

## **ECDH: FOR A FUTURE THAT LIVES UP TO ITS PAST**

November 14 marked the 60th anniversary of *Lawless v. Ireland*, the first judgment of the European Court of Human Rights. In these 60 years, the Strasbourg Court has left an unparalleled mark in promoting and rooting the respect for human rights and fundamental freedoms. It is no exaggeration to say that the ECHR is one of the world's institutions that has contributed most to the maintenance and promotion of peace based on fundamental rights, setting an example for other regions of the world - and this should be recognised by the international community.

However, only the most inattentive would deny that the climate of stability and growth which marked the immediate post-war period in Europe and which enabled the ECHR to develop its case law has given way to an increasing radicalisation of public debate. The rise of populism and of the so-called "illiberal democracies" are challenging the consensus that we took for granted not so long ago.

It is at times like these that a court like the ECHR is more necessary than ever. It is essential that we have a Court that guarantees the most fundamental rights and freedoms of citizens, in the face of threats from unilateral and partial visions of society or populist regimes that, while claiming to be "true representatives of the will of the people", are nothing more than autocracies in disguise.

The anniversaries of institutions should be moments of assessment and reflection. Perhaps the time has come for the Court to reflect on itself and what it needs to do to preserve its authority.

In terms of procedure, perhaps the criticisms often directed by the ECHR towards States should be directed at the Court itself: aren't the proceedings before the Court too long? Is the Court not in denial of justice when it takes so many years to decide appeals from citizens who suffer gross violations of their rights? A striking example are the appeals lodged by hundreds of Turkish magistrates who were summarily expelled after the attempted coup of 2016 and who, almost five years later, are still awaiting a decision and are suffering detention in inhuman conditions that endanger their lives and the subsistence of their families.

The ECHR must also seriously reconsider the criteria for verifying the existence of an "effective domestic remedy" or the requirements for the issuing of interim measures, in cases where we are witnessing an organised and systematic dismantling of the rule of law. If these changes are not introduced, its judgments will increasingly be ineffective because of their lateness, which will irremediably affect the Court's authority.

At an institutional level, the independence and credibility of the Court must be strengthened. The Court's funding model needs to be rethought, freeing it from the threat of budget cuts resulting from unilateral decisions by Member States dissatisfied with judgments, as we have seen recently.

Also the selection of judges - elected by the Parliamentary Assembly after indication of the States - should be rethought. The Council of Europe (the Committee of Ministers, in Recommendation CM/Rec(2010)12, or the Consultative Council of European Judges, in Opinions no. 10(2007) or 21(2018)) has several times reiterated the essentiality of the absence of any interference by other powers in the selection of judges. Why does this principle not apply to the ECHR? Why not give the Court the power to select its judges, through open and transparent

competitions, with clear and predefined criteria, without interference from States or the Parliamentary Assembly?

And as with any other court, public perception of its independence is also essential to maintaining its authority. Episodes that may lead citizens to doubt the Court's equidistance from certain states - particularly the most populous and largest donors - should not be repeated. A single one of these unfortunate events can destroy years of solid jurisprudence.

Six decades have passed since the beginning of the long journey that has made the ECHR a world reference. The world has changed a great deal over these sixty years and the Strasbourg Court has played a key role in this change.

We, the citizens of Europe, have the right to demand from the Council of Europe and the European Court of Human Rights a new start, placed under the sign of audacity. The success of the ECHR will be the success of democracy, rule of law, human rights and, above all, peace in Europe - a dream come true that we must not allow to become a mirage again.

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