



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

Solemn hearing

Opening of the Judicial Year 2024

Speech by Síofra O'Leary

President of the European Court of Human Rightsⁱ

Strasbourg, 26 January 2024

Distinguished Presidents of Constitutional and Supreme Courts,
Chair of the Ministers' Deputies,
Secretary General of the Council of Europe,
Commissioner for Human Rights,
Excellencies,
Ladies and Gentlemen,

At Court and Council of Europe level, 2023 was marked by a historic fourth summit. In their Reykjavik Declaration, the 46 Heads of State and Government reaffirmed:

“[t]heir deep and abiding commitment to the European Convention on Human Rights and the European Court of Human Rights as the ultimate guarantors of human rights across our continent, alongside our domestic democratic and judicial systems”.¹

Tonight, I have the honour of delivering this address on behalf of the 45 Convention Judges by whom I am flanked.

I address you not merely in your capacity as national superior court judges but also as Convention judges, to whom it primarily falls to ensure that your national authorities comply with the obligations to which they have sovereignly subscribed by ratifying the European Convention on Human Rights.

We are conscious that you have travelled from far and wide and are grateful that your presence here tonight is testimony to your own commitment to the soon to be 75-year-old Convention system.

We meet at a time when that system – whose character is at once fragile and resilient – is again being called into question. And yet, paradoxically, we are ever more conscious, as we survey the situation in Europe and on the world stage, of the need to safeguard the three fundamental

¹ Reykjavik Declaration, Summit of the Council of Europe United around our values, 16-17 May 2023, p. 4.

principles which underpin this system - democracy, the rule of law and human rights - whatever the legal basis relied on.

After providing you with a brief overview of our judicial activity in 2023 (I), I would like to touch on a societal problem which continues to be too vividly and brutally reflected in our case-law and from which none of our societies appear to be immune (II). I will then extract some key themes from four landmark judgments handed down last year (III) before introducing you to our keynote speaker, Commissioner Reynders, who we warmly welcome to the Human Rights Building (IV).

• • •

(I)

As 2024 dawned, the number of applications pending before the Court, although high (68,450), has decreased significantly, compared to the close of 2022 (when over 74,000 applications were pending).

In the past year the Court dealt with 38,260 applications and handed down judgments in respect of 6,900 of them (a 66 % increase on 2022). Approximately 6,400 applications were decided by Committees of three judges; while Single-judges dealt with a further 25,834 applications. Over 16,600 applications were communicated to respondent States.

75% of pending applications originate from the same five States I listed last January, namely Türkiye (23,400 applications), the Russian Federation (12,450), Ukraine (8,750), Romania (4,150) and Italy (2,750).

Fortunately, the past year ushered in some new developments and even green shoots.

Firstly, the number of applications pending against the Russian Federation when its membership ceased has been reduced from over 17,000 to 12,450. Additional Committees, operational across all five Sections, have adopted judgments or decisions concerning 5,300 applications and communicated a further 9,400.

Secondly, thanks to greater recourse to Committees and successful use of the friendly settlement procedure, the Italian docket has fallen from 3,531 to 2,750 applications.

Finally, in September, the Grand Chamber handed down a judgment in a leading case against Türkiye. It identified violations of Articles 7 and 6 § 1 of the Convention stemming from a systemic problem in cases tried in the aftermath of the attempted coup d'état.² A first batch of 1,000 follow-on applications, of which there are approximately eight thousand, has since been communicated.

In 2023 we engineered the necessary quantitative and qualitative shift in judicial work at Chamber and Committee levels. This is with a view to allowing Chambers more time and space to deal with the new and complex legal questions raised in many of the cases pending before them, while ensuring that Committees can increase judicial output and expedition where the existing well-established case-law and a given case so permit.

2023 was also a year characterised by procedural reflections and reforms.

A new Practice Direction sought to clarify the manner in which third parties can intervene in cases pending before the Court.³ Five years after the entry into force of Protocol No. 16, the Court updated its guidelines for domestic courts considering whether to request an advisory opinion.⁴ The

² *Yüksel Yalçinkaya v. Türkiye* [GC], no. 15669/20, 26 September 2023.

³ [European Court clarifies third-party intervention \(coe.int\)](https://www.coe.int/en/e/courdec/humanrights/european-court-clarifies-third-party-intervention).

⁴ [Updated Guidelines on implementation of advisory opinion procedure under Protocol No. 16 to the Convention \(coe.int\)](https://www.coe.int/en/e/courdec/humanrights/european-court-updates-guidelines-on-advisory-opinion-procedure)

Rules of Court now also contain a new rule on the treatment of highly sensitive documents. This responds to calls from High Contracting Parties, some of which had been involved in previous cases where the question of such access arose.⁵

Rule 28, which governs recusal, was clarified and consolidated following a consultation with stake-holders. A new Practice Direction issued last week seeks to ensure greater transparency and confirms the paramount importance attached to the independence and impartiality of the justice rendered by this Court.⁶

Which leaves me just a few, but very necessary, minutes to devote to interim measures.

When issuing interim measures, which it does in exceptional cases where there is an imminent risk of irreparable harm, the Court exercises its jurisdiction to ensure observance of the engagements undertaken by the High Contracting Parties in the Convention and Protocols thereto, in accordance with Article 19 of the Convention.

It is important to recall that a failure by a respondent State to comply with interim measures undermines the effectiveness of the right of individual application guaranteed by Article 34 of the Convention. It also undermines the formal undertaking of the State in question in Article 1 to protect the rights and freedoms set forth in the Convention.⁷

Last year, I expressed grave concern that some Contracting States are prepared to flout international rule of law requirements, disregarding the issuance of interim measures and seeking to undermine the authority of the Court by questioning its jurisdiction to so issue.

Today, our concern should be heightened. This is because the criticism previously directed at this Court is now, in certain quarters, redirected at national judges. National judges who act in accordance with the rule of law, perform their essential judicial role, comply with their fundamental obligations under national law, the Convention system or other instruments of international law and uphold the right to effective judicial protection, preserving individual rights to physical integrity, liberty and life itself.

Responding to recent attacks on what he referred to as the “European legal order” - to which you, we and the members of the CJEU here present all belong - the President of the French Conseil Constitutionnel emphasised this month that:

“The notion of the rule of law underpins the entire European approach, whether at continent-wide level ... in the context of the European Convention ... or at European Union level. Let us not lose sight of the stability, credibility and influence that the European dimension confers on our countries.”⁸

Showing contempt for judicial decisions adopted by independent and impartial courts, whether at national or international level, is never the solution in a democratic State governed by the rule of law.

The binding nature of interim measures does not of course mean that the Court does not listen to those who call on it to review its decision-making processes. Nor does it mean that it is not attuned to attempts by parties on either side to instrumentalise the Court. Consultations are ongoing on

⁵ See, for instance, *Al Nashiri v. Poland*, no. 28761/11, §§ 17-40 and 360-376, 24 July 2014, and *Yam v. the United Kingdom*, no. 31295/11, §§ 79-83, 16 January 2020. See also Press release [ECHR 296 \(2023\)](#) 30.10.2023 “European Court introduces new rules on highly sensitive documents – new Rule 44F and amended Rule 33 § 1”.

⁶ See [Press release](#).

⁷ See, for example, *K.I. v. France*, no. 5560/19, §§ 115 – 116, 15 April 2021.

⁸ <https://www.conseil-constitutionnel.fr/actualites/ceremonie-de-voeux-du-president-de-la-republique-au-conseil-constitutionnel-4>.

clearer codification of the Court's well-established case-law on Rule 39, greater transparency has been introduced in decision-making since last December and a revised Practice Direction, clarifying the Rule 39 process will be published once the consultation and codification are complete.⁹

Finally, returning to the Reykjavik Declaration, I thank wholeheartedly your States for having translated political support for the Convention system and the values it upholds into the provision of more sustainable financing. As we, the Judges of this Court, had so clearly indicated, this is necessary to enable us to exercise our judicial mission.

• • •

(II)

Before turning to some of this year's jurisprudential landmarks, I would like to turn a spotlight on cases which address endemic and pervasive forms of violence, too often shielded from the glare of the law and public exposure. This is because of where the violence occurs or the feelings of fear and shame it seeks to instil. Its victims are silent members of our own communities, perhaps even of our own families, with geography, age, social class or education providing no form of protection or immunity.

I am of course referring to domestic and gender-based violence.

Over the last two decades, starting with *Opuz v. Türkiye*,¹⁰ the Court has developed a rich body of case-law pursuant mainly to Articles 2, 3, 8 and 14 of the Convention, which seeks to protect and compensate individual victims and contributes to greater awareness of the legal mechanisms and responses required at national level to combat and prevent this type of violence.¹¹

The Court's work has incited and informed the leadership of the Council of Europe in this field, whether through the indefatigable work of GREVIO or the Istanbul Convention,¹² to which 39 Council of Europe States are now parties. Following ratifications by Moldova, the United Kingdom and Ukraine in 2022, the EU itself¹³ ratified the Convention last year. It was joined two weeks ago by Latvia.

Year on year do we see in the cases pending before us a positive shift in patterns of private behaviour and State action in their regard? Sadly not, or not enough.

In 2023, in cases involving Bulgaria and Georgia, the Court found violations of either Articles 2 or 3 of the Convention, combined with Article 14, against the backdrop of a systemic failure by the relevant State authorities to address gender-based violence.¹⁴ These cases follow on from judgments against the same two States,¹⁵ as well as other judgments against Italy and Croatia, in 2022.¹⁶ Last year we also handed down judgments highlighting the secondary victimisation of a 12 year old orphan who had complained of sexual abuse,¹⁷ or the authorities' failure to protect a victim of domestic violence and ensure continued contact with her children. The blocking of contact had been used to compound and replace the previous physical abuse.¹⁸

⁹ See Press release [ECHR 308 \(2023\)](#) 13.11.2023 "Changes to the procedure for interim measures (Rule 39 of the Rules of Court)".

¹⁰ *Opuz v. Türkiye*, no. 33401/02, ECHR 2009.

¹¹ See *Kurt v. Austria* [GC], no. 62903/15, 15 June 2021, and the authorities cited therein.

¹² Convention on preventing and combating violence against women and domestic violence (CETS No. 210). GREVIO is the Group of Experts on Action against Violence against Women and Domestic Violence.

¹³ See European Union [declaration](#), 28.06.2023.

¹⁴ *A.E. v. Bulgaria*, no. 53891/20, 23 May 2023 and *Gaidukevich v. Georgia*, no. 38650/18, 15 June 2023.

¹⁵ *Y and Others v. Bulgaria*, no. 9077/18, 22 March 2022, and *A and B v. Georgia*, no. 73975/16, 10 February 2022.

¹⁶ See, for example, *M.S. v. Italy*, no. 32715/19, 7 July 2022, and *J.I. v. Croatia*, no. 35898/16, 8 September 2022.

¹⁷ *B. v. Russia*, no. 36328/20, 7 February 2023.

¹⁸ *Luca v. Republic of Moldova*, no. 553451/17, 17 October 2023.

Often in public discourse on domestic and gender-based violence one finds references to vulnerability and comparisons with the treatment of ethnic or minority groups. Yet the victims of domestic and gender-based violence are not born vulnerable. They are rendered vulnerable, on their journey from girl to womanhood, by the imbalanced social structures into which they are born, by the law and by law-makers, and by attitudes and patterns of behaviour in their regard which are ignored, permitted or endorsed by society, including the State.

In the cases I have referenced and the hundreds pronounced in previous years, our focus has been, and must remain the actions and omissions of State authorities. Many of these cases are complex. This is by virtue of their nature, the occurrence of violence in the private domain and the competing rights of the accused. But the relatively simple legal question which confronts us remains that framed by the Court in *Opuz* over 15 years ago:¹⁹ were the applicants accorded equal and sufficient protection before the law?

• • •

(III)

Turning to the over 6, 900 applications leading to judgments last year, rest assured that at this late hour I will highlight only four, all chosen for the broader themes they illustrate.

In *Fedotova and Others v. Russia* the Grand Chamber found a violation of the respondent State's positive obligations under Article 8 due to the absence of any form of legal recognition of same-sex partnerships.²⁰

Consolidating its existing case-law on the subject,²¹ the Court recognised that the margin of appreciation accorded States Parties relates to the form of legal recognition required – which does not have to extend to marriage - and to the content of protection, which nevertheless has to be adequate.

The need to ensure recognition and effective protection of the private and family life of same-sex couples was firmly located in the values of a “democratic society” promoted by the Convention, foremost among which are pluralism, tolerance and broadmindedness. It would be incompatible with the underlying values of the Convention, as an instrument of the European public order, if the exercise of rights by a minority group were made conditional on its being accepted by the majority

Follow on judgments requiring effective protection of same-sex couples were handed down by Chambers in the ensuing months in cases against Romania, Ukraine, Bulgaria and Poland.²²

In relation to Article 10, and the protection afforded by the latter to whistle-blowers, the Grand Chamber seized the opportunity in *Halet v. Luxembourg*²³ to refine and clarify the relevant principles.

¹⁹ *Opuz*, cited above, §§ 199-200.

²⁰ *Fedotova and Others v. Russia*, nos. 40792/10, 30538/14 and 43439/14, 17 January 2023

²¹ See, inter alia, *Oliari and Others v. Italy*, nos. 18766/11 and 36030/11, 21 July 2015 and *Orlandi and Others v. Italy*, nos. 26431/12 and 3 others, 14 December 2017.

²² See *Buhuceanu and Others v. Romania*, nos. 20081/19 and 20 others, 23 May 2023; *Maymulakhin and Markiv v. Ukraine*, no. 75135/14, 1 June 2023; *Koilova and Babulkova v. Bulgaria*, no. 40209/20, 5 September 2023; *Przybyszewska and Others v. Poland*, nos. 11454/17 and 9 others, 12 December 2023.

²³ *Halet v. Luxembourg* [GC], no. 21884/18, 14 February 2023.

The applicant had disclosed several hundred tax documents to a media outlet which subsequently published them to draw attention to advantageous tax agreements concluded between the private company for which he worked and the respondent State. He was dismissed by his employer, subjected to a criminal fine and refused a whistle-blower defense by the national courts.

The detailed and technical reasoning of the Grand Chamber is not food for a solemn hearing. I refer to the judgment to draw attention to the relevant considerations which arise in relation to the public interest in whistle-blowing cases and the fine-tuning of the balancing exercise to be conducted by national authorities in those cases. The Court indicated that account should be taken of the detrimental effects of disclosure taken as a whole, in so far as they may affect private interests (whether those of an employer or third party) and public ones (encompassing the wider economic good and citizens' confidence in the fairness and justice of a State's fiscal policies).

Given that the new EU Whistle-Blowing Directive refers to the relevant criteria established in the case law of this Court, *Halet* is a leading Convention judgment in a field which will no doubt see further, developing synergies in the case-law of the two European Courts.²⁴

Moving to Chamber judgments and decisions, at a time when the Court is unjustifiably criticised for failing to take account of the difficulties faced by States in the fight against terrorism, it is worthwhile highlighting the judgment in *Pagerie v. France*.²⁵

The case raised the issue whether sufficient procedural safeguards had attached to a lengthy preventive curfew imposed on a radicalised Islamist during the state of emergency declared in France following terrorist attacks, some of which had been coordinated by ISIL, from 2015 onwards.

Finding no violation of Article 2 of Protocol No. 4, the Chamber emphasised that:

"The Court is acutely conscious of the difficulties associated with the fight against terrorism [...]. Thus, in the area of the fight against terrorism, the Convention requires the member States to take preventive measures to protect the lives of the population in the event of a real and immediate risk of attack [...] and also to secure effective safeguarding of the protected rights [...]. The Court reiterates that it is primarily for the national authorities to strike the sometimes delicate balance between protection of the public and the safeguarding of rights, in accordance with the principle of subsidiarity. Nonetheless, this balancing exercise is subject to European supervision, a task entrusted to the Court."»²⁶

The final judgment I will refer to - *Wałęsa v. Poland*²⁷ - and its aftermath, mark an important inflection point. It follows multiple violations found in a series of previous cases challenging the impact of judicial reforms initiated in the respondent State in 2017.²⁸ The objective of those judgments, whether the violations rested on Articles 6, 8, 10 or even 18, has been to protect the national judiciary against unlawful external influence, from the executive, the legislature or from within the judiciary itself.

²⁴ Directive (EU) 2019/1937 of the European Parliament and of the Council on the protection of persons who report breaches of Union law, OJ 2019 L305/17, recital 33.

²⁵ *Pagerie v. France*, no. 24203/16, 19 January 2023.

²⁶ *Ibid.*, §§ 147 – 150.

²⁷ *Wałęsa v. Poland*, no. 50849/21, 23 November 2023.

²⁸ *Dolińska-Ficek and Ozimek v. Poland*, nos. 49868/19 and 57511/19, 8 November 2021; *Advance Pharma sp. z o.o. v. Poland*, no. 1469/20, 3 February 2022; *Xero Flor w Polsce sp. z o.o. v. Poland*, no. 4907/18, 7 May 2021, *Reczkowicz v. Poland*, no. 43447/19, 22 July 2021, *Grzęda v. Poland* [GC], no. 43572/18, 15 March 2022; *Żurek v. Poland*, no. 39650/18, 16 June 2022; *Tuleya v. Poland*, nos. 21181/19 and 51751/20, 6 July 2023; *Juszczyszyn v. Poland*, no. 35599/20, 6 October 2022.

In *Wałęsa* the Court had recourse to its pilot judgment procedure, whose dual purpose is to reduce the threat to the effective functioning of the Convention system and to facilitate the most speedy and effective resolution of a dysfunction affecting the protection of Convention rights in the national legal order.

The Chamber found violations of Articles 6 and 8 of the Convention in the case brought by the applicant, the former leader of *Solidarność*. He had suffered the reversal, ten years on, by a Chamber of the Supreme Court of a final defamation judgment in his favour, following an appeal by the Prosecutor General. The Court regarded the latter appeal as “an abuse of the legal procedure by the State authority in pursuance of its own political opinions and motives”.²⁹

The interrelated systemic problems identified by the Court entailed repeated breaches of the fundamental principles of the rule of law, separation of powers and the independence of the judiciary. When deciding to apply the pilot judgment procedure, the Court emphasised that the state of continued non-compliance with the Convention had been perpetuated by the Constitutional Court’s recent judgments, which in parallel had contested the primacy of EU law and the binding effect of CJEU judgments.

The judgment in *Wałęsa v. Poland* is a reminder that where the common values underpinning the Convention are openly challenged, common values which derive from Europe’s common constitutional heritage, both European courts assist directly and indirectly in their defence, in defence of the other European system and in defence of independent and impartial national constitutional and supreme courts.³⁰

It is also a judgment which speaks to the possibility of change. Soon after its delivery, notice was received by the Court from the respondent State of its “will and determination to implement ECHR judgments, particularly those regarding the principles of the rule of law and independence of the judiciary.”³¹

• • •

(IV)

While I have thus far only referred to the ongoing conflict in Ukraine, other cold and active conflicts persist within the Convention legal space. Looking East, we see brutality and aggression playing out daily on our screens and in other people’s streets and lives.

As we face into the turbulence of 2024, the opening words of the United Nation’s Charter carry particular resonance.

Our forebearers sought to save succeeding generations from the scourge of war, reaffirm faith in human rights, respect international law, promote social progress and practice tolerance. Now is surely not the time for our generation, on whom so much has been bestowed, to renege on these promises to the generations which succeed us.

²⁹ *Wałęsa*, cited above, § 254.

³⁰ See the [Speech](#) “EUUnited in Diversity II – The Rule of Law and Constitutional Diversity: Perspectives from the European Court of Human Rights”, The Hague, the Netherlands, 31st August – 1st September 2023, and, for concrete examples, *Tuleya*, cited above, § 264; Joined Cases C-562/21 PPU and C-563/21 PPU *X and Y v. Openbaar Ministerie*, EU:C:2022:100, §§ 79-80 or, recently, Case C-718/21 *L.G. v. Krajowa Rada Sądownictwa* EU:C:2023:1015.

³¹ See the [Statement](#) of 15 December 2023.

Commissioner Reynders, I started and finished my address with references to the rule of law and common European values. This struck me as an appropriate springboard from which to introduce you as our keynote speaker.

In the Reykjavik Declaration the EU is identified as the main institutional partner of the Council of Europe in political, legal, and financial terms.

As EU Commissioner for Justice you have promoted the rule of law as a central component of the common DNA of both organisations.³² Before the PACE you recently addressed EU accession to the Convention. Your annual Rule of Law reports, which survey EU and accession States, have focused, quite correctly, on the record of the States surveyed when it comes to execution of this Court's judgments.

It is heartening to see, whether in the recent work of the Commission or the CJEU, greater attention finally being paid to the vital contributions of the Venice Commission, GRECO³³ or CEPEJ,³⁴ alongside the judgments of this Court, to the defence of democracy and the rule of law.

Commissioner Reynders, the judicial members of Europe's legal order and other guests are eager to hear your words and I now invite you to take the floor.

¹ This is a slightly longer version of the speech delivered orally by the President on Friday 26th January 2024.

³² See the [speech](#) at the Parliamentary Assembly of the Council of Europe, 12.10.2023.

³³ Group of States against Corruption.

³⁴ European Commission for the Efficiency of Justice.