

Conference on “Justice in the EU – from the Citizen’s Perspective”

Stockholm, 22-23 July 2009

Address by Judge Dean Spielmann

Mr Chairman, Excellencies, dear colleagues and friends, ladies and gentlemen,

Let me first of all thank you for the privilege of being invited to address, on behalf of the European Court of Human Rights, the eminent audience gathered on the occasion of this important conference on “Justice in the EU from the Citizen’s Perspective”. Your invitation fits very well into the tradition of good relationship and cooperation which, since a couple of years, the European Union has been building up with the Council of Europe and the European Court of Human Rights.

As far as the Council of Europe is concerned, this cooperation has taken the form of the Memorandum of Understanding which was agreed upon a few years ago and has become since the basis of regular and fruitful consultations between the two organisations. As regards the Court, I would only mention that the good understanding and regular contacts between the European Court of Human Rights and the Court of Justice of the European Communities have contributed a lot to the harmony existing between their respective case-law. It is in the same spirit of cooperation that I would like to make the following observations on the subject matter of the conference and in particular on access to justice, as well as on the protection of rights in criminal proceedings.

In Strasbourg we have indeed gathered quite some experience in dealing with those topics. Indeed, Article 6 of the European Convention on Human Rights, the provision guaranteeing the fairness of court proceedings, still is the Convention provision most frequently invoked by the applicants coming to Strasbourg. And among the many

safeguards Article 6 enshrines, access to justice and procedural rights in criminal proceedings remain very prominent issues.

There is no time here to go into any details about the Court's case-law on these issues but the main message which we can we learn from these many applications and the case-law to which they give rise is certainly that an effective access to justice and an effective protection of procedural rights are increasingly being perceived by European citizens – and rightly so – as an inherent component of a democratic society committed to the rule of law. In this respect the EU Charter on Fundamental Rights certainly shows the way forward by widening up the scope of the right to a fair trial as delineated by Article 6 of the Convention. Driven by the same momentum, the European Court of Human Rights, for its part, has constantly interpreted Article 6 of the Convention so as to give it the widest possible scope compatible with its wording, covering for instance large parts of administrative, social or even constitutional litigation.

However, it is not good enough to create a right to a judge; it also has to be effective in practice. And this is probably one of the

areas where the biggest efforts are called for. Indeed, many of our national courts are chronically overloaded, which year after year produces hundreds of identical Strasbourg judgments finding a violation of the right to a fair trial within a reasonable time. This is a structural problem with which the Court has been confronted for the last 20 years or so and still remains on the agenda. If it is true that justice delayed is justice denied, we should probably ask ourselves whether in terms of access to justice, and as a matter of credibility, this problem should not be looked at before anything else.

In this connection, I would not like to be seen as oblivious of the fact that we have similar problems as regards the workload of the Strasbourg Court and the delays to which it gives rise. In this respect, however, some progress has been made as a result of the fact that a breakthrough has recently been achieved allowing two of the most effective procedural innovations provided for by Protocol 14 to the Convention to be applied as from now in respect of States which so accept. Actually, an increasing number of States are doing so, which will certainly improve the effectiveness of citizens' access to the Strasbourg Court.

Unfortunately, the same can still not be said as regards access to the Strasbourg Court for citizens who want to complain about acts by EU institutions, the EU still not being, unlike all its Member States, a Contracting Party to the Convention. This is an anomaly with potentially adverse effects on the EU's credibility, making it the only regulatory power in Europe not subject to an external judicial control. It should therefore be remedied as soon as possible.

Let me now turn to the second topic which I would like to briefly address with you today: procedural rights in criminal proceedings. Many things have already been said and written about this topic, in connection with previous attempts to come to an agreement on a framework decision on these rights and I will not repeat them here. I would rather confine myself to a few basic ideas.

First, every initiative towards expanding the number or the scope of the fundamental rights being currently protected is to be welcomed in principle. And all drafts for new instruments on procedural rights which I have seen so far indeed contain such new rights or rights involving higher standards. This is certainly in line with the

Strasbourg Court's own case-law to the effect that the Convention being a living instrument, some of its standards may occasionally need to be raised in order to match higher expectations in public opinion in certain areas. This is why, for instance, the Court recently ruled that henceforth legal assistance must be available as from the first interrogation of a suspect by the police. Moreover, the Convention even implicitly encourages the Contracting States to lay down higher domestic standards.

However, in order for the creation of new rights or the raising of existing standards to be credible and represent real progress, it should not be seen as an attempt to distract attention from a poor record in implementing *existing* rights but rather as a way to improve this record. Can I remind you, in this connection, that some 60 to 65 % of all violations found in Strasbourg are so-called repetitive violations stemming from structural or systemic problems which have already been identified by the Court in countless judgments but which keep producing new applications because they have not yet been properly remedied by the States concerned?

If, however, the purpose is not just to add a layer of new procedural rights but to *reinforce* the existing rights, notably with a view to facilitating mutual recognition of judgments, then I can only encourage you to pursue on this path, not least because this could raise hopes as regards our own workload in Strasbourg.

Yet, for the new instruments to fulfil such expectations, they should be properly adjusted to the Convention. This means that any misunderstanding as to their scope and meaning as compared with those of the Convention should be avoided. Furthermore, the standards of the Convention, as interpreted by the Strasbourg Court, should be explicitly acknowledged as the minimum level to be observed also by any new instrument.

Actually, this was not the case with the last versions of the former framework-decision on procedural rights, which were quite disappointing in this respect. It was indeed hard to escape the impression that some parts of this draft framework-decision were being seen at the time as an opportunity to try and lower the corresponding Convention standards.

This, however, is a very short-sighted approach, as it is absolutely clear that at the end of the day any dispute over whether a new instrument is compatible with the Convention will end up before the European Court of Human Rights. We indeed have to bear in mind: the more room is left for hesitation by domestic judges, the more room is left for litigation by potential plaintiffs. Indeed, we may need more and better rights and they may need better implementation; but more court litigation is certainly the last thing we need in Europe.

Thank you.