

Intervista esclusiva a Róbert Ragnar Spanó, presidente della Corte europea dei diritti dell'uomo

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1) What are the major challenges you tackling in this first phase of your presidency from both a personal and a professional perspective?

Answer: Taking up the function of President of the European Court of Human Rights is a daunting task. The Court is one of the most important human rights institutions in the world and certainly one of the most influential and distinguished courts in this field. One feels a sense of great responsibility and dedication. **I start my presidency at a very difficult time due to the sanitary crisis.** That poses significant logistical and structural challenges. However, the Court has done remarkably well during the past few months in keeping up productivity and demonstrating that we can rise to the challenge to do our jobs at the front-line of safeguarding democracy, the rule of law and human rights.

2) Even before becoming judge of the European Court of Human Rights, you collected a series of outstanding professional achievements. Have these previous professional posts, for instance the years as a parliamentary ombudsman, proven useful in your work as a European judge? You were also a Law Professor and then Dean of the Law School: can the experience of coordinating the activity of the Law School be beneficial for your functions today?

Answer: Yes, I feel that I was very well prepared to take up my function as a Judge of the European Court of Human Rights when, in 2013, I began my nine year mandate. **In particular, my almost 15-year experience within the Office of the Parliamentary Ombudsman of Iceland, and of course especially in the last few years before Strasbourg, when I served provisionally as Ombudsman, were of particular worth.**

3) Also, do you consider that coming from a multi-national background was helpful to improve the multilingual and multicultural dimensions of your upbringing and education? Are these dimensions relevant for the daily work of the Court?

Answer: My background has proved crucial for me. The Court is comprised of 47 Judges from the same number of Member States from the Council of Europe, along with over 600 Registry Staff, also from these States, with very different historical, social and cultural backgrounds. It is a difficult environment to navigate successfully. I think my international background and my ability to converse in a number of languages have helped me extensively in that regard.

4) Over the past years, one of the most debated topics in legal scholarship focusing on multilevel constitutionalism and protection of human rights has been the so called “judicial dialogue”, in its different facets: with the Court of Justice of the EU, with domestic judges who have to uphold European standards in their jurisdictions and whose case law can be referred to by the Court itself, but also with the Inter-American Court of Human Rights. What is your take on this issue? And do you think the new advisory function can have an impact on these relationships?

Answer: Judicial dialogue with national courts is essential because the Court was always intended to be subsidiary to the national systems own safeguarding of human rights. The national authorities, and in particular the national courts, are the first guardians of human rights. Indeed, one can say that they are the first “Strasbourg Judges”. Together with us, the international judges of the ECtHR, they form a European “community of judges” that are entrusted with enforcing the fundamental rights and freedoms of the Convention. This is why the Court has been working hard to increase access to information on the Convention and the case-law through improving its website; increasing the translations of Court decisions and judgments into different languages; and through the training of judges, prosecutors and lawyers. The Superior Courts Network, which the Court set up in 2015, is another relevant tool. **It aimed to establish an information exchange network which would enable superior courts from Contracting States to have a point of contact within the Court through which case-law information could be provided. The network is an unmitigated success.** It now comprises of 90 courts from 40 Member States, including four from Italy (the Supreme Court of Cassation, the Council of State, the Court of Auditors and the Constitutional Court).

I am very much in favour of the new advisory function of the Court which came to life with Protocol No. 16 on 1 August 2018. It institutionalizes dialogue with national courts. I believe that it can only help to enhance the legitimacy of the Court in the long term because the concept of subsidiarity will become further embedded in the system, with domestic courts feeling fully integrated into the decision-making process.

As you mention there is another facet to our judicial dialogue which takes place with other international courts and bodies, such as the Court of Justice of the European Union, as well as the two other regional human rights courts: the Inter-American Court of Human Rights and the African Court of Peoples and Human Rights. We meet annually with Judges from the Court of Justice of the European Union to exchange on topics of mutual interest and discuss common approaches in European law. It is essential that Member States perceive a harmony in the European legal space. Cooperation with the two regional human rights courts I just mentioned was institutionalized recently through the San José Declaration signed by the three courts’ Presidents in July 2018. This Declaration committed to establishing a permanent forum of institutional dialogue between us. We have much to learn from each other. For example, recently I took part in a virtual conference with the Presidents of the other two regional courts on “The impact of Covid-19 on human rights. The perspectives of the three human rights courts of the world”. The global impact of this pandemic is obvious and our response needs to be coordinated.

5) For your first public talk since taking over the presidency, you addressed the topic of judicial independence (“The Principle of Judicial Independence and the Democratic Virtues of Human Rights Law”, 29th of May). How and why did you select this subject? Do you think it will be object of further judicial interpretation and development?

Answer: The independence of the judiciary is and will be a major theme of my term as President of the European Court of Human Rights. The independent and impartial judge is one of the fundamental constitutional pillars of the Convention system. The Grand Chamber of this Court emphasised recently in the case of *Baka v. Hungary* that the judiciary play a special role in society. Judges are the guarantors of justice, a fundamental value in a law-governed State. They must enjoy public confidence if they are to be successful in carrying out their duties. The very foundations of the Convention system are premised on respect for the rule of law. The rule of law is embedded into the fabric of the system. For the enforcement of human rights, the rule of law thus requires the existence of functioning institutions, most importantly national courts being independent. So our whole system of human rights relies on having functioning and independent judicial systems at the national level. The topic of judicial independence is not a new one; indeed, it was chosen as the subject of two of our recent Annual Judicial Seminars in 2018 and 2019. We have an established and rich jurisprudence on many aspects of judicial independence, for example, the appointment and dismissal procedures for judges, the rights and restrictions of judges in terms of their family and private life, their freedom of association or freedom of religion. In recent years, we have seen some examples of what I would call a “rule of law backsliding” in a few Member States, where justice system reforms have put judicial independence into question. Some complaints have been brought before the Strasbourg Court and are currently pending.

6) What are the main challenges that the ECtHR is facing at the moment? The questioning of its legitimacy? The rise of sovereignty-based conceptions of legal systems in Europe? The overload of cases? Or others?

Answer: There are a number of challenges facing the Strasbourg Court at the moment. One is the case-load challenge. New working methods which were put into practice by the Court in the last decade have helped to reduce dramatically the number of pending cases from 161,000 in September 2011 (at its peak) to just below 60,000 today. These changes included reinforcing the Court’s filtering capacity and measures for dealing with repetitive cases. Of course, 60,000 pending cases still pose a challenge for the Court and that is why we are constantly looking for ways to improve our case-processing, for example through the use of new IT tools. Of course, there are still some major systemic problems in certain Member States which persist. Here I am thinking of conditions of detention, enforcement of domestic proceedings and the length of domestic proceedings. Applications related to Inter-State conflicts also pose a challenge to the Court. While there are only eight pending Inter-State cases before the court, the number of individual applications which result from inter-state conflicts can be quite high. But over and above the numbers, there are procedural difficulties with dealing with these cases, such as the difficulty in gathering evidence, establishing the facts and the applicability of international humanitarian law.

Another challenge is the rise in populism and intolerance which leads to the calling into question of the values of the Convention. International institutions, such as the Council of Europe, which promote multilateralism, democracy and the rule of law, are vulnerable to attack. However, the Council of Europe and the Court have in my view never been as important and relevant as at this very moment. The crisis emanating from the pandemic, the tensions we see for democracy and the rule of law bring us back to first principles, the values and ideals we have been fighting for in the last 70 years and that are embedded within the rights and freedoms provided for by the Convention. The Court must remain a forum of principle, a Court of law, rising above political life, interpreting and applying the Convention in a manner bringing justice to the peoples of Europe.

7) Depending on the Court analyzed, Presidents can become true leaders, defining the course of its aims and achievements, like the Chief Justice within the US Supreme Court. What is your take on the mission of the European Court of Human Rights?

Answer: I was not elected to this post just to sit comfortably in my office for the next few years. No, not at all. I hope to use my time well, to contribute meaningfully to bringing the Court forward, to strengthen even further its impact for Europe and the protection of human rights. That will mean continuing and even reinforcing our reform process towards expediting the delivery of high quality judgments, in particular in priority cases that develop and clarify Convention principles. The Court must be relevant today, now, not in the distant past. During my presidency Europe will hopefully see a more reactive Court, a more dynamic Court, a Court that is visible and capable of rendering judgments in the most important cases in a reasonable amount of time, but at the same time is also capable of streamlining even further its working methods and procedures.

I hope to be able to strengthen even further the internal working environment, to take part in motivating and inspiring the incredibly talented group of people who work every day at the Court to make the institution the best it can be.

TAG: Corte europea dei diritti umani, Unione Europea, Europa, Consiglio d'Europa

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