

### Introductory Address

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Dear Justice Donal O'Donnell, dear President of the ECtHR, Marko Bošnjak, and Vice-President of the CJEU, Lars Bay Larsen, Madame Minister of Justice, Mr Attorney General, Madame Executive Director of the EU Agency for Asylum, representatives of the UNHCR, dear colleagues and friends,

On behalf of the European Chapter of the International Association of Refugee and Migration Judges, I would like to express a warm welcome to our biennial conference, this time, after Italy and Slovenia, in a country that I had never been to before and about which I know very little. The later fact puts my introductory address at an inconvenient disadvantage. However, by applying an “accelerated procedure”, I have found two links with Ireland which came to mind without any thorough examination of the risks involved. Namely, when James Joyce entered one of the richest phases of his literary production, he lived for 16 years in a city which in the early 20<sup>th</sup> century was the city with the highest Slovenian population. The second “fast-track” link that I found with Ireland is the fact that Immediate Past President of the ECtHR is the Irish judge Siofra O'Leary, while the current President of the Strasbourg Court, who is with us today, is the Slovenian judge Marko Bošnjak. Furthermore, I also have one strong personal link with Ireland, which I will leave for the end of my contribution.

I will share with you on this occasion my personal thoughts and experiences about the three important characteristics of the European Chapter at this moment of our time in Europe and in the context of our conference programme.

Given that we live in a so-called post-factual society, I need to start with the first characteristic, which is that the European Chapter is about knowledge. It is about legal knowledge of EU law and judicial experience regarding the rule of law in the field of asylum and migration. Eminent proof of that is the compilation of several thousands of pages of judicial analyses on all major aspects of the CEAS produced by around 20 core members of our association. We achieved this in 7 years under the contract with the EUAA.<sup>1</sup> So, it is not a surprise that the Executive Director of that agency is with us today. The interpretative value of our judicial analyses on CEAS will not necessarily become outdated by “*Mr. Godot*,” who in the form of the New Pact on Migration and Asylum actually came to our doorstep.<sup>2</sup> I deliberately used the expression that judicial

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<sup>1</sup>For free access to judicial analyses in various languages, visit website of the EUAA: asylum knowledge / courts and tribunals / EUAA Judicial Publications / Publications

<sup>2</sup>This is a paraphrase from Samuel Becketts „*Waiting for Godot*“ (1952).

analyses will not “*necessarily*” be outdated, because there is a danger that the extremely complex and technical system of the Pact on Migration and Asylum, particularly as regards effective access to procedure, with its numerous exceptions and cross-references between nine regulations and directive,<sup>3</sup> might detract our attention from the existing case law of both European courts, which has been developed since 1989 based on the ECHR and since 2009 based on references to the EU Charter of Fundamental Rights. Hence, in the sixth session of our conference we will touch upon some issues regarding effective access to procedure and judicial protection.

The second proof that the European Chapter is about knowledge and professional experience are our numerous training activities in asylum-related matters. Irish judges are the most numerous in the European Chapter and they are often core trainers with regard to activities under the auspices of the EUAA. But, the European Chapter goes beyond the borders of the EU. I need to mention the Western Balkans, Ukraine, Moldova, Kazakhstan, the Caucasus, Israel, and before the war we were also active in Belarus and Russia. In this regard, the regional and main UNHCR offices are our close partners, which is also reflected in the opening and last sessions of this conference. We are again particularly thankful to the UNHCR for financially supporting judges to enable them to attend this conference.

Since knowledge needs a quality management system, we have included in the programme some of these aspects from particular courts' perspective with the help of the President of the French National Court for Asylum, Mathieu Herondart, Melanie Plimmer, President of the Chamber on Immigration and Asylum Chamber of the U.K First Tier Tribunal, Judge Jolien Schukking from the ECtHR and Justice Aileen Donnelly of the Supreme Court of Ireland. Of course, our main quality benchmarks are the interpretations and standards of both European courts. That is why we put in the programme, immediately after the opening session, high representatives of both European courts, accompanied by national perspectives, with Justice Niamh Hyland of the High Court of Ireland and an academic contribution by Professor Cathryn Costello.

However, the European Chapter is not just about knowledge and judicial expertise. Thus, I come to the second characteristic of the European Chapter. The European Chapter is also an important partner in a multilevel stakeholder endeavour to preserve the values that the Council of Europe, the EU, and the international community of the rule of law still deem are the right values that our societies should continue to be built on. This characteristic of the European Chapter has three subcategories that are reflected in our conference programme.

The first is the European Chapter's concerns with the separation of powers, checks and balances, and judicial independence. Hence, it is our tradition to invite the minister of justice of the host country to our conferences,

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<sup>3</sup>See Official Journal of the EU L, 22. 5. 2024.

which can often be politically sensitive. We are grateful that Madame McEntee, the Minister of Justice of the Republic of Ireland, will address this audience and that the Attorney General of the Republic of Ireland, with his very special independent role under the Irish Constitution, will be joining this session, too.

The second specific subcategory of the multi-level stakeholder approach to the rule of law is a consequence of the expansion of the mandate of the EUAA. In this respect, the active and meaningful participation of judges in activities related to the courts and the tribunals of the aforementioned agency is becoming increasingly important. The role of the Network of Courts and Tribunals of the EUAA is indispensable and the European Chapter is playing an important role in that network. Perhaps Nicolas Jacobs from EUAA and Judge Luca Perilli will touch upon some of these issues in the third session.

The third specific subcategory within the multilevel stakeholder endeavour to preserve the rule of law is that basically all our professional activities relate to effective protection of fundamental human rights under international and EU law. These are the rights to the absolute prohibition of torture, inhuman or degrading treatment or punishment in its procedural and material dimension – not only in relation to refugee status or subsidiary protection, but also in cases of return and extradition, in relation to the reception conditions in the Member States of the EU – even in conjunction with compensation claims for not ensuring appropriate reception conditions. On the latter issue, an interesting request for a preliminary ruling was sent not long ago by the Irish High Court to the CJEU.<sup>4</sup>

Our professional activities directly relate also to those rights that are not absolutely protected, such as the right to personal freedom or *habeas corpus* – a value whose origin goes back to the early 13<sup>th</sup> century in this part of Europe.<sup>5</sup> In addition, we are also often confronted with the issues of family and private life, the prohibition of collective expulsion, and the best interests of the child. We will see what particular topics of migration or asylum have been selected by the supreme court Justices from Germany and the Czech Republic and Justice from the Court of Appeal of Northern Ireland in the fourth session of our conference.

Statistically, both European courts are considerably burdened by migration and asylum-related cases in their respective workload and that is why both European courts are our first natural partners. I use this opportunity to thank Judge Lars Bay Larsen for his indispensable support for having biennial tripartite meetings between the Luxembourg Court, the Strasbourg Court, and our association and UNHCR experts. This tradition started back in 2012 in Strasbourg under the presidency of Judge Spielman.<sup>6</sup> In the more recent past, such high-level

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<sup>4</sup>.See: A. and R.J., C- 97/24.

<sup>5</sup>Habeas corpus: Magna Carta Libertatum, King John of England, 15 June 1215; see also: Interdictio de Homine Libero Exhibendo, codified in the year 533 in the Digesto, Lib. XLIII, Tit. XXIX.

<sup>6</sup>For written contributions at that conference see International Journal of Refugee Law, 2013, Vol. 25, no. 2.

conferences have been facilitated and strongly supported by the EUAA. We will have the next high level roundtable in the middle of May on the premises of the Strasbourg Court.

However, in order to know better what the actual needs of judges are, our cooperation with the EJTN, including national schools for judges, is indispensable, too; in some countries, communication and cooperation with local NGOs is necessary in order to reach judges. We have a good record of regular cooperation also with the European Law Academy in Trier, FRA – the European Law Institute in Vienna, and with academia: the EUI in Florence, Masaryk University in Brno, the University of Trento, the University of Nijmegen, the University of Toronto, and the University of Bologna.

There are wars around us and we are again faced with the bankruptcy of humanity - not just with bankruptcy of the international rule of law. A hopeless judge in this absurdity could use the first sentence in the famous quote of Samuel Beckett: “*I can't go on*” (anymore). But Beckett's next sentence was: “*I'll go on.*”<sup>7</sup> At our last session, two Honorary Presidents of the European Chapter and Madaline Garlick from the UNHCR will address the issue of international protection in situations of armed conflict; and it is not true that law is silent during wars. In the last two years, the ECtHR issued a seminal judgment<sup>8</sup> and a decision on admissibility<sup>9</sup> on 570 pages in two cases against Russia. So, we now have highly relevant developments as regards the mix between interstate cases in Strasbourg and protection of the rights of individuals in armed conflicts. These two cases are also relevant for understanding the relationship between the ECHR and the rules of international humanitarian law.<sup>10</sup>

Thus, I come to the third characteristic of the European Chapter, which is a *conditio sine qua non* for our existence. The European Chapter is primarily about cultivating collegiality among judges at the international and national levels. Collegiality is something that I do not want to talk about, because it demands an interdisciplinary approach. Our General Meeting this afternoon will be a small reflection of that.

To conclude: it is not a coincidence that the Chapter's conference is being held here in Dublin. All four levels of independent adjudication in Ireland have provoked some very important preliminary rulings by the CJEU: the Supreme Court, the Court of Appeal, the High Court, and the International Protection Appeals Tribunal. This has occurred in all four major areas: the Dublin Regulation, the Qualification Directive, procedural law and reception conditions, despite some formal limitations on the applicability of secondary EU law on asylum

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<sup>7</sup>This is a paraphrase of Samuel Beckett taken from the end of his novel *The Unnamable* (1953).

<sup>8</sup>Ukraine v. Russia (Re Crimea), [GC], App. nos 20958/14 and 38334/18 25 June 2024, see in particular: paras. 824.

<sup>9</sup>Ukraine and the Netherlands v Russia, [GC] App. nos. 8019/16 and 28525/20, 30 November 2022, see in particular: paras. 718-720, 824-949.

<sup>10</sup>Ukraine v. Russia (Re Crimea), [GC], App. nos 20958/14 and 38334/18 25 June 2024, see in particular: paras. 912-945, 956-958, 981-984, 1008-1009, 1017-1019, 1032, 1063, 1084, 1134-1135, 1157-1158, 1251, 1271, 1288-1289, 1296, 1302, 1354, 1373.

in Ireland. Furthermore, the consequences of Brexit, following which we lost some ties with our colleagues in the United Kingdom, was another reason for coming to Dublin, along with the fact that we still cannot fulfil our promise to stage our conference in Odessa, as was planned for 2020 and for 2022.

But the paramount reason that we are here today is Hilka Becker, the Chairperson of the International Protection Appeals Tribunal. Hilka is my third link with Ireland that I mentioned at the beginning of my introduction. So, thank you Hilka and we also thank your precious team of colleagues from the Tribunal, along with our Secretary, Liesbeth van de Meeberg. I would also like to thank the Irish judiciary as a whole and Department of Justice for welcoming us here in Dublin and for supporting this event in all aspects.

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