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

Why the European Convention on Human Rights still matters

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I – Introduction

Minister Hasler,
Professor Butterstein,
President Hoch,
Ladies and Gentlemen,

It is an honour to participate in today's conference at the University of Liechtenstein. I would particularly like to thank Judge Carlo Ranzoni, an esteemed judicial brother since 2015, as well as the organisers for giving a seat to the European Court of Human Rights at your table.

Before I begin in earnest let me congratulate Minister Hasler for Liechtenstein's extremely dynamic and successful six-month presidency of the Committee of Minsters of the Council of Europe which has just ended.

Liechtenstein assumed the presidency at a critical time in the organisation's history as a devastating war continues to be raged in Ukraine and as the effects of successive crises - from terrorism, to migration, a global pandemic and economic instability - manifest themselves in rule of law and democratic erosion in many parts of Europe and beyond.

Holding States accountable for human rights violations was key to the Reykjavik Declaration in May 2023 and implementing the Summit's decisions have been at the heart of Liechtenstein's work.

Strengthening the European Court of Human Rights, in particular to ensure a more efficient execution of its judgments, was also one of your priorities and I would like to thank you for that commitment.

The Liechtenstein Presidency was also marked by several important anniversaries. You celebrated your 45th year of membership of the Council of Europe and handed over the Presidency during the Council of Europe's 75th anniversary celebrations.

That anniversary reminds us why the Council of Europe was created. In 1949, the 10 founding States reaffirmed in the Statute:

> "[…] *their devotion to the spiritual and moral values which are the common heritage of their peoples and the true source of individual freedom, political liberty and the rule of law, principles which form the basis of all genuine democracy*"[1].

One of the principal means for achieving greater unity and safeguarding our States' common heritage is the European Convention and its innovative mechanism for the collective enforcement of individual rights.

Since the signature of the Convention in May 1950, the European Court of Human Rights has dealt with approximately 1,055,000 applications and handed down over 27,000 judgments and many thousands more decisions.

Those judgments and decisions have contributed, whether directly or indirectly, to the improvement of the democratic and social fabric of our societies, seeking to make them more inclusive, tolerant and genuinely effective and resilient democracies.

I would like to use my time this afternoon to explain why - at this turning point in history, this changing of an era - when States are confronted with conflict and unprecedented challenges, the European Convention on Human Rights still matters.

II - The Convention as an instrument of peace and stability in Europe

My first theme – which focuses on the Convention as an instrument of peace and stability in Europe – is illustrated by the tragic events which have unfolded since 24th February 2022 and the new geopolitical situation in which we now find ourselves in Europe and beyond.

The invasion of Ukraine by, at that time, a fellow Council of Europe Member State, has led to the mass displacement of Ukraine's people, reconfigured Europe's legal and political borders and altered dramatically its security architecture.

Following the decision in March 2022 that Russian membership of the Council of Europe had ceased, the Court explained that it remains competent, by virtue of the "residual" jurisdiction conferred by Article 58 §§ 2 and 3 of the Convention, to deal with applications directed against the Russian Federation.[2] This jurisdiction is restricted to acts and omissions capable of constituting a violation of the Convention if they occurred prior to 16th September 2022. The latter is the date on which the

[1] See the third recital of the Statute of the Council of Europe, ETC No. 001, London, 5 May 1949.
[2] Resolution CM/Res(2022)3 on legal and financial consequences of the cessation of membership of the Russian Federation in the Council of Europe(Adopted by the Committee of Ministers on 23 March 2022 at the 1429bis meeting of the Ministers' Deputies). See also Resolution of the European Court of Human Rights on the consequences of the cessation of membership of the Russian Federation to the Council of Europe in light of Article 58 of the European Convention (22 March 2022).

Russian Federation ceased to be bound by the obligations it had assumed under the Convention and its Protocols.

The Court has handed down many decisions and judgments in applications directed against the Russian Federation in the intervening months.[3] Many more will follow. Some of the applicants – such as the now deceased Alexei Navalny or Boris Nemtsov – are names you know.

However, for the purposes of this evening's lecture, one of the most expressive decisions thus far is that on admissibility delivered in open court in January 2023 in the case of *Ukraine and the Netherlands v. Russia*.[4] The case concerned the invasion of Eastern Ukraine in 2014 and the downing of Malaysia Airlines Flight MH17 in July that same year, with the loss of almost 300 lives.

In a series of important preliminary observations in the decision, the Court recalled that:

> "*the purpose […] in concluding the Convention was not to concede to each other reciprocal rights and obligations in pursuance of their individual national interests but to realise the aims and ideals of the Council of Europe, as expressed in its Statute, and "to establish a common public order of the free democracies of Europe with the object of safeguarding their common heritage of political traditions, ideals, freedom and the rule of law" (see the Commission's decision on the admissibility of application no. 788/60, Austria v. Italy, 11 January 1961, Yearbook, vol. 4, p. 18). It follows that when a High Contracting Party or Parties refer an alleged breach of the Convention to the Court under Article 33 of the Convention, they are not to be regarded as exercising a right of action for the purpose of enforcing their own rights, but rather as bringing before the Court "an alleged violation of the public order of Europe" (ibid., p. 20. See also France, Norway, Denmark, Sweden and the Netherlands v. Turkey, nos. 9940/82, 9942/82, 9944/82, 9941/82 and 9943/82, Commission decision of 6 December 1983, Decisions and Reports 35, p. 143 at p. 169).*"

Last Wednesday, my colleagues and I sat in the Grand Chamber in the case of *Ukraine and the Netherlands v. Russia*, hearing the arguments of the Ukrainian and Dutch governments in relation to multiple alleged violations of the Convention in Ukraine between 2014 and 2022. At a time when Europe is once again witnessing armed conflict and devastation, it is thus the Convention's vocation as an instrument of peace which resonates first and foremost. And at the heart of the Court's role in respect of both conflict prevention and conflict resolution lies the inter-State application.

Since 1953, 44 inter-State applications have been allocated to a judicial formation. Compared to the total number of allocated applications over the same period (1,117,678), one can say that recourse to Article 33 remains extremely rare.

[3] See, for examples of Grand Chamber and Chamber judgments, *Fedotova and Others v. Russia* [GC], nos. 40792/10 and 2 others, 17 January 2023.; *Navalnyy v. Russia (no. 3)*, no. 36418/20, 6 June 2023.; *Glukhin v. Russia*, no. 11519/20, 4 July 2023.

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

However, the last decade has seen a marked increase in the number of inter-State applications being brought to the Court, with 14 such cases and approximately 9,000 related individual applications now pending.

Incidentally, inter-State applications introduced by your State and by my own, against the Czech Republic and the United Kingdom, respectively, are pending.[5]

These figures suggest a confidence in the role that can be played by the European Convention in responding to disputes that arise at inter-State level within the Council of Europe.

Both inter-State judgments and those in individual cases contribute to the establishment of historical and factual truth. They respond to our societies' need to know what happened. In addition, they can act as a basis for further judicial proceedings, as well as restitution mechanisms such as the Register of Damage established by Council of Europe States at the Reykjavik Summit.[6]

The Convention has sought and seeks to create a climate in which the escalation of conflict becomes less likely. In the words of Luzius Wildhaber, one of my predecessors,

> "*The ECHR is the product of idealistic realism. […] It is anchored in the belief that democratic regimes, respectful of fundamental rights do not go to war with one another, and that it can therefore no longer be an issue of purely domestic jurisdiction whether democracies relapse into dictatorships.*"[7]

Where conflict does occur, States and individuals, victims of conflicts, can turn to the Court for reparation and a public statement of a violation of international law.

The Convention system is a protection mechanism which allows 26 Council of Europe States, to intervene in support of accountability for violations of international law and in defence of the "common public order of the free democracies of Europe", as they did last Wednesday in Strasbourg.

III - The Convention and the rule of law

My second illustration of why the Convention still matters centres on the rule of law.[8]

The Strasbourg Court has consistently held that the rule of law forms part of and inspires the fabric of the whole Convention and is inherent in all its articles.[9]

[5] *Liechtenstein v. the Czech Republic* (no. 35738/20) and Ireland v. the United Kingdom (no. 1859/24)

[6] Council of Europe, "Reykjavík Declaration Appendix I: Declaration in support of the Enlarged Partial Agreement on the Register of Damage Caused by the Aggression of the Russian Federation against Ukraine", 17 May 2023.

[7] L. Wildhaber, 'Rethinking the European Court of Human Rights' in J. Christoffersen and M. Rask Madsen (eds.), *The European Court of Human Rights between Law and Politics*, (Oxford University Press 2011).

[8] European Commission for Democracy through Law (Venice Commission), Rule of Law Checklist, CDL-AD(2016)007, 18 March 2016, pp. 20-24.

[9] See, variously, *Engel and Others v. the Netherlands*, 8 June 1976, § 55, Series A no. 22, or *Amuur v. France*, 25 June 1996, § 50, Reports of Judgments and Decisions 1996-III.

The close relationship between the rule of law and democratic society has been underlined by the Court through different expressions: "*democratic society subscribing to the rule of law*",[10] "*democratic society based on the rule of law*",[11] and more systematically "*rule of law in a democratic society*".[12] Being linked to the notion of "*democratic society*", the rule of law is also related to the broader concept of "European public order",[13] the defence of which lies at the heart of the Convention system.[14]

Over the years, the Court has developed various substantive guarantees which may be inferred from this notion. I won't delve into them this evening but will leave the detail to the written paper. These include the principle of legality or foreseeability,[15] the principle of legal certainty,[16] the principle of equality of individuals before the law,[17] the principle that the executive cannot have unfettered powers whenever a right or freedom is at stake,[18] the principle of the possibility of a remedy before an independent and impartial court[19] and the right to a fair trial.[20] Some of these principles are closely interrelated and can be included in the categories of legality and due process. They all aim at protecting the individual from arbitrariness, especially in the relations between the individual and the State.[21]

A democratic state founded on the rule of law seeks to temper State authority and thus provides the necessary framework for the enjoyment of fundamental rights.

Serious attacks on judicial independence in recent years, within EU and Council of Europe States, have led to a marked increase in disputes before the Luxembourg and Strasbourg Courts which raise questions regarding the independence and impartiality of judges.

In a system of shared responsibility such as that established by the Convention, the integrity of the system itself requires the existence of strong and independent national courts, able to adjudicate free from undue interference and exercise meaningful judicial oversight over national authorities.[22]

[10] *Winterwerp v. the Netherlands, 24 October 1979, § 39 Series A no. 33.*
[11] *Vereniging Weekblad Bluf! v. the Netherlands, 9 February 1995, § 35, Series A no. 306-A.*
[12] *Malone v. the United Kingdom, 2 August 1984, § 79, Series A no. 82.*
[13] *United Communist Party of Turkey and Others v. Turkey*, 30 January 1998, § 45, Reports of Judgments and Decisions 1998-I.
[14] See *Al-Dulimi and Montana Management Inc. v. Switzerland* [GC], no. 5809/08, 21 June 2016, § 145: "One of the fundamental components of European public order is the principle of the rule of law, and arbitrariness constitutes the negation of that principle."
[15] *Del Río Prada v. Spain [GC], no. 42750/09, ECHR 2013*
[16] *Panorama Ltd. And Miličić v Bosnia and Herzegovina (no. 69997/10 and 7493/11), 25 July 2017, § 63.*
[17] *Roman Zakharov v Russia* [GC] (no. 47143/06), 4 December 2015, § 230, *Beghal v the United Kingdom* (no. 4755/16), 28 February 2019, § 88.
[18] Reflected in the core of *H.F. and Others v. France* [GC], nos. 24384/19 and 44234/20, 14 September 2022.
[19] *De Souza Ribeiro v. France* [GC], no. 22689/07, § 83, ECHR 2012.
[20] *Ibrahim and Others v. the United Kingdom* [GC], nos. 50541/08 and 3 others, § 250, 13 September 2016.
[21] See, for example, *Grzęda v. Poland* [GC], no. 43572/18, § 342, 15 March 2022: "the principles of the rule of law and the avoidance of arbitrary power which underlay much of the Convention".
[22] See *Tuleya v. Poland, nos. 21181/19 and 51751/20, § 264, 6 July 2023*: "The Court cannot over-emphasise the fundamental role played by the national courts as guarantors of justice in upholding that principle through their decisions whereby they give direct effect to the Convention rights and freedoms or remedy Convention violations that have already occurred" citing *Grzęda v. Poland*, cited above, § 324. See also A. Seibert-Fohr, "Protecting Judicial Independence: A Shared Endeavour of European Human Rights Protection" Keynote 8 October 2023.

Sadly, we now have extensive case-law in Strasbourg relating to the recruitment/appointment of judges,[23] career/promotion,[24] transfer,[25] suspension,[26] disciplinary proceedings,[27] and removal from post while formally remaining a judge.[28]

To give you one high profile example, in *Guðmundur Andri Ástráðsson v. Iceland*, the Grand Chamber examined the process for the appointment of judges to the newly established Icelandic Court of Appeal.

It introduced a three-step test whereby a defect in the appointment procedure of a judge leads to a violation of Article 6 if (a) it is manifestly in breach of domestic law, (b) affects the ability of the judiciary to perform its duties free of undue interference and (c) the competent national courts have failed to adequately review the alleged irregularity and its consequences.

That Grand Chamber judgment in the Icelandic case reminds us that the establishment of independent and impartial tribunals in accordance with law is something which we must seek to protect in all European States, even in those where democracy and the rule of law do not otherwise appear fragile.

The principles developed in *Ástráðsson* have since been applied in cases involving other respondent States, not least Poland, Bulgaria, Ukraine, Georgia or Albania.[29]

At the end of last year, the Court handed down its judgment in *Wałęsa v. Poland*.[30] The Chamber found violations of Articles 6 and 8 of the Convention in a case brought by the applicant, the former leader of *Solidarność*. He had suffered the reversal, ten years on, by a Chamber of the Polish Supreme Court of a final defamation judgment in his favour. This was following an appeal by the Prosecutor General. The Court regarded that appeal as:

> "*[…] an abuse of the legal procedure by the State authority in pursuance of its own political opinions and motives*".[31]

The judgment, in which the Court applied its pilot judgment procedure due to there being over 400 associated cases pending regarding the Polish judicial reforms, marks an important inflection point. It follows multiple violations found in a series of previous cases challenging the impact of those reforms.[32]

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[23] *Juričić v. Croatia*, no. 58222/09, 26 July 2011.

[24] *Dzhidzheva-Trendafilova v. Bulgaria* (dec.), no. 12628/09, 9 October 2012, and *Tsanova-Gecheva v. Bulgaria*, no. 43800/12, §§ 85-87, 15 September 2015.

[25] *Tosti v. Italy* (dec.), no. 27791/06, 12 May 2009.

[26] *Paluda v. Slovakia*, no. 33392/12, §§ 33-34, 23 May 2017, and *Camelia Bogdan v. Romania*, no. 36889/18, § 70, 20 October 2020.

[27] *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], nos. 55391/13 and 2 others, § 120, 6 November 2018; *Di Giovanni v. Italy*, no. 51160/06, §§ 36-37, 9 July 2013; and *Eminağaoğlu v. Turkey*, no. 76521/12, § 80, 9 March 2021. As regards dismissal see *Oleksandr Volkov v. Ukraine*, no. 21722/11, §§ 91 and 96, ECHR 2013; *Kulykov and Others v. Ukraine*, nos. 5114/09 and 17 others, §§ 118 and 132, 19 January 2017; *Sturua v. Georgia*, no. 45729/05, § 27, 28 March 2017; *Kamenos v. Cyprus*, no. 147/07, §§ 82-88, 31 October 2017; and *Olujić v. Croatia*, no. 22330/05, §§ 31-43, 5 February 2009.

[28] *Baka v. Hungary* [GC], no. 20261/12, 23 June 2016, §§ 34 and 107-11; *Denisov v. Ukraine* [GC], no. 76639/11, § 54, 25 September 2018; and *Broda and Bojara v. Poland* (nos. 26691/18 and 27367/18, §§ 121-23, 29 June 2021), and *Gumenyuk and Others v. Ukraine*, no. 11423/19, §§ 61 and 65-67, 22 July 2021. See, for an overview, K. Šimáčková, "Protection of the rule of law and judicial independence through the protection of the rights of judges before the European Court of Human Rights", "EUnited in diversity, II, The Hague, August 2023, forthcoming.

[29] See, variously, *Reczkowicz v. Poland*, no. 43447/19, §§ 216-279, 22 July 2021; *Besnik Cani v. Albania*, no. 37474/20, §§ 83-114, 4 October 2022; *Gloveli v. Georgia*, no. 18952/18, §§ 49-51, 7 April 2022.

[30] *Wałęsa v. Poland*, no. 50849/21, 23 November 2023.

[31] *Wałęsa*, cited above, § 254.

[32] *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*

The objective of those judgments, whether the violations found related to Articles 6, 8, 10 or even 18 of the Convention, has been to protect the national judiciary against unlawful external influence, from the executive, the legislature or from within the judiciary itself.

This case shows us that as a last resort, the Strasbourg Court can play a role in ensuring that judicial reform is not used as a pretext to erode respect for Convention rights or the independence or impartiality of judges to whom it falls to safeguard those Convention rights.

The aftermath of the *Wałęsa* judgment speaks to the possibility of change. Soon after the delivery ofthe judgment, 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.[33]

To bring this theme closer to home, the landmark *Wille* case[34] of 1999 concerned the then President of the Administrative Court of Liechtenstein, who complained under Article 10 that his freedom of expression had been interfered with when the monarch told him that he would not appoint him to any public office in the future. This came after Mr Wille had publicly stated that the State Court could arbitrate in constitutional disputes between the Prince and the Parliament.

This judgment set a precedent as regards judges being entitled to the protections afforded by Article 10 and freedom of expression; something which has featured prominently in the recent Polish cases.

I conclude this rule of law segment with a reference to Professor Hersch Lauterpacht, who wrote presciently in 1949:

> "*[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.*"[35]

Then and now, when defending the rule of law, in all its different dimensions, the European Convention clearly matters.

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.

[33] See further the President's speech at the opening of the 2024 Strasbourg judicial year - https://www.echr.coe.int/documents/d/echr/speech-20240126-oleary-jy-eng.

[34] *Wille v. Liechtenstein* [GC], no. 28396/95, ECHR 1999-VII

[35] H. Lauterpacht et al, 'The Proposed European Court of Human Rights', (1949) 35 *Transactions of the Grotius Society,* p. 34.

IV – The Convention, oxygen and blind spots

My third and last theme illustrating the Convention's continued importance focuses on its ability to bring oxygen into ongoing national debates, to cast light on national blind spots and to equip our systems to face the challenges of modern-day life.

As I have emphasised on many occasions, the character of a State is defined in a fundamental way by its fundamental law – therein lies its constitutional identity - informing its whole body of laws, ordering its democratic life, and to some extent, grounding the policy and actions of Government.

It is not the vocation of a human rights treaty – or international human rights judges - to override, substitute or compete with that.[36]

However, no system is immune to blind spots and in most States there comes a time when recourse to an external adjudicatory forum provides parties with the oxygen, the distance and the perspective which they might argue national authorities on a given issue might otherwise have lacked.

Thinking of my own State, Ireland, sometimes the Strasbourg Court has had to push for required change, acting as an essential ally for national judges seeking the same. The provision of suitable detention facilities for young, troubled offenders is a case in point.[37] Sometimes it has had to shove. The case of Louise O'Keeffe and historical child sex abuse in primary schools, in which the Court found a violation of Article 3 of the Convention, is another.[38]

In many other situations the case-law of the Strasbourg Court has successfully nudged my State and others, little by little, into recognising and rectifying their blind spots.

This method works when the respondent State accepts that, under the Convention, it is the State and not the Court in Strasbourg which bears primary responsibility for assuring respect for Convention rights and freedoms. Furthermore, this is a responsibility which finds expression in the obligations to which the State has voluntarily subscribed under international law.

In relation to Liechtenstein, relevant examples might be in relation to Article 6 fair trial guarantees, unreasonable delay in civil proceedings or whistle-blowing protections and freedom of expression under Article 10.[39]

It is important to emphasise that the Court conducts its supervisory function in accordance with the principle of subsidiarity. Its assessment is informed by European consensus and the margin of appreciation.

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[36] See further Síofra O'Leary, 'Legal Tales of European Integration: the ECHR and Modern Ireland' (Iveagh House EU 50 Lecture, 1 February 2023).

[37] See *D.G. v. Ireland*, no. 39474/98, ECHR 2002-III.

[38] *O'Keeffe v. Ireland* [GC], no. 35810/09, ECHR 2014 (extracts)

[39] See, respectively, *Bekerman v. Liechtenstein*, no. 34459/10, 3 September 2015, *Steck-Risch and Others v. Liechtenstein,* no. 63151/00 , 19 May 2005 and *Gawlik v. Liechtenstein*, no. 23922/19, 16 February 2021.

In this way, the Court's judgments keep pace with the majority of the member States in human rights protection, going generally no faster, but also no slower than the trends across our shared Convention legal space.[40]

The recent climate change rulings – which made news around the globe and which provoked parliamentary resistance in your Council of Europe neighbour – is a case in point.

Over the last decades, the Court has developed a rich case-law on environmental issues under certain articles of the Convention, most notably, the right to private and family life; access to court; the right to property; and freedom of information.

The three climate change rulings from April need to be read and understood together. They reflect quite clearly and carefully how the Convention system works.

Firstly, in *Duarte Agostinho and others v. Portugal and 32 Others*, the Court's decision to declare the applicants' complaints against Portugal inadmissible came down to the non-exhaustion of available and effective domestic remedies. The Court explained:

> "*[I]t [is] difficult to accept the applicants' vision of subsidiarity according to which the Court should rule on the issue of climate change before the opportunity has been given to the respondent States' courts to do so. This stands in sharp contrast to the principle of subsidiarity underpinning the Convention system as a whole, and, most specifically, the rule of exhaustion of domestic remedies [...].*"[41]

In *Duarte* the Court also rejected the applicants' arguments in relation to the extra-territorial jurisdiction of the 32 States other than Portugal. The specificities of climate change, some of which the Court acknowledged, could not in themselves serve as a basis for creating, by way of judicial interpretation, a novel ground for extraterritorial jurisdiction or as a justification for expanding existing ones. In particular, the Court rejected the applicants' submissions to the effect that control over their Convention "interests" should serve as the relevant test for establishing jurisdiction in the field of climate change. The Court considered that this test would lead to a critical lack of foreseeability as regards the Convention's reach and an untenable level of uncertainty for the States. It would entail an unlimited expansion of the States' extraterritorial jurisdiction under the Convention and responsibilities thereunder towards people practically anywhere in the world.[42]

[40] Pavli D. and Kondak R., "Beyond the Age of Subsidiarity: Do Established Democracies still need the European Court of Human Rights?", *Liber Amicorum Robert Spano,* 2022, 563.
[41] Ibid §228
[42] Ibid., §§ 204, 206 and 208. An interesting EU dimension was also relied on by the applicants in *Duarte* as a basis for extra-territorial jurisdiction of the 26 EU Member States they had cited as respondents, namely their EU citizenship. The Court rejected this argument, pointing out that it "misconstrued the nature and effect of EU citizenship as provided in EU law and interpreted by the CJEU" (§§ 199-200).

Secondly, in the decision in *Carême v France*, the victim status of the applicant was denied because there had been successful domestic litigation by the municipality itself in accordance with national law. In other words, all roads do not and should not lead to the Strasbourg Court.

Thirdly, in the leading case *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland,* the Court did find a violation of Article 6 § 1 - the right to a fair trial - because there had been no avenue under Swiss law in which the applicant association's climate change complaints could have been brought before a court. It also found that Switzerland had failed to comply with its positive obligations under Article 8, which obligations can essentially be boiled down to ones of regulatory due diligence.

Three important takeaways from these three cases are that, firstly, the Convention only applies where the rights and freedoms guaranteed therein are seriously affected by the adverse effects of climate change. The threshold for individual victim status is high in climate-change cases.

Secondly, the Court emphasised that there is a critical need for domestic systems to provide effective channels for applicants to raise climate change complaints, including before domestic courts, before any application is lodged with the Court.

Thirdly, In *Klima*, the Court expressly stated that future generations are likely to bear an increasingly severe burden of the consequences of present failures and omissions to combat climate change and, at the same time, recognised that they are at a representational disadvantage in the relevant current decision-making processes. It held:

> "*[T]he intergenerational perspective underscores the risk inherent in the relevant political decision-making processes, namely that short-term interests and concerns may come to prevail over, and at the expense of, pressing needs for sustainable policy-making, rendering that risk particularly serious and adding justification for the possibility of judicial review*".[43]

I leave it to the academics here present to decipher the extent to which the Court innovated in these recent cases. I would argue that what emerges from them is the ability of the Court, not to reinvent the wheel per se, but to develop and apply well-established principles ensuring that the Convention can continue to tackle contemporary challenges.

V - Conclusions

I would like to conclude by referring to the Strasbourg Plenary Court's Memorandum in advance of the historic 4th Summit of Heads of State and Government which took place in Reykjavik last May.

[43] *Klima*, § 420.

In the memorandum, the Court recalled the decisive role played by the Council of Europe and the Court for over seven decades, seeking to maintain high standards of democracy, human rights and the rule of law in the member States.

Speaking as a collegiate body of 46 Judges, we concluded then in a manner which I could not better in my conclusion for you today:

> "*As war rages on European soil, Council of Europe member States should not lose sight of what the Convention system is intended to do, namely to monitor compliance with the minimum standards necessary for a democratic society operating within the rule of law. It serves as an early warning system which seeks to prevent the erosion of democracies.*[44]

We cannot either lose sight, at this critical point in Europe's history, of the Convention's special character as a treaty for the collective enforcement of human rights and fundamental freedoms and of our profound responsibility to pass on this unique international protection mechanism to future generations."[45]

One might ask, in a State like yours with only one application pending before a Court charged with dealing with over 64,000 applications, what role you can play in preserving and securing that heritage.

Coming from a State with, at present, only two applications, I would say that our role is be Convention champions. I hope that the arguments I have set out in favour of this today will convince you to continue in this vein.

[44] See the Plenary Court's Memorandum: ECtHR, Memorandum for the Fourth Summit of Heads of State and Government of the Council of Europe, 20 March 2023.
[45] See above.