



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

131st Plenary Session of the European Commission for Democracy through Law (Venice Commission)

Speech by Robert Spano

Venice, 17 June 2022

President Bazy Malaurie,
Esteemed Members of the Venice Commission,

It is an immense honour for me, as President of the European Court of Human Rights, to participate in your 131st Plenary Session. This is particularly the case as the COVID-19 pandemic prevented me from participating in your 30th anniversary meeting in 2020. What is quite clear is that for 32 years now, the Venice Commission has proved without any shadow of a doubt its pre-eminence in the task of “constitutional engineering”.¹

My presence today demonstrates the close and effective synergies between our two institutions. How does this manifest itself?

Firstly, many Court judges have, before joining us, been eminent members of your Commission. They have retained a particular affection for your respected institution.

Moreover, at the end of their mandate, some Strasbourg Court judges have also joined your Commission, thus bringing to your work the experience acquired at the Court. I am particularly pleased to see here this morning Angelika Nussberger, my good friend and former Vice-President of the Court. I know that her wisdom and knowledge will be very beneficial for the Venice Commission.

Secondly, and in terms of the adjudication of cases, the Court seeks the opinion of the Venice Commission as *amicus curiae* in pending cases. This shows the high regard in which you are held. This has already happened seven times, mostly recently in the 2020 Grand Chamber case of *Mugemangango v. Belgium*². I would add that the Court, on its own initiative, has cited the work of the Venice Commission in more than 200 cases.

Last but not least, the Venice Commission references the Court’s judgments in its opinions and studies thereby helping to spread knowledge about the Court’s case-law.

I agree with those who have characterised the relationship between our two institutions as one of cross-fertilisation. I will come back to this point later in relation to current challenges.

The work of the Venice Commission complements that of the Court. This is done in two ways. Firstly, upstream: the anticipatory work done by the Venice Commission prevents many cases from being

¹ Pieter Van Dijk and Ben Vermeulen, “Thirty Years of Constitutional Cooperation: The Synergy Between the European Court of Human Rights and the Venice Commission” in “Venice Commission: thirty-year quest for democracy through law : 1990–2020”

² *Mugemangango v. Belgium* [GC], no. 310/15, 10 July 2020

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brought before the Court. The Strasbourg Court is based on subsidiarity. If a remedy is provided at domestic level, cases will not be brought before the European Court of Human Rights. Where such a remedy is available before the Constitutional Court and is effective, human rights are better protected.

Then, once the Court has ruled, the Venice Commission may intervene downstream to ensure that the necessary legislative amendments have been adopted. The Venice Commission may also be called upon to give its opinion on matters related to the execution of Court judgments. Here I am thinking of two opinions given in recent years respect of the execution of Court judgments by the Russian Federation at the request of the PACE's Legal Affairs Committee³.

This is an illustration of the principle of shared responsibility which is one of the keys to the success of the European human rights protection system. Shared responsibility with the States, of course. But also with institutions such as those within the Council of Europe which bring the values of the Organisation to life and ensure its effectiveness.

As has been said, the Court is not an island. This type of cross-fertilisation is beneficial for all. Indeed, in these challenging times, the need for all of us to work together, create synergies and cooperation, has become more important than ever. Firstly, the international-rule based order is now under threat due to recent events. Secondly, increased fragmentation of international law must be avoided. Thirdly, it is clear that we need to get back to first principles, reinvigorate the tripartite foundations of the Council of Europe, democracy, the rule of law and human rights. The work of the European Court of Human Rights and of the Venice Commission has been and will continue to be crucial for these purposes.

Since 2015, the Court has also shared something else in common with the Venice Commission. Over the years, you have built up what is undoubtedly the most accomplished network in constitutional law, not only in Europe, but worldwide.

We have followed your example by creating a network of superior courts, called the "SCN". On 13 April this year the SCN welcomed the Constitutional Court of Lithuania, bringing membership to 102 courts from 45 countries. As I have said, this network is a very robust tool for the principle of subsidiarity and continued dialogue between national courts and the European Court. It allows national judges to become familiar with our case-law and working practices. Many of the member courts of our network are also part of yours, and I am delighted at this fine complementarity.

At the beginning of my speech I referred to the topic of the independence of the judiciary as an example of recent cross-fertilisation. Over the last year or so the Court has delivered a number of judgments relating to this topic quoting and relying on the opinions of the Venice Commission⁴.

The recent Grand Chamber judgment of *Grzęda v. Poland*⁵ from March this year dealt with the premature termination of the term of office a judicial member of the national council of the judiciary (NCJ), the body which is in charge of judicial independence and plays a fundamental role in the judicial appointment procedure. The Polish government claimed that the Polish Constitutional Court judgment of 20 June 2017 gave the Parliament authority to change the method of election of judicial members the NCJ and to terminate prematurely the term of office of the sitting judicial members. The Venice Commission gave an important opinion on this law upon which the Court relied agreeing with the Commission that the Constitutional Court did not specifically require the termination of the terms of office of the sitting judicial members of the NCJ and that there were alternative solutions to the premature termination. The Court referred the Venice Commission view that the judicial

³ See opinions CDL-AD(2020)009 and CDL-AD(2016)016.

⁴ see *Xero Flor w Polsce sp. z o.o. v. Poland*, no. [4907/18](#), 7 May 2021; *Broda and Bojara v. Poland*, nos. [26691/18](#) and [27367/18](#), 29 June 2021; *Reczkowicz v. Poland*, no. [43447/19](#), 22 July 2021; and *Dolińska-Ficek and Ozimek v. Poland*, nos. [49868/19](#) and [57511/19](#), 8 November 2021; see also *Advance Pharma sp. z o.o v. Poland*, no. [1469/20](#), 3 February 2022,

⁵ *Grzęda v. Poland* [GC], no. 43572/18, 15 March 2022

members of the NCJ were entitled to serve a full term of office. Moreover, the Court noted that the authorities were required to ensure the independence of judicial councils and referred in this respect *inter alia* to the Commission report on the Independence of the Judicial System Part I: the Independence of Judges and the Rule of Law Checklist.

This one example provides ample evidence of the way in which the work of the Venice Commission feeds into the Court's reasoning in a very concrete way.

Let me conclude by reiterating that close synergies between our two bodies can only be mutually beneficial and reinforce a global system of human rights protection in Europe.

Thank you.