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

The challenged, challenging but very necessary European Convention on Human Rights

Institute of International and European Affairs

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I – Introduction

Dear Alex,

Ladies and Gentlemen,

It's a pleasure to be in Dublin on this St. Patrick's weekend and my thanks to the organisers for the invitation to address you.

As an Irish woman who has devoted her professional career to European law and to Europe, I've always admired the work of the Institute and the platform which it has provided over the decades for informed debate and considered reflection within this jurisdiction.

Looking around Europe and beyond, we see the consequences in certain societies of a failure to engage in an informed manner with the important political, legal and social questions of our times, whether at national or international level. We also see, in the age of social media, with what speed information vacuums can be filled and with what.

I understand that today's audience is composed of lawyers and non-lawyers. As such, my intervention will seek to give all present a sense of the work of the European Court of Human Rights whose job it is to interpret and apply the almost 75-year-old European Convention.

What challenges is the Court facing? What challenges does its judicial work pose for national systems across the 46 Member States of the Council of Europe and why, despite some legitimate criticism of the Convention system, should we in Europe be grateful for the legacy of our forebearers and minded to preserve the essence of the unique human rights protection mechanism with which they bequeathed us.

As the Judge elected in respect of Ireland and President of the Court, I hear cases as part of an international court which assesses whether States which ratified the Convention have respected their international legal obligations thereunder. These are of course obligations to which the States in question sovereignly subscribed.

The 46 Convention States range from Ireland to Azerbaijan and from Finland to Malta and included the Russian Federation until its expulsion from the Council of Europe in March 2022, following the invasion of Ukraine.

Our role in the thousands of cases lodged each year by individuals, or in the much rarer inter-State cases, is not to establish criminal guilt or civil liability or to substitute the work of national judges whose decisions in the applicants' cases must, in principle, precede ours.

It is, instead, to provide external European supervision of domestic decisions and to hold States accountable for any breaches of rights and freedoms under the European Convention which they have undertaken to respect and ensure.

Before giving you a taste of the challenges currently facing the Court, let me first provide a little history.

II – A brief look at Convention history

The origins of the European Convention on Human Rights (European Convention) are of course to be found in the atrocities perpetrated by totalitarian regimes on European soil and beyond during the Second World War.

The spirit of the post-war years – the spirit of "never again"[1] – is summed up in a famous speech delivered by Winston Churchill in Zurich in 1946. There he outlined his plans for recreating a "European family in a regional structure" which he referred to as the United States of Europe.[2]

The spirit informing that speech, and the reasons for it, are, sadly, too often ignored forgotten or ignored nowadays.

The 1948 Hague Congress that inspired the founding of the Council of Europe called for a Charter of Human Rights and for a court to enforce it.

Discussions on the possible charter were led by many who had experienced directly the brutality of the Second World War and its ground-breaking international legal aftermath in the form of the Nuremberg trials. They and others, including Séan MacBride, drew up a list of rights inspired by the Universal Declaration of Human Rights of 1948.

The Convention was conceived as an early warning system to combat the first signs of totalitarianism. As Pierre-Henri Teitgen, a French resistance fighter and one of the founding fathers remarked, the latter doesn't develop in a day:

> "Democracies are asphyxiated over time".[3]

[1] See Reykjavík Declaration of the Council of Europe: United around our Values, 16-17 May 2023, p. 3.
[2] Winston Churchill, Speech on a Council of Europe, Zurich 19 September 1946.
[3] Tietgen's speech cited in Janis, Richard and Bradley, *European Human Rights Law*, 3rd Edition, OUP, 2008, p. 16.

While the constitutions of many European States guaranteed individuals certain elementary rights and freedoms, it was recognized, and experience has shown, that these constitutional guarantees, when purely national, were and are not always strong enough to secure their protective aims.

Constitutional guarantees can be overridden by governments and national authorities, out of neglect, by mistake, or on purpose.

The establishment of the Strasbourg Court represented an abandonment of the idea that the State's sovereignty over its citizens was absolute and unrestrained.

The Convention which we interpret and apply gives individuals the right to take a case before an international court when they have tried national legal remedies or when no effective remedies are available.

Member States for their part assume the obligation to effectively protect the rights and freedoms enshrined in the Convention, with the primary responsibility in this regard lying with national authorities and national courts.

They accept – or are meant to - international monitoring by the Court, while respecting its authority, independence and autonomy, as well as the binding legal force of judgments and decisions.

As Cambridge Professor Hersch Lauterpacht remarked in a 1949 visionary article about a future European Court of Human Rights:

> "[E]ven in countries in which the rule of law is an integral part of the national heritage and in which the courts have been the faithful guardians of the rights of the individual, there is room for a procedure which will put the imprimatur of international law upon the principle that the State is not the final judge of human rights."[4]

The striking difference between then and now is that for a long time it was not possible for applicants to bring their case directly before the Strasbourg Court. It was only the subsequent changes to the Convention system that empowered individuals to seize the Court directly.

In the early days, work was scarce. Between 1959 and 1976 just 18 cases were brought before the Court. For a period of seven years, no cases were brought at all.

Yet even during this fallow period, the Court established some important founding principles.

Its first judgment in *Lawless v Ireland* (1960)[5] concerned the extra-judicial internment of members of the IRA in the 1950s in the Curragh and the State's declaration of an emergency. In another judgment adopted during the same decade in the *Belgian Linguistics* case (1968),[6] the Court established its case-law on the prohibition of discrimination and the right to education.

The 1970s ushered in what was considered a golden era of Strasbourg case-law during which many landmark rulings were handed down[7].

[4] Lauterpacht et al, 'The Proposed European Court of Human Rights', (35) *Transactions of the Grotius Society* (1949), p. 34.
[5] See, for instance, *S., V. and A. v. Denmark* [GC], nos. 35553/12 et al., §§ 104-108, 22 October 2018.
[6] See, for instance, *Georgia v. Russia (II)* [GC], 38263/08, § 313, 21 January 2021.
[7] See E.L. Abdelgawad, "The European Court of Human Rights" in *The Council of Europe: Its Law and Policies*, Oxford University Press (2017), p. 229 and E. Bates, *The Evolution of the European Convention on Human Rights: From its Inception to the Creation of a Permanent Court of Human Rights*, Oxford University Press (2010), p. 320.

Examples include:

- *Golder v. the United Kingdom* (1975) on the right of access to Court,

- *Tyrer v the United Kingdom* (1978) on the use of corporal punishment,

- *Airey v Ireland* (1979) on the establishment of a positive obligation on States to provide effective access to court in civil cases, including via the provision of free legal aid,

- or the first inter-State case to lead to a judgment – *Ireland v. the United Kingdom*[8] – in which the Court established the distinction between inhuman and degrading treatment and torture. It also set down parameters for how the Court may act when a respondent State refuses to cooperate, despite essential information being within its purview.[9]

During this period, the Court also began to develop its teleological approach to interpretation (according to which the Convention must be interpreted so as to achieve its purpose of the practical and effective protection of human rights), the living instrument doctrine (according to which the Convention can and must be interpreted in the light of present-day conditions) and recognition that States may owe positive obligations and not simply be bound by an obligation not to interfere negatively with an individual's rights. The aforementioned *Airey* judgment is a perfect illustration.

The fall of the Berlin Wall and the dissolution of the Soviet Union were the next major game-changers.

Many of the former Soviet Republics sought entry first to the Council of Europe and subsequently to the European Union. The consequent enlargement in the 1990s of the Council of Europe and the accession of States from Central and Eastern Europe led to a huge increase in the work of the Court.

From 1959 to 1998, in other words for the first forty years of its existence, approximately 143,000 applications were lodged, 32,500 decisions were declared inadmissible, over 830 judgments were delivered by the former Court, and over 37,000 decisions were adopted by the Commission, whose job it was to filter applications, allowing only a small percentage to reach the Court.[10]

Fast forward 25 years and by last year the Court had dealt with over 1 million applications and handed down over 26,000 judgments.

Following the Eastern expansion of the Council of Europe, by mid-2011, the Court's docket had reached an all-time and unsustainable high.

After over ten years of external and internal reforms, the Court has reduced its docket drastically from the untenable figure of 161,000 reached in 2011, to the still seriously challenging 67,300 applications pending today.

In the past three years we have dealt with, on average, 38,000 applications per year, delivering judgments in over 6,900 applications last year alone.

We have also had to respond to a mass influx of cases related to specific regional, State or societal events such as the conflicts in first Georgia and then Ukraine in 2008, 2014 and 2022, the aftermath of the attempted coup d'État in Türkiye in 2016, or the Covid-19 pandemic.

[8] *Ireland v. the United Kingdom*, 18 January 1978, Series A no. 25.
[9] See also *Ireland v. the United Kingdom* (revision), no. 5310/71, 20 March 2018.
[10] Yearbook of the European Convention on Human Rights 2002 (2003), 202.

In the context of the enlargement of the Council of Europe which I just mentioned, the Convention system played a prominent role in ensuring democratic change in Central and Eastern European States.[11]

In relation to those States which have also joined the European Union, it played a crucial role in preparing them on the road to accession. Post EU accession it continues to play a key role, in conjunction with the Court of Justice of the European Union (CJEU), safeguarding in EU Member States the values necessary in effective pluralist democracies underpinned by the rule of law.

The same can be expected to happen in relation to Council of Europe States – such as Moldova, Ukraine, Montenegro and others - which are now EU candidate States. Indeed, without the work of the Strasbourg Court and the Council of Europe's Venice Commission, it is difficult to see how their road to EU accession could be successfully managed.

So why was there such a dramatic increase in applications in the first decade of this century?

The larger number of States parties to the Convention is one explanation. Another is the multitude of legal questions relating to the rule of law and the protection of individual rights which arose in transitional democracies.

However, the major reason for the increase in the Court's work was the creation in 1998 of a single, full-time European Court – the one I now serve – putting an end to the filtering out of inadmissible complaints by the former European Commission.

The structure and logic of this change were conceived long before the full ramifications of Council of Europe enlargement to 47 States, including, at that time, Russia, were understood.

III – The challenges

This point provides a good springboard for me to turn to the key challenges facing the Court and the Convention system in their eighth decade. I'll concentrate on three.

Since the establishment of that permanent court in 1998, the judges and registry have been grappling with one central difficulty: the **size and nature of the docket**.

Each year we need to filter a huge volume of inadmissible cases (over 30, 000 last year), process large numbers of more or less identical but well-founded claims (about 80 % of the 67,300 cases pending), while ensuring careful scrutiny and adjudication of complaints raising complex and novel issues of human rights law in sufficiently good time for the outcome to be meaningful for the applicant, the respondent Government and national courts.

The type of new and complex legal issues I'm referring to relate to the effects on Convention rights of anything from climate change, in relation to which we have three major Grand Chamber cases pending, social media usage, bioethical questions or new technologies, to name but a few.

Consideration of these legal questions requires time and resources. What the Court sets out in the general principles in a given judgment constitutes the minimum Convention standard across 46 quite heterogenous States.

[11] I. Motoc and I. Ziemele (eds.), *The Impact of the ECHR on Democratic Change in Central and Eastern Europe: Judicial perspectives,* 2016, CUP.

However, as I said, close to 80 % of the Court's present docket is composed of applications concerning questions in relation to which the Court has well-established case-law or applications which are repetitive.

Let me give just two examples:

- In relation to prison conditions, the Court has established very clear standards (in terms of cell space, light, ventilation and sanitary facilities) with which national authorities have to comply for Article 3 of the Convention not to be breached.[12] Yet approximately 5,400 applications on our current docket relate to this issue.

- In relation to the basic rule of law obligation under Article 6 of the Convention to enforce decisions handed down by national courts, in 2017, having already dealt with over 14,000 applications on this issue in relation to Ukraine, and with 12,000 still pending, the Court passed the buck to the Committee of Ministers. It considered that there was no more European judicial road to travel. The solution to the systemic problem which had already been identified was largely political and financial, with the result that the 12,000 pending cases were struck off.[13]

So the first challenge relates to the size and nature of the docket and the failure to find solutions nationally to problems in relation to which the jurisprudential solution or answer has already been provided.

A second challenge relates to conflicts.

Throughout its history the Court has tackled complex legal cases ensuring that States are held accountable for the most serious human rights violations which occur within their jurisdiction.

In recent years, the Court has seen a marked increase in the number of inter-State cases due to an increase in conflicts between Council of Europe member States or former member States.

Currently there are 14 pending inter-State cases before the Court, covering 18 applications. 12 of the 14 pending cases relate to ongoing conflicts between Council of Europe States or former States. 5 involve the Russian Federation.

These cases are particularly challenging, both in terms of their legal and factual complexity and the resources they require. They also give rise to a very high number of individual applications when conflict related, currently some 8,800.

Following the expulsion of the Russian Federation in 2022, the Court also remains competent to deal with applications directed against that State in relation to acts or omissions capable of constituting a violation of the Convention, provided that they occurred before 16 September 2022. That is the date on which Russia ceased to be a High Contracting Party to the European Convention.

There is clearly a need to ensure that a State that ceases to be a Contracting Party due to its expulsion from the Council of Europe cannot retroactively evade its international law obligations and accountability for serious violations of human rights.

[12] See *Muršić v. Croatia* [GC], no. 7334/13, 20 October 2016.
[13] *Burmych and Others v. Ukraine* (striking out) [GC], nos. 46852/13 et al., 12 October 2017.

Last year the Court handed down judgments in relation to thousands of applications pending against the Russian Federation and heard a pending inter-State case on the 2014 invasion of Crimea. A second hearing in relation to the invasion of Eastern Ukraine and the downing of Malaysia Airlines flight MH17 will be held in June this year.

The final challenge which I will mention relates to the **authority and raison d'être of the Court itself** and it was well summed up in general terms, not limited to the Strasbourg court, by our own Chief Justice in a speech at UCD in 2021:

> "the post-war model of judicial protection of human rights is under more challenge today in more significant ways and in more locations than at any time since 1945".[14]

In reality, the post-war model of judicial protection of human rights has never gone unchallenged. Indeed, in some quarters, it was never fully accepted or understood.

There seems to have been an idea, mistakenly nurtured by some of the drafters and signatories (although not, it would seem, Ireland), that the Convention was for *other* States and not a matter of domestic concern; respect for human rights being considered beyond reproach on the home front.

Yet we do now appear to be at a watershed moment.

Parliamentary debates or ministerial speeches in more than one Council of Europe Member State fixate on the need to defy interim measures issued by a "foreign court". The consequences of particular judgments which don't appeal either to a majority in society or to a ruling party are rejected.[15] Opposition figures the subject of repeat judgments in Strasbourg ordering their liberation continue to languish in prison.[16] One of the most prominent, Alexei Navalny, recently died in a penal colony in the Arctic circle, with 8 Strasbourg judgments in his favour and 27 cases still pending.

As a Judge, I don't comment on draft national legislation but I think I can, for the purpose of my illustration of current challenges facing the Convention system, point to the recent assessment by a national parliamentary committee whose job it is to assess such draft legislation.

In a recent report on a bill which it considers denies access to justice and effective remedies, the UK Joint Committee on Human Rights emphasised that:

> "[…] hostility to human rights is at the heart [of the Bill].[17]

And yet the irony is that the Convention is a protection mechanism which allows many of the same Convention States – 26 in total – to intervene before the Strasbourg court in one of the pending inter-State cases brought by Ukraine against the Russian Federation which I just mentioned. Those States

[14] See Chief Justice D. O'Donnell, "A Court and the World" at a conference on *The Making (and Re-Making) of Public Law*, UCD, 6-8 July 2022.
[15] See EUObserver, Erdoğan lashes out at ECHR's landmark 'anti-Turkey' ruling, 13 October 2023.
[16] See further *Kavala v. Türkiye* (infringement proceedings) [GC], no. 28749/18, 11 July 2022.
[17] See JCHR, Safety of Rwanda (Asylum and Immigration) Bill Report, 12 February 2024.

intervene in that case very explicitly in support of accountability for violations of international law and in defence of the common public order of the free democracies of Europe.[18]

This dichotomy between some States' reception of the Convention system within their own jurisdiction and their perception of the role of that system in the jurisdiction of other Council of Europe States supports the point I made in the opening part of this segment on challenges, namely the mistaken idea that the Convention was and is for *other* States and not a matter of domestic concern.

IV – The challenging nature of Strasbourg Court judgments and decisions

Turning from the challenges to the Convention system to the challenging nature of Strasbourg Court judgments: let's be clear, our rulings don't always please.

Firstly, as regards many of our applicants, to borrow the words of US Supreme Court Justice Frankfurter:

> "it is a fair summary of history to say that the safeguards of liberty have been forged in controversies involving not very nice people."[19]

Secondly, as regards the judgments themselves, they may displease either the respondent Governments to which they are addressed, or members of the public who, for better or worse, may have very different views on where the correct balance between, for example, the protection of human life and the protection of the general public, may lie.

The case of *McCann and Others v. the United Kingdom* is a good illustration. It concerned, as some of you will remember, the killing in Gilbraltar by members of the UK security forces of three members of the IRA suspected of involvement in a bombing mission.

The judgment set the benchmark for the Court's treatment of cases concerning the protection of the right to life under Article 2 of the Convention. The use of force, while permitted, must be no more than "absolutely necessary" for the achievement of one of the legitimate aims set out in Article 2. National authorities are under an obligation, in certain circumstances, to conduct an effective investigation. In the case at issue, the Court was not convinced that the force used and the killing of the suspects complied with the requirements of Article 2, concentrating on the control and organisation of the security operation.

A tabloid published the phone number of the Court's Registrar on the day of the *McCann* ruling. That event gave rise to the creation of our press service, whose task ever since has been to explain complex and in places unpopular rulings to press and public in 46 Council of Europe States and beyond.

More importantly, the principles established in *McCann* have been relied on in hundreds of cases in which individuals have lost relatives due to what they alleged was a use of disproportionate force followed by a failure to investigate the circumstances of their death. One need look no further than

[18] See *Ukraine and the Netherlands v. Russia* (dec.) [GC], nos. 8019/16 and 2 others, 30 November 2022.

[19] Felix Frankfurter - Oxford Reference. For its part, and along the same lines, the Court has stressed the following:
"[E]ven those who commit the most abhorrent and egregious of acts, nevertheless retain their essential humanity and carry within themselves the capacity to change. Long and deserved though their prison sentences may be, they retain the right to hope that, some day, they may have atoned for the wrongs which they have committed. They ought not to be deprived entirely of such hope. To deny them the experience of hope would be to deny a fundamental aspect of their humanity and to do that would be degrading." See *Matiošaitis and Others v. Lithuania*, nos. 22662/13 et al, § 180, 23 May 2017.

the judgment in *Armani da Silva v. the United Kingdom*[20] to understand the value of the general principles on the right to life established in *McCann* decades earlier. That case concerned the mistaken identification as a terrorist and the subsequent killing in the London underground of a young Brazilian.

The Strasbourg Court has always been conscious of its limited, external and supervisory role. It pays due deference to the assessment of national courts (when they have assumed their Convention obligations) and to national democratic processes (provided that the legislature paid heed to the relevant Convention rights and principles and struck a fair balance between individual rights and the public interest).

It is the established methodology of the Court's assessment that when the domestic legislature adopts a measure of general application its proportionality is determined by having due regard to the legislative choices underlying it.

The quality of the parliamentary and judicial review of the necessity of the measure is of particular importance in this respect, including to the operation of the relevant margin of appreciation or discretion accorded by the Strasbourg court to States.

The Court has applied this methodology when assessing State legislative choices in a variety of situations such as economic and social policy, welfare and pensions, electoral laws, the destruction of frozen embryos, assisted suicide, and prohibitions and restrictions on religious and political advertising, to name but a few.[21]

However, the Court has also held that although individual interests must on occasion be subordinated to those of a group, democracy does not simply mean that the views of a majority must always prevail. A balance must be achieved which ensures the fair and proper treatment of people from minorities and avoids any abuse of a dominant position.

Thus, for instance, in a case concerning the absence of any form of legal recognition and protection for same-sex couples in Russia, the Court did not accept, in a judgment last year, that the attitude of the Russian population, namely widespread opposition to same-sex relationships, could be taken as a decisive argument for its assessment under Article 8 (the right to respect for private and family life) of the European Convention.

The Court explained that it would be incompatible with the underlying values of the Convention if the exercise of Convention rights by a minority group were made conditional on its being accepted by the majority. Were this so, a minority group's rights to freedom of religion, expression and assembly would become merely theoretical rather than practical and effective as required by the Convention.[22]

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.[23]

In recent years the Court has also sought to respond to the type of democratic erosion and rule of law backsliding which we are now witnessing in some European countries.

[20] *Armani Da Silva v. the United Kingdom* [GC], no. 5878/08, 30 March 2016.
[21] *Animal Defenders International v. the United Kingdom* [GC], no. 48876/08, §§ 106-108, 22 April 2013.
[22] *Fedotova and Others v. Russia* [GC], nos. 40792/10 et al, §§ 214-219, 17 January 2023.
[23] *Buhuceanu and others v. Romania*, no. 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; and *Przybyszewska and Others v. Poland*, nos. 11454/17 and 9 others, 12 December 2023.

It has recently dealt with the protection of the autonomy and independence of the judiciary in cases against Albania,[24] Belgium,[25] Bulgaria,[26] Georgia,[27] Hungary,[28] Iceland,[29] the Republic of Moldova,[30] Poland,[31] Romania,[32] Türkiye,[33] and Ukraine.[34]

This list of respondent States – some of whom are our EU partners - is, unfortunately, longer than one would have hoped or expected in 2024.

To give one concrete example of a case on judicial independence, at the end of last year, the Court found violations of different Convention articles in a case which had been brought against Poland by Lech Walesa, the former leader of Solidarność.

He had suffered the reversal, ten years on, 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". It also identified in the applicant's case a series of interrelated systemic problems which it held entailed repeated breaches of the fundamental principles of the rule of law, separation of powers and the independence of the judiciary.

The judgment in *Wałęsa v. Poland* was a pilot judgment, a tool developed by the Court to help identify and correct systemic or structural problems. Pilot judgments have allowed the Court to treat a multitude of issues: from prison overcrowding in Italy and Belgium,[35] to the systemic slowness of judicial procedures in Hungary and Bulgaria[36] or systemic violence against women in Russia.[37]

Wałęsa v. *Poland* is also a judgment which speaks to the possibility of change. The newly elected Government has publicly declared its intention to execute this and other Strasbourg judgments on the Rule of Law.

In the current environment in which we work, all green shoots are most welcome.

During my time in Strasbourg there has been a marked increase on reliance by applicants on Article 18 of the European Convention. This provision is part of the Convention's nuclear arsenal. It allows the Court to identify and sanction misuse of State power. A violation of Article 18 is found where the respondent State is held to have violated human rights for "an unlawful ulterior purpose".

Article 18 has been particularly noticeable in cases brought by prominent opposition politicians, human rights defenders and journalists. A short roll call speaks for itself: Aleksei Navalnyy[38], now

[24] *Xhoxhaj v. Albania*, no. 15227/19, 9 February 2021
[25] *Loquifer v. Belgium*, nos. 79089/13 et al, 20 July 2021.
[26] *Donev v. Bulgaria*, no. 72437/11, 26 October 2021.
[27] *Gloveli v. Georgia*, no. 18952/18, 7 April 2022.
[28] *Baka v. Hungary* [GC], no. 20261/12, 23 June 2016.
[29] *Guðmundur Andri Ástráðsson v. Iceland* [GC], no. 26374/18, 1 December 2020
[30] *Catană v. the Republic of Moldova*, no. 43237/13, 21 February 2023.
[31] *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 and *Żurek v. Poland*, no. 39650/18, 16 June 2022.
[32] *Kövesi v. Romania*, no. 3594/19, 5 May 2020.
[33] *Bilgen v. Türkiye*, no. 1571/07, 9 March 2021.
[34] *Oleksandr Volkov v. Ukraine*, no. 21722/11, 9 January 2013.
[35] See *Torreggiani and Others v. Italy*, nos. 43517/09 and 6 others, 8 January 2013 and *Vasilescu v. Belgium*, no. 64682/12, 25 November 2014.
[36] See *Gazsó v. Hungary, no. 48322/12,* 16 July 2015 and *Dimitrov and Hamanov v. Bulgaria*, nos. 48059/06 and 2708/09,10 May 2011.
[37] *Tunikova and Others v. Russia*, nos. 55974/16 and 3 others, 14 December 2021.
[38] *Navalnyy v. Russia* [GC], nos. 29580/12 and 4 others, 15 November 2018.

deceased, Selahattin Demirtaş[39] and Osman Kavala[40] from Türkiye, Ilgar Mammadov[41] and Natig Jafarov[42] from Azerbaijan, as well former politician Yuliya Tymoshenko[43] from Ukraine and Ivane Merabishvili,[44] former Prime Minister of Georgia.

The Court found violations of Article 18 in their cases in relation to detention and/or criminal prosecution on various charges, often fictitious and primarily aimed at silencing their political activity. In the last two years violations of Article 18 have also found in cases of disciplined judges or prosecutors in Poland and Bulgaria.

Allow me to close this excursus into politics on a less somber, but nevertheless striking note, namely the situation whereby politicians who, to put it diplomatically, are skeptical of the Convention system and the European Court, nevertheless have recourse to it when the need arises in their own lives. I'll leave you to search in the database for some examples.

As a court of law we are charged with interpreting and applying the law of the Convention whilst often navigating what are now very choppy political waters.

The repatriation of children and ISIS brides from the camps in Syria,[45] the prohibition on wearing the niqab in public,[46] the imposition of interim measures in relation to an asylum-seeker placed on a flight to Rwanda[47] or the display of a crucifix in public schools in Italy[48] – politics are never far from our courtroom, but politics is not what we do.

The judgments issued by the Court are, as I said, challenging. But that is what they are intended to do: challenge individual and systemic failures to respect the shared European values of democracy, respect for human rights and the rule of law to which the States Parties sovereignly subscribed.

V – The continued need for the Convention system

It's easy to refer to the cases I've just touched on and the legal issues they raise and assert that a State like Ireland, after 50 years of EU membership and over 70 years of guidance from the Strasbourg court, has no real need for the Convention's apparatus.

Ireland is a State blessed with independent and impartial courts and a functioning democracy.

As regards cases pending before the Court, Ireland now rivals the UK in terms of the following statistic, namely the number of applications pending in relation to a given State per 10,000 inhabitants. The Convention average is 0.41. Ireland is at 0.04, with the UK on 0.03 and only Germany close by on 0.05.

However, the over 26,000 judgments issued by the Strasbourg court are testament to the fact that all societies have their blind spots; their one off or systemic dysfunctions, and a need, as Lauterpacht put

[39] *Selahattin Demirtaş v. Turkey (no. 2)* [GC], no. 14305/17, 22 December 2020.
[40] *Kavala v. Turkey*, no. 28749/18, 10 December 2019.
[41] *Ilgar Mammadov v. Azerbaijan (no. 2)*, no. 919/15, 16 November 2017.
[42] *Natig Jafarov v. Azerbaijan*, no. 64581/16, 7 November 2019.
[43] *Tymoshenko v. Ukraine*, no. 49872/11, 30 April 2013.
[44] *Merabishvili v. Georgia* [GC], no. 72508/13, 28 November 2017.
[45] *H.F. and Others v. France* [GC], nos. 24384/19 and 44234/20, 14 September 2022.
[46] *S.A.S. v. France* [GC], no. 43835/11, ECHR 2014 (extracts).
[47] See Press Release ECHR 197 (2022) 14.06.2022, The European Court grants urgent interim measure in case concerning asylum seeker's imminent removal from the UK to Rwanda.
[48] *Lautsi and Others v. Italy* [GC], no. 30814/06, ECHR 2011 (extracts).

it, for an external eye to verify compliance with the rule of law and international human rights standards.

Let us not forget the changes introduced into Irish law or felt in Irish society, directly or indirectly, as a result of Strasbourg judgments.[49]

Leaving aside the big-name cases like *Norris*, *O'Keeffe*, *Airey* or *A., B. and C. v. Ireland,* think of:

- The new legislative and judicial framework to ensure the protection of persons in psychiatric detention and young offenders in need of special care after the friendly settlement in *Croke*[50] and the judgment in *D.G.*[51];

- The reforms taken to reduce length of proceedings, in response to critical assessments in Strasbourg extending over a period of many years.[52] This has included, directly or indirectly, constitutional reform to create the Court of Appeal, improved case-management to reduce litigation backlogs in the superior courts, and the development and clarification under constitutional law of a compensatory remedy[53];

- The protection of natural fathers in matters of adoption of their children, following the *Keegan* judgment of 1994[54], or

- The adoption of legislation equalising the rights of all children, whether born within or outside of marriage, in the areas of guardianship, maintenance and property rights, a development that was spurred by the *Johnston* judgment of 1986[55], and

- The change in legal practice crafted by the Supreme Court following the second judgment in *Independent Newspapers*,[56] so as to safeguard against the acknowledged risk of excessive jury awards in defamation cases.

Society's underdogs and its elites have both been able to rely on the hope of external judicial assessment which the European Convention offers.

VI - Conclusions

As a devastating war rages on in Ukraine, one of the most critical contemporaneous contributions that the Convention can bring to the hope of stability and order on our Continent is its capacity to serve as an instrument of peace and as a guardian of effective and pluralist political democracy. Now is not the time to abandon one of the most effective mechanisms produced by the post-war international rules-based order; a mechanism which is there to bolster democracy and safeguard the rule of law across a Convention legal space in which over 700 million people reside.

Let me therefore conclude by saying that I remain hopeful that the political leaders of today and tomorrow will stand by their commitment at the summit of the 46 in Reykjavik last year[57] to the

[49] See further Department for the Execution of Judgments of the European Court of Human Rights, Ireland: Main Achievements.
[50] *Croke v. Ireland* (friendly settlement), no. 33267/96, 21 December 2000.
[51] *D.G. v. Ireland*, no. 39474/98, ECHR 2002-III.
[52] Beginning with *Doran v. Ireland*, no. 50389/99, ECHR 2003-X (extracts); most recently *Keaney v. Ireland*, no. 72060/17, 30 April 2020.
[53] *O'Callaghan v. Ireland*, [2021] IESC 28.
[54] See *Keegan v. Ireland*, 26 May 1994, Series A no. 290.
[55] *Johnston and Others v. Ireland*, 18 December 1986, Series A no. 112.
[56] *Independent Newspapers (Ireland) Limited v. Ireland*, no. 28199/15, 15 June 2017.
[57] See n. 1 above.

Convention system and to the values expressed in the Preamble to the European Convention. Those values need to be defended, by them and by you, in word and in deed.