

## **SOCIAL AND ECONOMIC RIGHTS UNDER THE EUROPEAN CONVENTION ON HUMAN RIGHTS AND THEIR PROTECTION IN TIMES OF CRISIS<sup>12</sup>**

By: Dr. Georgios A. Serghides, Judge ECtHR

***Distinguished guests  
Ladies and gentlemen,  
Dear students***

Good afternoon.

*First of all, I would like to express my thanks to the organisers of this Round Table for the invitation and to say that I am very happy and honoured to be here with you.*

“All human rights are universal, indivisible and interdependent and interrelated”.

Those were the words of the United Nations Vienna Declaration of 1993, reflecting the principle that all human rights have a common core: the inherent human dignity, which for every person is unique and indivisible.

In 1948 the United Nations Universal Declaration recognised the unity and individuality of all fundamental rights, that is to say, not only civil and political rights but also social and economic rights, which could be regarded as the other side of the same coin.

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<sup>1</sup> Speech delivered at the University of Central Lancashire (UCLN), Cyprus – Roundtable of Experts “Promoting & Protecting Socio-Economic Rights in Times of Crisis in Europe”, Nicosia, 2 March 2018.

<sup>2</sup> All views expressed are personal.

However, for historical reasons only the first group of rights were included in the European Convention on Human Rights adopted in 1950 (to be referred to as the “Convention”), while the second group of rights was left for the Council of Europe’s European Social Charter adopted in 1961. The EU Charter of Fundamental Rights of 2000, a much more recent instrument, also deals with social rights, under the heading “solidarity”.

In *Airey v. Ireland*,<sup>3</sup> the European Court of Human Rights (to be referred to as the “Court”) held that “[w]hile the Convention sets forth what are essentially civil and political rights, many of them have implications of a social or economic nature”. It also held that “there is no water-tight division separating that sphere from the field covered by the Convention”. In that case, the Court affirmed that, from the standpoint of Article 6 of the Convention and in certain circumstances, the State had an obligation, even in civil matters, to provide free legal aid to those most in need. This principle was subsequently confirmed and fine-tuned in *Golder v. the United Kingdom*<sup>4</sup> and other cases, but also broadened to encompass the entire issue of access to justice.

The question may be asked as to which of the Convention rights have social or economic dimensions. In my view, almost all the Convention rights can, to a greater or lesser extent, present such dimensions. Ioannis Sarmas, a Greek supreme court Judge, rightly observed that “[o]n closer examination ... almost all the Articles of the Convention

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<sup>3</sup> No. 6289/73, 09/10/79, § 26.

<sup>4</sup> no. 4451/70, 12 February 1975 (Plenary).

which enshrine rights can be read from a financial perspective”.<sup>5</sup> He was making the point that respect for Convention rights “entails budgetary sacrifices linked not only to the obligation to execute the Court’s judgments but also to the provision of public services”.

I can enumerate below some of the rights in the Convention which have social or economic dimensions: the right to life under Article 2, the right to be free of torture or to inhuman or degrading treatment or punishment under Article 3, the prohibition of forced labour under Article 4, the right to respect for family and private life under Article 8, freedom of thought, conscience and religion under Article 9, freedom of expression under Article 10, trade union freedom under Article 11, the right to free legal assistance and to the free assistance of an interpreter under Article 6, the right to compensation in the case of unlawful detention under Article 5, the right to the peaceful enjoyment of one’s possessions under Article 1 of Protocol No. 1, the right to education under Article 2 of Protocol No. 1, the right to compensation for wrongful conviction under Article 3 of Protocol No. 7, the prohibition of discrimination and the right of equality under Article 14 and under Protocol No. 12, respectively, and the right of equality between spouses under Article 5 of Protocol No. 7.

I will refer to one case, namely *Gaygusuz v. Austria*<sup>6</sup>, where two Articles of the Conventions were implicated in an issue which concerned a social right. In that case the applicant was a Turkish national who lived and worked (with some interruptions) in Austria from 1973 until 1987. He later applied for emergency assistance in

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<sup>5</sup> See Ioannis Sarmas, “Implementing the European Convention on Human Rights in times of economic crisis”, at p. 2 [http://echr.coe.int/Documents/Speech\\_20130125\\_Sarmas\\_ENG.pdf](http://echr.coe.int/Documents/Speech_20130125_Sarmas_ENG.pdf)

<sup>6</sup> no. 17371/90, 16 September 1996.

the form of advance pension on account of his failing health. However, his application was rejected, despite the fact that during his employment he had been paying contributions to unemployment insurance funds in the same capacity and on the same basis as Austrian nationals. He complained before the Court about the Austrian authorities' refusal to grant him "emergency assistance" on the ground that he did not have Austrian nationality, which was one of the conditions laid down by the relevant law for allowances of that type. He claimed to be a victim of discrimination based on national origin contrary to Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1. The Court considered that the right to "emergency assistance" was a "pecuniary right for the purposes of Article 1 of Protocol No. 1" (§ 41), and that "even though, at the material time, Austria was not bound by reciprocal agreements with Turkey, it undertook, when ratifying the Convention, to secure 'to everyone within [its] jurisdiction' the rights and freedoms defined in section I of the Convention." (§ 51). Thus, the Court ultimately found that there had been a breach of Article 14 taken into conjunction with Article 1 of Protocol No. 1.

It is true that the social and economic dimensions of the above-mentioned rights are usually revealed by the Court while interpreting these rights using different tools, which I will refer to as doctrines, the most common of which are: the living instrument doctrine, the doctrine that Convention guarantees must be practical and effective, and the doctrine of positive obligations of the State. All these interpretative tools are manifestations of the principle of effectiveness, which is perhaps the most important principle of the Convention system and, so to speak, the most defining element of

the “DNA” of that system. The principle of effectiveness is indeed inherent in the Convention, being an integral part of the protection of human rights which by definition seeks to be effective.

Although the above-mentioned interpretative principles ensure that existing rights are not fossilised and make them socially adaptable, they nevertheless do not amount to the invention or creation of new rights, and for rights which were omitted from the Convention, the principle of effectiveness cannot be employed to fill the lacuna. Only by the enactment of a new protocol could new rights, such as the right to health care or the right to social security and assistance, be added to the protection system under the Convention. But to open up the Convention system in this way would expand the positive obligations of the States concerned to a great extent and at a financial cost which they would have to be ready to bear.

In a written address made in 1991 Rolv Ryssdal, then President of the European Court of Human Rights, pertinently said as follows:

“The democratic state under the rule of law, which the Convention presupposes but at the same time also claims to guarantee, must, as we understand it today, necessarily be a social State under law. It may be a matter of regret that the Convention does not contain, or at any rate does not yet contain, an express provision to this effect. But there is nothing to stop the Convention organs taking increased account of the social dimension in the interpretation and application of the rights and freedoms, where this is required by social conditions in our countries. The principle developed by the Court, that the Convention is to be interpreted in the light of the present day conditions, applies in this sphere as well. Here too the *Airey* judgment gave an early indication of the Court’s approach”.<sup>7</sup>

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7. See Rolv Ryssdal, “The Protection of Social and Economic Rights and the European Convention on Human Rights and Fundamental Freedoms – Written Address”, in Franz Matscher (ed), *Die*

The preamble to the Convention proclaims that the Council of Europe's aim is "the achievement of greater unity between its members and that one of the methods by which that aim is to be pursued is the maintenance and further realisation of human rights and fundamental freedoms". This consideration embodies the requisite dynamism and cultivates the idea of advancing human rights by way of evolution.

In my view, therefore, only a constant evolution of human rights directed towards a more advanced level of protection is desirable, as anticipated in the preamble to the Convention. This end will be greatly furthered if the Court applies a dynamic and evolutive interpretation and always takes into account human dignity when interpreting Convention rights,<sup>8</sup> since human dignity lies behind every human right and its notion is elastic and susceptible to further refinement and upgrading.

Former Vice President of the Court, François Tulkens, pertinently said the following in an article of hers dealing with the issue:

"Understanding and applying the instincts (*l'intuition*) which underpin the principle of indivisibility of fundamental rights, the Court soon realised that the effectiveness of the civil and political rights it sought to protect was possible in certain cases only if the social implications of those rights were taken on board. Thus, by acknowledging the 'porous' nature (*perméabilité*) of the Convention *vis-à-vis* social rights, the Court has achieved impressive breakthroughs. Even if this movement is not

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*Durchsetzung wirtschaftlicher und sozialer Grundrecht: The Implementation of Economic and Social Rights*", Strasbourg - Arlington, 1991, 1 at p. 4.

8. See David Feldman, "Human Dignity as a Legal Value" – part II, *Public Law*, Spring 2000, p. 75. See also the partly dissenting opinion of G. A. Serghides in *Khlaifia and Others v. Italy* [GC], no. 16483/12, 15/12/16, § 52.

limitless and uncritical, it is not unreasonable to believe that there could in future be new developments in the case-law. The Convention, indeed, is a living instrument to be interpreted in the light of present-day conditions.”<sup>9</sup>

Now I will briefly examine the protection of social and economic rights in times of crisis. By the word “crisis” I mean any kind of crisis, economic crisis, refugee crisis, internal or external armed conflict, terrorism, environmental disasters, etc. Not infrequently, however, an economic crisis is not only a poverty issue, but entails a crisis of identity of a State, of democracy, or of the rule of law and human rights.

Since the relevant social and economic rights are intrinsically and inseparably incorporated into the civil rights secured under the Convention they have received the same protection as those rights, whether in normal situations or in times of crisis.

Regarding the latitude of protection of human rights, including social and economic rights, one must distinguish between an Article 15 of the Convention crisis and any other crisis.

Article 15<sup>10</sup> is the only Convention provision which specifically deals with a situation of national crisis. Under this provision, in time of war or other public emergency threatening the life of the nation, any

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<sup>9</sup> See Françoise Tulkens, “The European Convention on Human Rights and the Economic Crisis: The Issue of Poverty”, p. 4.  
[http://cadmus.eui.eu/bitstream/handle/1814/28099/AEL\\_2013\\_08.pdf?sequence=1&isAllowed=y](http://cadmus.eui.eu/bitstream/handle/1814/28099/AEL_2013_08.pdf?sequence=1&isAllowed=y)

<sup>10</sup> See on this Article generally, Peter Kempees, *Thoughts on Article 15 of the European Convention on Human Rights*, Oisterwijk, the Netherlands, 2017.

High Contracting Party may take measures derogating from its obligations under the Convention. But such measures can be applied only if the following substantive and formal conditions are met, namely:

- (a) the measures must be applied to “the extent strictly required by the exigencies of the situation”;
- (b) they must not be inconsistent with the other obligations of the State concerned;
- (c) no derogation is allowed from the right to life under Article 2, except in respect of deaths resulting from lawful acts of war, the prohibition of torture or inhuman or degrading treatment or punishment under Article 3, the prohibition of slavery or servitude under Article 4, the right not to be punished without law under Article 7, the right not to be tried or punished twice under Article 4 of Protocol No.7, and the right not to be tried or punished twice under Article 4 of Protocol No. 7;
- (d) the Secretary General of the Council of Europe must be kept informed of the measures taken and the reasons therefor, and also notified when such measures have ceased to operate and the provisions of the Convention are again being fully executed.

Regarding any crisis other than that provided by Article 15, it is true what former President of the Court, Sir Nicolas Bratza said in January 2012, in his speech on the opening of the judicial year of the Court, namely that:

“in times of crisis, the protection of human rights is not a luxury, but it is, more than ever, a necessity”.<sup>11</sup>

It is also true what former President of the Court Dean Spielmann, said on a similar occasion in January 2015, namely that:

“To quote Nicolas Hervieu, one of the shrewdest observers of our case-law, ...: ‘To pursue the fight against terrorism while upholding fundamental rights is not a luxury, but a condition of effectiveness and a compelling necessity. Any renouncement of our democratic values would only lead to defeat. And the terrorists would be the winners’”.<sup>12</sup>

Regarding the extent of the protection of human rights in cases of crisis – and now I’m referring more broadly to crisis situations where the right of derogation has not been exercised – one must draw a distinction between absolute rights and limited or qualified rights.

Regarding the first category of rights the protection is always the same. For example, as regards Article 3, which is an absolute right, thus a right without allowing for exceptions, the Court in *Hirsi Jamaa and Others v. Italy*<sup>13</sup> found a violation of that Article, finding that “having regard to the absolute character of the rights secured by Article 3”, the unprecedented level of irregular migration could not “absolve a State of its obligations under that provision” in spite of the “burden and pressure this situation place[d] on the States concerned, which [were] all the greater in the ... context of economic crisis” (§ 122). The Court pointed out that “the economic crisis and

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<sup>11</sup> Speech by Sir Nicolas Bratza, Solemn hearing of the European Court of Human Rights on the occasion of the opening of the judicial year, Strasbourg, 27 January 2012, available online: [www.echr.coe.int](http://www.echr.coe.int) (The Court – The President – Speeches – 2012).

<sup>12</sup> Speech by Dean Spielmann, Solemn hearing of the European Court of Human Rights on the occasion of the opening of the judicial year, Strasbourg, 30 January 2015, available online: [www.echr.coe.int](http://www.echr.coe.int) (The Court – The President – Speeches – 2015).

<sup>13</sup> [GC] no. 27765/09, 23 February 2012.

recent social and political changes had [had] a particular impact on certain regions of Africa and the Middle East, throwing up new challenges for European States in terms of immigration control” (§ 176), especially for States forming the external borders of the European Union.

Now, as regards the limited or qualified rights, in other words rights allowing for exceptions or restrictions, their protection in times of crisis may not always be the same as under normal conditions. This is so, because the interference with the exercise of a right by a public authority can be permitted if it is in accordance with the law and is necessary in a democratic society and pursues one of the legitimate aims mentioned in the Convention, for instance as those provided in paragraph 2 of Articles 8-11 of the Convention, namely public safety, the economic well-being of the country, the prevention of disorder or crime, protection of health or morals, and the protection of the rights and freedoms of others. The same is also true for Article 1 of Protocol No. 1, dealing with the right to the enjoyment of one’s possessions and other Convention rights which contain some exceptions and give discretion to the national authorities to deal with exceptional situations in a different manner.

Therefore, in times of crisis, restrictions on rights which are limited may vary, in order to meet the new conditions created by the crisis, subject to the application of the principle of proportionality, according to which the restrictions must be proportionate to the aims pursued. In such cases, the Court brings into play the principle of subsidiarity without intervening in the measures taken by the

national authorities. But under no circumstances would such restrictions affect the substance or essence of a right, which should always be preserved. Also, under no circumstances, could an economic crisis or any other crisis serve as a pretext for inequality or discrimination regarding the application of human rights.

A State which imposes austerity measures should not lose sight of the fact that social and economic rights are vulnerable. Nor should it overlook the need to always ensure access to justice to everyone without discrimination.<sup>14</sup>

I will mention an example of a case where an economic crisis affected the right to the enjoyment of property. In *Koufaki and*

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<sup>14</sup> As Carmona said:

‘Without equal access to justice, persons living in poverty are unable to claim their rights, or challenge crimes, abuses or violations committed against them, trapping them in a cycle of impunity, deprivation and exclusion. ... Moreover, the relationship between poverty and obstructed access to justice is a vicious circle: the inability of the poor to pursue justice remedies through existing systems increases their vulnerability to poverty and violations of their rights, while their increased vulnerability and exclusion further hampers their ability to use justice systems’.

(See Sepulveda Carmona, “Access to Justice and the Fight against Poverty”, in *How access to justice can help reduce poverty*, (at p. 2), Proceedings of the Avocats Sans Frontières (ASF) Justice 2015 Conference (Brussels, 22 May 2013), available online at [www.asf.be](http://www.asf.be) (last accessed on 2 August 2013)).

In this connection, François Tulkens, pertinently said the following<sup>14</sup>:

“Two consequences follow. First fighting poverty not only requires improving income levels and access to housing, food, education, health services and water and sanitation, but also that persons living in poverty have the resources and capabilities to enjoy the whole spectrum of human rights. Access to justice plays a crucial role in all parts of this equation. Second, the content of a right must be the same for all. Some use the concept of integrity in the content of human rights. In short, human rights have no meaning unless they apply equally to everyone.”

(See François Tulkens, “The European Convention on Human Rights and the Economic Crisis: The Issue of Poverty”, p. 6.

[http://cadmus.eui.eu/bitstream/handle/1814/28099/AEL\\_2013\\_08.pdf?sequence=1&isAllowed=y](http://cadmus.eui.eu/bitstream/handle/1814/28099/AEL_2013_08.pdf?sequence=1&isAllowed=y)).

*Adedy v. Greece*<sup>15</sup>, the Greek Government had adopted a series of austerity measures designed to cut public spending. These measures, which applied without distinction to all public servants, included 20% cuts in public sector workers' salaries and pensions. The applicants contested the compatibility of these draconian measures with their right to the enjoyment of their possessions under Article 1 of Protocol No. 1. The Court in 2013 declared the application inadmissible, having regard to the public interest considerations which underpinned the adoption of the measures and the wide margin of appreciation enjoyed by States in the formulation of economic policy, in particular when it came to tackling a financial crisis which threatened to overwhelm the country. The Court held that the effect of the cuts on the applicants' livelihoods was not such as to threaten their well-being and that a fair balance had been struck.

The above case should be contrasted with *N.K.M. v. Hungary*<sup>16</sup>, which concerned the unexpected imposition of a high rate of tax on severance payments. In that case, the applicant, a civil servant with thirty years' service, had been dismissed. She had a statutory entitlement to severance pay on dismissal which amounted to 8 months' salary. Some weeks before receiving notice of her dismissal, new legislation was introduced imposing a 98% tax on severance pay exceeding a certain threshold. In the case of the applicant, this represented an overall tax burden of approximately 52% on the entirety of the severance pay, about three times the general

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<sup>15</sup> nos. 57665/12, 57657/12, 7 May 2013.

<sup>16</sup> no. 66529/11, 14 May 2013.

personal income tax rate. The applicant's complaint was centred on Article 1 of Protocol No. 1 to the Convention.

This case is of particular importance because, against its established case-law recognising the Contracting States' wide margin of appreciation in the area of taxation, the Court found that in the circumstances of the instant case, the applicant had been required to bear an excessive and individual burden. The applicant had had to suffer a substantial loss of income at a time when she had been made redundant, which was at variance with the very aim of a severance package, namely to help those dismissed to get back into the job market. Furthermore, the new legislation had been introduced very shortly before the applicant's dismissal, leaving her with little time to adjust to a new and extremely difficult financial situation – a situation she could never have anticipated. The Court also criticised the fact that the measure targeted only a certain group of individuals, who were apparently singled out by the public administration in its capacity as employer. However, the Court found that there was no cause for separate examination of the facts from the standpoint of Article 14 of the Convention<sup>17</sup>.

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<sup>17</sup> It is also interesting to note what the European Committee of Social Rights said in the case of *Greek General Confederation of Labour (GSEE) v. Greece*, Complaint No. 111/2014, publicity 5 July 2017, § 88:

“Having regard to the context of economic crisis, the Committee recalls that ensuring the effective enjoyment of equal, inalienable and universal human rights cannot be subordinated to changes in the political, economic or fiscal environment. The Committee has previously stated that ‘the economic crisis should not have as a consequence the reduction of the protection of the rights recognized by the Charter. Hence, the governments are bound to take all necessary steps to ensure that the rights of the Charter are effectively guaranteed at the period of time when beneficiaries need the protection most.’ (General introduction to Conclusions XIX-2, (2009))”

In *Stec v. the United Kingdom*<sup>18</sup>, the Court accepted that the notion of “possessions” contained in Article 1 of Protocol No. 1 could extend to all social security benefits, whether contributory or non-contributory. It is important to note that the Court in that case also remarked that in the modern democratic State “many individuals are, for all or part of their lives, completely dependent for survival on social security and welfare benefits. ... Where an individual has an assertable right under domestic law to a welfare benefit, the importance of that interest should also be reflected by holding Article 1 of Protocol No. 1 to be applicable” (§ 51).

As regards the right to respect for one’s family life, I can mention the case of *Wallova and Walla v. the Czech Republic*<sup>19</sup>. In this case the applicants and their children had been separated following court decisions ordering that the children be placed in residential care. The Court found a violation of Article 8 attaching considerable weight to the domestic courts’ admission that the fundamental problem for the applicants was how to find housing suitable for such a large family. The applicants’ capacity to bring up their children or the affection they bore them were not in dispute, however. Besides the national authorities had acknowledged the efforts the applicants had made to overcome their difficulties. The Court observed that the issue was the material difficulties, which the authorities could have resolved by means other than the separation of the family, which was an extremely drastic measure not suited to the situation. As the Court held, the role of social welfare authorities is precisely to help people in difficulty, by guiding them through the necessary steps and

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<sup>18</sup> [GC], nos. 65731/01 and 65900/01, 6 July 2005 (decision).

<sup>19</sup> no. 23848/04, 26 October 2006.

advising them on the different forms of social allowances, the opportunities of obtaining social housing and other means to improve the situation and find a solution to the problems they face.

Another relevant Article 8 case is *McDonald v. the United Kingdom*.<sup>20</sup> This case concerned a lady with severely limited mobility who complained about a reduction by a local authority of the amount allocated for her weekly care. The reduction was based on the local authority's decision that her night-time toileting needs could be met by the provision of incontinence pads and absorbant sheets instead of a night-time carer to assist her in using a commode. Mrs McDonald alleged that the decision to reduce her care allowance on the basis that she could use incontinence pads at night, even though she was not incontinent, had amounted to an unjustifiable and disproportionate interference with her right to respect for private life, and had exposed her to considerable indignity.

The Court held that the decision to reduce the amount allocated for the applicant's care had interfered with her right to respect for her private life, in so far as it required her to use incontinence pads when she was not actually incontinent. It also held that there had been a violation of Article 8 of the Convention in respect of the period between 21 November 2008 and 4 November 2009 because the interference with the applicant's rights had not been in accordance with domestic law during this period. However, from 4 November onwards the Court found that the local authority's decision not to provide her with night-time care to aid her toileting needs was in

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<sup>20</sup> no. 4241/12, 20 May 2014.

accordance with domestic law. In the view of the Court that interference had pursued a legitimate aim, namely the economic well-being of the State and the interests of other care-users. Hence, the case turned on whether the interference was “necessary in a democratic society”, especially when weighed against the economic well-being of the State.

In carrying out that balancing act, the Court bore in mind that States had considerable discretion, “a wide margin of appreciation”, in issues involving social, economic and health-care policy, especially when deciding how to allocate scarce resources. It was therefore not for the Court to substitute its own assessment of the merits of the contested measure for that of the competent national authorities.

In this regard, the Court found that both the local authority (via regular care reviews) and the national courts (including the Court of Appeal and the Supreme Court) had balanced the applicant’s need for care with its social responsibility for the well-being of other care-users in the community at large.

Consequently, despite the very distressing situation the applicant was facing, the Court held that from 4 November 2009 onwards the interference with the right of Mrs McDonald to respect for private life had been both proportionate and justified as “necessary in a democratic society” and rejected this part of her complaint as inadmissible.

Though the Convention does not protect a “right to housing” as such, it is recognised as an interest in the context of protecting property rights.<sup>21</sup>

The Turkish invasion of the northern part of Cyprus in 1974 rendered homeless thousands of Greek Cypriots and violated many of their fundamental rights, including their social and economic rights, a fact recognised by the Court. In the fourth inter-State application between Cyprus and Turkey,<sup>22</sup> the Court ruled on the main aspects of the Cyprus question which touched upon social issues, i.e. refugees, displaced persons, forced disappearances, property rights, and the question of redress for the victims under Article 41 of the Convention. In *Xenides-Arestis v. Turkey*,<sup>23</sup> the Court found that there had been a violation of the right for the applicant’s home under Article 8 of the Convention and her right of property under Article 1 of Protocol No. 1, and condemned Turkey to pay pecuniary and non-pecuniary damage to the applicant. Unfortunately, the execution of the above judgments is still pending under the supervision of the Committee of Ministers.

The question may be asked whether limited (qualified) social or economic rights, apart from the possibility of being diminished in a

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<sup>21</sup> See *James and Others v. the United Kingdom*, no. 8793/79, 21 February 1986, where in § 47 the Court held the following:

“Eliminating what are judged to be social injustices is an example of the functions of a democratic legislature. More especially, modern societies consider housing of the population to be a prime social need, the regulation of which cannot entirely be left to the play of market forces.”

<sup>22</sup> See *Cyprus v. Turkey*, [GC] no. 25781/94, § 47, 10 May 2001 (merits), 12 May 2014 (just satisfaction).

<sup>23</sup> no. 46347/99, 22 December 2005 (merits), 7/12/06 (just satisfaction).

crisis situation, may also be extended. I believe that the answer to this question is that what can be expanded in case of crisis are the positive obligations, both substantive and procedural, of the State, in order to secure the rights which are affected by the crisis. If a crisis tends to destroy human rights and people need more protection, the positive obligation of the State under Article 1 of the Convention, read in conjunction with Article 18 of the Convention (prohibition of abuse of rights) and any other relevant provision of the Convention, becomes greater. The practical problem, however, which arises in such circumstances, is that, though this positive obligation is theoretically expanded in cases of crisis, in practice this is not very easily achieved or not achieved at all, because the means to pursue this obligation are weak or even inexistent due to the crisis.

One proposal I would like to make regarding my topic is that it is time for a new Protocol to the Convention to be enacted containing certain social rights, where the High Contracting Parties can agree that they need the direct protection of the Convention and the Court. And I suggest that the right to work and the right to health care would be two of the first rights to be included in such a Protocol.

Of course, I cannot exhaust my topic, so I will end my presentation here by making two concluding thoughts:

(a) Crisis is, after all, a test for the rule of law, the Convention mechanism for the protection of human rights and the legitimacy of the Court;

(b) As rightly observed by Linos-Alexandre Sicilianos, Vice President of the Court, “[t]he Court has always striven to rise to the challenge of its mission as custodian of the democratic ideals and principles of our continent.”<sup>24</sup>

Thank you very much for your attention.

“Personal file: social and economic rights under the ECHR”

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<sup>24</sup> See Linos-Alexandre Sicilianos, “The European Court of Human Rights at a Time of Crisis in Europe”, at p. 13 in:  
[http://www.echr.coe.int/Documents/Speech\\_Judge\\_Sicilianos\\_Lecture\\_ESIL\\_20151016\\_ENG.pdf](http://www.echr.coe.int/Documents/Speech_Judge_Sicilianos_Lecture_ESIL_20151016_ENG.pdf)