have honoured us with their presence. I hope that our seminar will be an opportunity not only for learning from each other but also for renewing the friendships which have grown up among us.

Our President has said that our annual seminar is the expression of our intention to dialogue with our colleagues from the national courts. But this year there is perhaps also another reason for attaching major importance to this event.

The Organising Committee, which I have the honour of chairing this year, has been struck by the increasing numbers of challenges to the authority of our countries' judiciaries. Some of these challenges might better be described as "assaults" on the judiciary, its institutions and its representatives. Our Court's case-law (already) contains a number of examples of such invective. Fortunately attacks are the exception rather than the rule. What is happening to the judiciary should, in a way, come as no surprise. In these post-modern times, authority is in universal decline. Moreover, sincere criticism can be highly beneficial. The judiciary is no exception. However, accusations are not always made in good faith, which is how the judiciary sometimes ends up being targeted by the media, the legislature, the executive, and other groups.

The severity of the attacks on the authority of the judiciary might sometimes lead us to wonder whether the rule of law, of which the judiciary is one of the primary guardians, is still in a position to operate as we expect it to, or will continue to do so in the future. The Secretary General, Mr Jagland, will no doubt mention that link-up with the rule of law, which he highlighted in his last Annual Report on the state of democracy, human rights and the rule of law in Europe.

Furthermore, it is not only the national courts which are undergoing a difficult period. Here in Strasbourg we are very much alive to this problem. We welcome constructive criticism. But we

note that some States sometimes have purely political reasons for refusing to accept certain judgments delivered by the Court, and that in such cases prominent politicians tend to disparage the Court as an institution.

We are all in the same boat.

We felt that the time had come to take stock of the authority of the judiciary, of its rights and obligations, and of how it can defend itself against unjustified attacks. This annual seminar at the Court provides an opportunity for holding a kind of “European judicial summit”. Not in order to become a European judicial trade union, far from it, but to consider how the courts and the judges can best fulfil their mission in the service of our citizens, endeavouring to honour their fundamental obligation of independence and impartiality.

2. I would now like to explain briefly the structure of our programme.

In a minute, we will hear Secretary General Jagland, who will draw the overall picture from the point of view of the Council of Europe. This is obviously a wider point of view than that of, say, our Court. It is important to see the problems faced by the judiciary in a wider context. We are very happy that the Secretary General has been able to join us.

We will then turn to the two themes of our meeting.

In the first part, we will discuss the *challenges* to the authority of the judiciary.

There are many challenges, but we will focus on those that come from other State actors. The authority of the judiciary is to be preserved in a system based on the *separation of powers*. An old concept, but what does it mean nowadays? How does the judiciary fit into such a system? Marta Cartabia will present a report on this issue.

When we speak of challenges to the authority of the judiciary we are, in a sense, speaking of the “rights” of the judiciary, and of the need to respect those rights. But we should not forget that rights bring with them “obligations”, “duties”, “responsibilities”. The European Court regularly states that “the courts [must] inspire confidence in the public”. This is a task for all the branches of State power, including the courts themselves. The whole idea of subsidiarity, a cornerstone of the European Convention on Human Rights, is also based on the presumption that the domestic courts are functioning properly. But what are the quality standards for courts and the standards of conduct for judges? And can courts and judges be held accountable for their acts? Bruno Pireyre will explore these issues.

For this first theme there will also be a presentation by a judge of our Court. What can *our case-law* offer as regards the position of courts and judges, from the point of view of the rights and expectations of those who make use of the public justice service? Pere Pastor Vilanova will share with us his views on these issues.

After the coffee break we will turn to our second theme: the *responses* to the challenges.

A response is a *reaction* to something that troubles us. But the judiciary is a sector where discretion and restraint are important values. So, is there room for courts and judges to defend themselves against challenges to their authority? Are there institutional mechanisms that can

defend courts and judges? And what about the individual judges: can they stand up for the judiciary and, if necessary, for themselves? This is an area in which there have been considerable developments in recent decades. Martin Kayser will explain to us what can be done.

A response is one thing, but maybe the judiciary should also be *proactive*. How does it present itself to the public? We know that we often use language that is difficult for a layperson to understand. And apart from our hearings and our judgments, our work is not performed in the open. Is it surprising then that there are a lot of misunderstandings about what exactly we are doing, and why we decide things in one way and not another? Good communication can perhaps help to avoid such misunderstandings, even to inspire confidence in the public. But do we have sound communication strategies? We will hear about some good practices from Radmila Dragičević Dičić and Dace Mita.

3. Dear colleagues, this seminar is not one where we want to discuss with you a particular aspect of *our* case-law and are eager to hear your views on it. Today, we are discussing a topic of truly “common” interest, and we hope that we can learn from each other about how to face the challenges to the judiciary, and ultimately to the rule of law.

I should perhaps say one thing about how we will proceed. The seminar will be recorded, and the video recording will soon be published on our website. This will allow others to benefit from our exchange of ideas.

Some courts have sent us written contributions. You will find them on the USB stick that you received. We very much appreciate these contributions. This format allows the courts to express more than can be said during an oral intervention. I would like to invite all of you to take a close look at these contributions. And I would like to thank the courts that made the effort to provide us with their views and suggestions: the Belgian *Conseil d'État* (which even sent two contributions), the Supreme Court of Cyprus, the Greek Supreme Administrative Court, the Turkish Court of Cassation, the Supreme Court of Ukraine, the Procurator General of Ukraine, and the Supreme Court of the Slovak Republic. We also received a contribution from the International Association of Judges.

Before ending my introduction, I would like to mention a few people who have been particularly helpful in the organisation of the seminar: John Darcy, who coordinated everything in the Registry; Rachael Kondak and Valentin Nicolescu, who drafted the background document containing a presentation of relevant cases from our Court's case-law – this gives a good overview of the problems encountered by judges and the protection offered by the European Convention; Valérie Schwartz, who is responsible for all the administrative aspects of the seminar; and many others whom I am not able to mention individually. My warm thanks to them on behalf of the organising committee and, I am sure, on behalf of all of you.

And thank *you* for your kind attention. I am looking forward to a stimulating exchange of views.