



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

## Address to the Parliamentary Assembly of the Council of Europe

### Speech by Síofra O'Leary

25 April 2023

President Kox,  
President of the Committee of Ministers,  
Secretary General Chatzivassiliou,  
Honourable Members of the Parliamentary Assembly,  
Dear Ambassadors,

It is both an honour and a privilege to address you this afternoon in my capacity as President of the European Court of Human Rights.

The symbolism of addressing you in the hemicycle on this side of the River Ill is notable. Creating more deliberate and productive synergies between the Council of Europe and the European Union and between the Assembly and the Court can only lead to a more harmonised European political and legal space and, with it, to greater peace and stability. That is, after all, what our work is all about.

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Your dual membership of this European Assembly and national parliaments is essential for the smooth functioning of the Convention system and for fostering an effective human rights culture across the Council of Europe.

National parliaments are well placed to participate in human rights protection because of their representative, legislative and oversight functions.

*Firstly*, you enjoy democratic legitimacy and your work as elected representatives constitutes a fundamental element of the “European public order”. Many Convention rights seek specifically to protect your vital work and to safeguard the foundations of an effective and meaningful democracy governed by the rule of law.<sup>1</sup>

*Secondly*, as lawmakers you can ensure that measures are taken to prevent human rights violations and that domestic remedies are available if such violations occur.

*Thirdly*, you oversee the Executive and scrutinise your governments’ compliance with Convention obligations, not least respect for Strasbourg Court judgments and decisions.

The Court, as I hope you know, is very attentive to national legislative processes.

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<sup>1</sup> See [Karácsony and Others v. Hungary](#) [GC], nos. 42461/13 and 44357/13, 17 May 2016, § 141.

In the seminal case of *Animal Defenders v. the United Kingdom*<sup>2</sup> - which concerned a statutory prohibition on paid political advertising - the key question was whether such interference with freedom of expression was 'necessary in a democratic society'.

In finding no violation, the Court took into account the fact that the legislation in question had undergone extensive examination by the UK Parliament, had enjoyed cross-party support and had been assessed in-depth for its compatibility with the Convention by the UK courts.

In a room full of national Parliamentarians, from 46 different States, it is worth stressing the following passage from that 2013 judgment:

"[...] there is a wealth of historical, cultural and political differences within Europe so that it is for each State to mould its own democratic vision. [...] By reason of their direct and continuous contact with the vital forces of their countries, their societies and their needs, [national] legislative and judicial authorities are best placed to assess the particular difficulties in safeguarding the democratic order in their State."

By adhering to and strengthening the principle of subsidiarity, the Court creates incentives for member States to do a better job fulfilling their obligations under Article 1 of the Convention – namely securing to everyone within their jurisdiction their human rights and freedoms.

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National parliaments also have a special role to play in relation to the implementation of the Court's judgments; a point underlined in the report<sup>3</sup> you will debate tomorrow.

Unexecuted judgments undermine the authority and functioning of the Convention system. Where the root cause of a systemic problem at national level remains untreated, the Court continues to receive applications – often in their hundreds and thousands – and continues to find violations which stem from that systemic or structural problem.

But a Court encumbered with repetitive applications is not a Court allowed to perform the vital role which is ours in guaranteeing that European societies are and remain democratic societies underpinned by the rule of law.

As explained in our memorandum in preparation for the Fourth Summit, close to 80% of our current case-load – which is over 76,000 applications – relates to legal questions the subject of well-established case-law or purely repetitive applications.

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From the perspective of the Court, the Parliamentary Assembly also plays a particularly crucial role when electing judges in accordance with Article 22 of the European Convention; something which you are engaged in today.

It cannot be said often enough: the quality of the Court and its case-law depends on the quality of the independent and impartial judges elected by you to perform that role. Your scrutiny of

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<sup>2</sup> *Animal Defenders International v. the United Kingdom* [GC], no. 48876/08, ECHR 2013 (extracts).

<sup>3</sup> "Implementation of judgments of the European Court of Human Rights", Report, Committee on Legal Affairs and Human Rights, Doc. 15742, 11 April 2023.

candidates is therefore essential. Your involvement provides democratic legitimacy to the Court and should defuse *ab initio* general, at times cleverly framed, but unsubstantiated and far-fetched allegations about lack of independence and impartiality of Court members.

It cannot either be said often enough – and forgive me for underlining something so elementary – when national selection bodies provide the Advisory Panel and the Assembly with a list of three excellent candidates, the election of an excellent judge naturally ensues.

When performing your Parliamentary function you have elected judges from different judicial, academic and civil society backgrounds; which has proved a source of richness and balance in the Court for decades.

As you are aware, the terms of office of four sitting Judges<sup>4</sup> have expired, in two cases by over a year and a half. In 2024, 12 sitting Judges will come to the end of their mandate<sup>5</sup>.

It is evident that delays in the selection and/or election process risk bringing the efficient functioning of the Court, to which I am devoting my presidency, to a standstill. I thank the President of PACE and the Secretary General most warmly for their consistent efforts in this regard.

The more efficient and transparent the process of selection and election, the less room we leave for unjustified attacks whose goal – let me be very frank – may be other than securing the independence and authority of the Court.

In this regard let me also reassure you that my defence of the Court and its work leaves ample room for institutional self-criticism, ongoing reflection and reform, in which I and my colleagues are constantly engaging.

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In the run up to the Fourth Summit, where questions relating to the accountability of Russia will be central to discussions, it is worth reiterating that the Court is the only international tribunal currently dealing with human rights issues related to the ongoing war in Ukraine. It is also the only international court which is examining, at the merits stage, events in Ukraine dating back to 2014 and up to the full-scale invasion in February 2022.

As I emphasised to the Committee of Ministers less than two weeks ago, the role of the Court should not be overlooked in any declarations on accountability which may emerge from the Reykjavik Summit.

The tragic events in Ukraine, the expulsion of Russia from the Council of Europe, the crippling of dissent and civil society in that former Member State and the forces which gave rise to these events, remind us what happens when democracies break down or when its roots are so fragile that they can easily be upended.

They should also remind us of the value of the precious instrument which is the European Convention on Human Rights left to us by our forefathers and foremothers.

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<sup>4</sup> Namely the Judges elected in respect of Lithuania, Poland, Bosnia and Herzegovina and Romania.

<sup>5</sup> Namely the Judges elected in respect of Andorra, Armenia, Austria, Bulgaria, Finland, Ireland, Latvia, Lichtenstein, Luxembourg, Monaco, Serbia, and the Slovak Republic.

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Next month's Summit comes at a crucial moment for Europe's rules-based order. I will be honoured to represent the Court and will engage in bilaterals concerning the functioning of the Court and the Convention system on that occasion.

For over 60 years the Court has dealt with well over 1 million applications, handing down almost 26,000 judgments. Those judgments have saved many lives, transformed many thousands of others and contributed to positive societal changes across our member States.

A detailed update regarding the current case-load situation is available in the speech I delivered to the Committee of Ministers and which the Secretary General can make available to you.

In the Court's memorandum in preparation for the Summit,<sup>6</sup> we focus on four issues – safeguarding the Convention system, resources, accountability, and execution (two of which I have already referenced).

At the Summit, the Court is seeking a **renewed commitment from the Contracting States to the Convention system** and to the binding nature of Court judgments and decisions. We thank the Assembly for seeking the same in its January Recommendation<sup>7</sup>. And allow me to salute the work of my compatriot, Deputy O'Loughlin, and her team, in this regard.

Beyond renewed political commitment, the Court is also calling for **sufficient and sustainable financial resources to enable us to exercise effectively our judicial function** and to handle the caseload expeditiously.

We call on you, and on the Heads of State and Government, to translate the discourse of values into material and political support. In the words of the previous President of the Committee of Ministers – “if not now, when?”

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Chers membres de l'Assemblée parlementaire,

La guerre d'Ukraine, par ses effets humains et matériels et ses répercussions géopolitiques à l'échelle du Monde, fait peser un risque majeur sur le système de valeurs communes qui lie les États du Conseil de l'Europe et nos peuples.

Au fil des ans, ce système conventionnel, qui avait été imaginé par les esprits les plus éclairés du XX<sup>ème</sup> Siècle, est devenu le plus sophistiqué pour la sauvegarde de la démocratie et l'état de droit que l'Humanité ait jamais connu.

Mais ce système peut être fragilisé face à des forces externes animées par des dynamiques totalement différentes et fonctionnant selon des règles bien moins contraignantes.

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<sup>6</sup> See the memorandum, adopted by the Plenary on 20<sup>th</sup> March 2023 at [https://echr.coe.int/Documents/Memorandum\\_Summit\\_Reykjavik\\_2023\\_ENG.PDF](https://echr.coe.int/Documents/Memorandum_Summit_Reykjavik_2023_ENG.PDF). See also the Court's input for the High Level Reflection Group of the Council of Europe - <https://rm.coe.int/report-of-the-high-level-reflection-group-of-the-council-of-europe-/1680a85cf1>.

<sup>7</sup> Recommendation 2245(2023): The Reykjavik Summit of the Council of Europe: United around values in the face of extraordinary challenges, 24 January 2023.

Si on ajoute à cette pression externe certains signes alarmants de « fatigue » voire d'« érosion » démocratique à l'intérieur même de nos pays, la menace qui pèse sur notre modèle de société, je le dis avec toute la gravité qui s'impose, est une menace existentielle.

Votre Assemblée, « notre Assemblée », et notre Cour, « votre Cour », sont au cœur de ce système de protection.

Je peux vous assurer que la Cour garde le cap du système conventionnel, qui fait de vos juges nationaux les premiers et plus importants juges de la Convention.

Elle garde le cap sans fléchir, consciente aussi de la responsabilité historique qui est la sienne, malgré la modestie de ses moyens et malgré les attaques infondées (et parfois virulentes) dont elle fait l'objet et auxquelles, en tant que juridiction, elle ne peut pas répondre.

Elle garde le cap grâce à l'action infatigable des juges et des agents du Greffe, que je voudrais saluer ici, et qui mènent leur mission sans hésitations et dans le respect de leur serment.

Je ressens – de par votre invitation – tout le soutien que vous portez à cette institution et à son œuvre, et je vous en suis profondément reconnaissante.

Je vous remercie de votre attention.