



European  
University  
Institute

ACADEMY  
OF EUROPEAN  
LAW

# WORKING PAPERS

AEL 2013/8  
Academy of European Law  
Distinguished Lectures of the Academy

## **The European Convention on Human Rights and the Economic Crisis: The Issue of Poverty**

Françoise Tulkens



European University Institute  
**Academy of European Law**

**The European Convention on Human Rights and the Economic  
Crisis: The Issue of Poverty**

Françoise Tulkens

EUI Working Paper **AEL** 2013/8

This text may be downloaded for personal research purposes only. Any additional reproduction for other purposes, whether in hard copy or electronically, requires the consent of the author(s), editor(s). If cited or quoted, reference should be made to the full name of the author(s), editor(s), the title, the working paper or other series, the year, and the publisher.

ISSN 1831-4066

© Françoise Tulkens, 2013

Printed in Italy  
European University Institute  
Badia Fiesolana  
I – 50014 San Domenico di Fiesole (FI)  
Italy  
[www.eui.eu](http://www.eui.eu)  
[cadmus.eui.eu](http://cadmus.eui.eu)

## **Abstract**

Distinguished Lecture delivered on the occasion of the XXIV Human Rights Law course of the Academy of European Law, on 24 June 2013.

## **Keywords**

European Convention on Human Rights, poverty, economic crisis, social exclusion



# THE EUROPEAN CONVENTION ON HUMAN RIGHTS AND THE ECONOMIC CRISIS: THE ISSUE OF POVERTY

*Françoise Tulkens*\*

## 1. Introduction

First of all, I would like to say that I am very happy and honoured to be here with you. The European Convention on Human Rights is more than ever our common heritage (*patrimoine commun*) and we share in this respect a common responsibility at national and international level, between judges and scholars. That is why I really appreciate this kind of meeting since it gives us an opportunity to discuss the rights and freedoms enshrined in the Convention as they are interpreted by the European Court of Human Rights in the context of our contemporary society. That's really the intelligence of the Convention: through the Court's interpretation, the rights written in 1950 can have a meaning today in 2013. As legal theorists have observed, the law must be stable yet it cannot stand still.<sup>1</sup> Adaptation and modification have been constant features of the Convention since 1950 and continue to be so today.

In this lecture, I will examine the contribution of the European Court of Human Rights to the fight against poverty and social exclusion. I argue in favour of a reading of the European Convention on Human Rights that is aligned with the necessities of the times. In the face of the global financial and economic crisis that developed since 2008, this does not mean sacrificing human rights in the name of austerity and macro-economic discipline; it means improving the protection of the most vulnerable and marginalized segments of the population, in a context in which the rights to access to courts, to housing or to social security have further gained in relevance and importance.

I will start by saying a few words about crisis, and particularly economic crisis, and human rights (2), before examining different aspects of the European Court of Human Rights' case-law addressing the question of poverty (3).

## 2. Crisis and Human Rights

Clearly, economy and human rights are closely linked,<sup>2</sup> even if their relationship is not necessarily always harmonious.<sup>3</sup> On the one hand, human rights, and especially those guaranteed by the

---

\* Former Judge and Vice-President of the European Court of Human Rights. This paper is partly based and expands on Tulkens, 'La Convention européenne des droits de l'homme et la crise économique. La question de la pauvreté' ('The European Convention on Human Rights and the Economic Crisis. The Issue of Poverty'), 1 *Journal européen des droits de l'homme / European Journal of Human Rights* (2013) 8.

<sup>1</sup> Attributed to R. Pound in his book *Interpretations of Legal History* (1923).

<sup>2</sup> Van Drooghenbroeck, 'La Convention européenne des droits de l'homme et la matière économique', in L. Boy, J.-B. Racine, F. Siirainen (eds), *Droit économique et droits de l'homme* (2009) 25.

<sup>3</sup> M. Couret Branco, *Economics vs. Human Rights* (2008).

Convention, are a *sine qua non* condition for effective economic activity. On the other hand, we must be mindful of the risks that powerful economic players may pose for rights and freedoms.<sup>4</sup>

I would like to begin with a few thoughts on the notion of crisis itself. The crisis is real, serious and lasting, as we hear frequently – I’m almost tempted to say hundreds of times per day – in the newspapers and on radio and television. The crisis has infiltrated every debate and is becoming the prism through which everything is viewed. I mean the economic crisis of course, but also an ecological and energy, political, social and institutional crisis, a crisis of authority and of democracy. A ‘never-ending crisis’, as M. Revault d’Allonnes observes, robs us of the future dimension. This is a strange reversal, given that modernists have tended, by contrast, to view the crisis as a dynamic period of transition between one era and another.<sup>5</sup>

So, the crisis today is perhaps no longer a crisis but rather the sign of a transition or shift. A geopolitical and economic shift, undoubtedly, but also a digital shift, with our entry into the virtual ‘sixth continent’ (the Web), a biotechnological shift in the new degree of control we exert over ‘life’ and procreation, and also an ecological shift, with the awareness of the limits imposed on our development models by the finite nature of the world’s resources. We are experiencing a ‘historic bifurcation point’ to borrow the expression used by Ilya Prigogine, the (Belgian) winner of the Nobel Prize in Chemistry. This ‘bifurcation point’ holds as many threats as promises. It is not the end of the world, but the end of *a* world. Contemplating it face-on leads us not to be pessimistic but to be determined.<sup>6</sup>

But let us now look more specifically at economic crisis, the one we are currently experiencing and the impact of which on human rights is very well illustrated by many authors and scholars. An impact which is diffuse but undeniable and which pervades everything, even the most remote and unexpected areas.<sup>7</sup> Not only does economic crisis ‘expose vulnerable people (women, children, migrants) and minorities to special hardship’ but it ‘also tends to encourage recourse to extremism of different forms [and] is often accompanied by a search for scapegoats’. But, as history has taught us, ‘[t]hese trends threaten to undermine the twin pillars on which the Convention is based: democracy and the rule of law’.

In reality compliance with human rights standards is not only even more necessary in times of economic crisis because of increased vulnerability, it also makes a contribution to recovery by establishing the conditions necessary for stability and the proper functioning of the rule of law, both essential for economic growth.

In this respect, it seems to me that the European Court of Human Rights has always held that insufficient resources of a State will not normally justify failure to secure Convention rights and freedoms, notably when considering Article 3 issues. Thus, for instance, in relation to prison conditions the Court has taken note of the serious socio-economic problems faced by countries in transition and recognised the economic pressure confronting Contracting States.<sup>8</sup> It has however

---

<sup>4</sup> Cf. de Tinguy du Pouët, ‘L’économie et les droits de l’homme’, in *Karel Vasak Liber Amicorum. Les droits de l’homme à l’aube du XXI<sup>e</sup> siècle* (1999) 163.

<sup>5</sup> M. Revault d’Allonnes, *La crise sans fin* (2012).

<sup>6</sup> Interview with J.-C. Guillebaud, ‘Cette crise multiple révèle une prodigieuse mutation’, *La Libre Belgique*, 29 December 2012.

<sup>7</sup> Cf. European Parliament, *Report on the impact of the financial and economic crisis on human rights*, by I. Vaidere (rapporteur), Committee on Foreign Affairs, 1 March 2013. See also M.-L. Basilien-Gainche, ‘Rapport annuel 2012 de l’Agence des droits fondamentaux de l’Union européenne: les droits fondamentaux, victimes de la crise’, in *Lettre “Actualités Droits-Libertés” du CREDOF*, 24 June 2013, available online at: <http://revdh.org/lettre-dl/> (last accessed on 1 August 2013).

<sup>8</sup> On transition see, against the background of German reunification, App. nos. 46720/99, 72203/01 and 72552/01, *Jahn and Others v. Germany*, Judgment (Merits) [GC], 30 June 2005.



confirmed that lack of resources cannot in principle justify prison conditions which are so poor as to reach the threshold of treatment contrary to Article 3 of the Convention.<sup>9</sup> The same principle was applied to other provisions of the Convention. So, for instance, to Article 6, concerning the execution of judicial decisions imposed on the public authority itself.<sup>10</sup> In fact, the Court does not readily accept arguments based on economic or financial distress put forward by the respondent Governments to avoid or to meet their obligations under the Convention.<sup>11</sup> Recently, in the *Nencheva and Others v. Bulgaria* judgment of 18 June 2013, the Court found a violation of Article 2 (right to life) in a situation of economic crisis where 15 disabled children and young adults placed in care had died, during the winter of 1996-1997, for lack of food, heating and basic care.<sup>12</sup>

However, the Court is now faced, in some countries, with the consequences of austerity programmes and the adoption of stringent budgetary measures. In the *Koufaki and Adedy v. Greece* case, the Greek Government had adopted a series of austerity measures designed to cut public spending. Such measures, of a permanent and retroactive nature and applied without distinction to all public servants, included 20% cuts in public sector workers' salaries and pensions and the curtailment of other financial benefits and allowances such as holiday pay and bonus month payments. The applicants contest the compatibility of these draconian measures with their rights under Article 1 of Protocol No. 1. On 7 May 2013, the Court 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 comes to tackling a financial crisis which threatened to overwhelm the country. It observed that the effect of the cuts on the applicants' livelihoods was not such as to threaten their well-being. A fair balance had been struck.

The Court's solution in the Greek case is to be contrasted with the approach followed in the *N.K.M. v. Hungary* judgment of 14 May 2013 concerning the unexpected imposition of a high rate of tax on severance payment. The applicant, a civil servant with thirty years' service, was dismissed. She had a statutory entitlement to severance pay on dismissal, amounting to eight 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. For the applicant, this represented an overall tax burden of approximately 52% on the entirety of the severance, about three times the general personal income tax rate. She complained mainly under Article 1 of Protocol No. 1 to the Convention. The case is noteworthy in that, notwithstanding 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. She 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. Moreover, the new legislation was introduced very shortly before the applicant's dismissal, leaving her with little time to adjust to a new and extremely difficult financial situation, which situation she could

---

<sup>9</sup> App. no. 38812/97, *Poltoratski v. Ukraine*, Judgment (Merits and Just Satisfaction), 29 April 2003, § 148; App. no. 17885/04, *Orchowski v. Poland*, Judgment (Merits and Just Satisfaction), 22 October 2009, § 153; and App. no. 11463/09, *Samaras and Others v. Greece*, Judgment (Merits and Just Satisfaction), 28 February 2012.

<sup>10</sup> App. no. 33509/04, *Burdov v. Russia*, Judgment (Merits and Just Satisfaction), 7 May 2002, § 35. In this well-known case concerning the non-payment of compensation awarded to an applicant who had suffered health problems as a result of taking part in emergency operations at the site of the Chernobyl nuclear disaster, the Court held that a State authority could not cite lack of funds as an excuse for not honouring a judgment debt. The applicant should not have been prevented from benefiting from the success of the litigation on the ground of alleged financial difficulties experienced by the State. The Court found violations of Article 6 § 1 and Article 1 of Protocol No. 1.

<sup>11</sup> See, for instance, App. no. 40191/02, *Ducret v. France*, Judgment (Merits and Just Satisfaction), 12 June 2007, § 40.

<sup>12</sup> App. no. 48609/06, *Nencheva and Others v. Bulgaria*, Judgment (Merits and Just Satisfaction), 18 June 2013, §§ 117 et seq.

never have anticipated. The Court also criticised the fact that the law was targeted at a defined group of government employees and that the majority of citizens were not obliged to contribute to the same extent to the State budget. The Court also highlighted in its finding that the applicant's statutory entitlement to severance pay amounted to 'possessions', that the law should protect the trust placed in statutory commitments. It observed that good government depends upon trust between the governed and the governor, and unless that trust is sustained and protected, governments will not be believed and civil servants will not order their affairs on that assumption as required by their heightened loyalty.

Against this background, to what extent does the protection which the Convention affords 'to everyone' (Article 1) encompass the severe hardship caused by economic crisis? Today, the relationship between poverty and human rights is on the political agenda at both international<sup>13</sup> and European level.<sup>14</sup> I will therefore deal, in this context, with certain aspects of the contribution made by the Court's case-law in dealing with situations of poverty and extreme poverty. 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,<sup>15</sup> the Court has achieved impressive breakthroughs. Even if this movement is not 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>13</sup> See UN GA, *Report of the Independent Expert on the Question of Human Rights and Extreme Poverty, Magdalena Sepúlveda Carmona*, UN Doc. A/HRC/17/34, 17 March 2011; *Id.*, *Final Draft of the Guiding Principles on Extreme Poverty and Human Rights, Submitted by the Special Rapporteur on Extreme Poverty and Human Rights, Magdalena Sepúlveda Carmona*, UN Doc. A/HRC/21/39, 18 July 2012 (This document was adopted by the United Nations Human Rights Council on 27 September 2012 and by the UN General Assembly's Third Committee on 21 November 2012. On 20 December 2012, in draft Resolution III entitled 'Human Rights and Extreme Poverty', which was adopted without a vote, the General Assembly welcomed the guiding principles on extreme poverty and human rights adopted by the Human Rights Council in resolution 21/11 as a tool for use by States in formulating and implementing policies to reduce or eradicate poverty, as appropriate. The Assembly commits States to taking all necessary measures to eliminate all forms of discrimination, especially against persons living in poverty. States should also refrain from adopting any law, rules or practice that would prevent those persons from fully exercising their human rights and fundamental freedoms, including economic, social and cultural rights, or would restrict the exercise of those rights, and should take steps to ensure equal access to justice for persons living in poverty.); *Id.*, *Report of the Special Rapporteur on Extreme Poverty and Human Rights, Magdalena Sepúlveda Carmona*, UN Doc. A/HRC/23/36, 11 March 2013. See also *Eradication of Poverty and Other Development Issues: Implementation of the Second United Nations Decade for the Eradication of Poverty (2008-2017)*, Report of the Second Committee of the UN General Assembly, UN Doc. A/67/441/Add. 1, 12 December 2012.

<sup>14</sup> European Union Agency for Fundamental Rights (FRA), 'Protecting Fundamental Rights During the Economic Crisis', Working paper, December 2012; Council of Europe, *Poverty and Inequalities, Paradoxes in Societies of Human Rights and Democracy? Proposals for an Inclusive Society*, conference organised by the Council of Europe in partnership with the European Union, Strasbourg, 21-22 February 2013, available online at <http://rights-poverty.eu/conference> (last accessed on 1 August 2013). The results of the work conducted in the context of the project "Human Rights of people experiencing in poverty" that served as a basis for this Conference are developed in two publications of the Council of Europe: *Living in dignity in the XXIst century. Poverty and Inequalities in Societies of Human Rights: The Paradox of Democracies* (2013) (this publication was written collectively by actors from different backgrounds including academics, members of associations and networks of people experiencing in poverty; it provides a critical review of the current situation, analyzing inequalities and poverty through the prism of human rights, democracy and redistributive policies, and also explores paths for a renewed strategy to fight poverty based on common goods and the sharing of social responsibilities); and *Redefining and Combating Poverty: Human Rights, Democracy and Common Goods in Today's Europe*, Trends in social cohesion Series, no. 25 (2012).

<sup>15</sup> Sudre, 'La perméabilité de la Convention européenne des droits de l'homme aux droits sociaux', in *Mélanges J. Mourgeon* (1998) 467. See also Nivard, 'La justice sociale dans a jurisprudence conventionnelle', in L. Burgorgue Larsen (ed.), *La justice sociale saisie par les juges en Europe* (2013) 61.

Social democracy is not another form of democracy; it is an inherent part of any democratic system.<sup>16</sup> As A. Touraine has said in *Qu'est ce que la démocratie ?*, 'the recognition of fundamental rights would be devoid of substance unless it helped to provide security for everyone and continually enlarged the domain of legal guarantees and State intervention that protect the weakest'.<sup>17</sup> That is precisely why at times talk about human rights becomes intolerable, if not insulting, for some. Is the genuine 'human right' not, ultimately, 'the possibility of acquiring rights'? Conversely, it might also be argued that the violation of 1st generation fundamental civil rights 'certainly affects the – fragile and random – exercise of economic, social and cultural rights'.<sup>18</sup> For example, Amartya Sen, the recent Nobel Prize for Economics, does not hesitate 'to establish a parallel between the non-democratic nature of a political system and famines and even he argues that 'it is the diverse positive freedoms that are available in a democratic state, including the right to hold free elections, the exercise of freedom of the press and of freedom of speech without censorship, that must be seen as the real force behind the elimination of famines'.<sup>19</sup>

However, let us be clear. Some are opposed, if not strongly hostile, to the "social" openness of the European Convention on Human Rights. To overcome the opposition between the categories of rights, some authors have been suggesting for long to look at things from a different perspective, which involves shifting from an individual rights point of view of the obligations of the State.<sup>20</sup> Human rights that the State is internationally committed to recognize impose three obligations: to *respect* human rights (not to interfere with the exercise of a right guaranteed); to *protect* human rights (not to accept abuses); to *fulfil* human rights (to provide the means for an effective exercise of human rights). It is what is called the tripartite typology.<sup>21</sup> As a consequence, it follows that to affirm that the State has an obligation not only to respect rights and to ensure their protection but also to ensure their realization is to affirm simply that the State cannot remain indifferent to the circumstances of life that separate the guarantee of the individual's freedoms from his or her effective capacity to enjoy these freedoms.<sup>22</sup> As such, the State is bound to an obligation of progressive realization. Therefore, where an obligation of progressive realization of an individual's right is at issue, the decisive criterion becomes whether or not State authorities have made all efforts that could reasonably be expected from them.<sup>23</sup>

The advantage of this typology is that it can be applied to all rights and therefore supports the integrated nature of economic / social rights and civil / political rights.<sup>24</sup> As I.E. Koch rightly points

---

<sup>16</sup> Imbert, 'Développement des droits de l'homme et progrès de la démocratie', in *Nouveaux droits de l'homme, nouvelles démocraties?* (1991) 53.

<sup>17</sup> A. Touraine, *Qu'est-ce que la démocratie?* (1994), at 52.

<sup>18</sup> Bernard, 'L'effectivité du droit constitutionnel au logement', 2 *Revue belge de droit constitutionnel* (2001) 156.

<sup>19</sup> A. Sen, *Poverty and Famine* (1981), cited by P. Ricoeur, *Parcours de la reconnaissance. Trois études* (2004), at 213.

<sup>20</sup> De Schutter, 'L'interdépendance des droits et l'interaction des systèmes de protection : les scénarios du système européen de protection des droits fondamentaux', *Droit en Quart-Monde*, September-December 2000, at 3 et seq. See also, concerning the EU Charter of Fundamental Rights, Tulkens, 'Coexistence et complémentarité de la Charte des droits fondamentaux de l'Union européenne et de la Convention européenne des droits de l'homme', paper delivered at a hearing of the European Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE) on 'The implementation of the EU Charter of Fundamental Rights two years after the Lisbon's Treaty entry into force', Brussels, 10 November 2011.

<sup>21</sup> See QUB Budget Analysis Project, *Budgeting for Economic and Social Rights: A Human Rights Perspective* (2010), at 31-49.

<sup>22</sup> De Schutter, 'L'interdépendance des droits et l'interaction des systèmes de protection: les scénarios du système européen de protection des droits fondamentaux', *supra* note 20, at 5.

<sup>23</sup> *Ibid.*, at 10.

<sup>24</sup> QUB Budget Analysis Project, *Budgeting for Economic and Social Rights: A Human Rights Perspective*, *supra* note 21, at 32.

out, basing analysis on the tripartite level of obligations reinforces the equal nature of all human rights, the interdependence of all duties and scope of State duties.<sup>25</sup>

While situations of poverty may result in violations of civil and political rights, persons affected by poverty are also limited in their capacity to assert the rights guaranteed by the Convention.<sup>26</sup> But, as E. Decaux put it, ‘the aim should not be to invent new rights for those living in poverty but to ensure that the rights proclaimed are genuinely effective for everyone’.<sup>27</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.

### 3. Poverty in the European Court of Human Rights’ Case-law<sup>28</sup>

#### A. Access to Justice

As the UN Special Rapporteur on extreme poverty and human rights pointed out, lack of access to justice is a major reason why people fall into and remain in extreme poverty, and therefore effective access to justice is not only a human right in itself but also an essential tool to tackle poverty and inequality.<sup>29</sup>

‘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’.<sup>30</sup>

Technically, what are the elements that matter in access to justice? In the context of due process and independence/impartiality of justice, we have the famous ‘four A’s’: availability, accessibility, adequacy, adaptability.

Concerning availability and accessibility, the *Airey v. Ireland* judgment of 9 October 1979 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

---

<sup>25</sup> Koch, ‘Dichotomies, trichotomies or wave of duties’, 5 *Human Rights Law Review* (2005) 87.

<sup>26</sup> Center for Economic and Social Rights, *Human Rights and the Global Economic Crisis. Consequences, Causes and Responses* (2009), available online at <http://www.cesr.org> (last accessed on 2 August 2013).

<sup>27</sup> Decaux, ‘Les droits des pauvres: une pierre blanche sur un long chemin’, 5 *Droits fondamentaux* (2005) 2.

<sup>28</sup> In relation to this issue as a whole, I have drawn on and updated the following paper: F. Tulkens and S. Van Drooghenbroeck, ‘Pauvreté et droits de l’homme. La contribution de la Cour européenne des droits de l’homme’, in Service de lutte contre la pauvreté, la précarité et l’exclusion sociale, *Pauvreté – dignité – droits de l’homme. Les 10 ans de l’accord de coopération* (2008) 65.

<sup>29</sup> Sepulveda Carmona, ‘Access to Justice and the Fight against Poverty’, in *How access to justice can help reduce poverty*, 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).

<sup>30</sup> *Ibid.*, at 2.

subsequently confirmed and fine-tuned,<sup>31</sup> but also broadened to encompass the entire issue of access to justice.

Of course, the Court never intended that an unconditional right of access to justice completely free of charge should be derived from Article 6.<sup>32</sup> Nevertheless, that provision has, on a case-by-case basis, acted as a bar to disproportionate financial obstacles preventing economically vulnerable individuals from gaining access to justice, whether on account of excessive court fees,<sup>33</sup> either laid down in advance<sup>34</sup> or adjusted depending on the amount of the claim,<sup>35</sup> or on account of the refusal to admit ordinary appeals or appeals on point of law to the detriment of persons whose lack of resources made it impossible for them even to begin to pay the amount ordered by the judgment in question.<sup>36</sup> Recently, the Court did not rule out the possibility that a decision ordering the losing party in proceedings to reimburse the winning party's legal costs might result in a violation of Article 6 of the Convention if the amount concerned was grossly disproportionate to the financial resources of the unsuccessful party.<sup>37</sup>

Lastly, in the case of *Guidi v. Italy*, the Court decided to apply Rule 39 of the Rules of Court (interim measures) in order to speed up payment of a sum of 14,500 euros owed by the State (Pinto compensation) to the applicant and his daughter, whose situation of severe financial hardship was known to the State.

This issue of access to justice also features on the European Union's agenda. 'The crisis is putting existing structures, including our justice systems, under increased pressure', says M. Schulz, the President of the European Parliament. 'While we are all in a prolonged global economic slowdown that forces governments to stringent budgetary cuts, those values guaranteed in the Lisbon Treaty should in no way be undermined'. And these values are respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights (Art. 2 TEU).

The topic of the 2012 Fundamental Rights Conference organised by the Fundamental Rights Agency is significant: 'Justice in austerity – challenges and opportunities for access to justice'. In Mr Kjaerum's view, the conclusion is clear: access to justice should be strengthened in times of crisis. Cutting budgets during such times simply shows a lack of long-term vision; the crisis should be used to encourage innovative solutions, capable of contributing to the shaping of future policies. In this respect, class actions mechanisms or other collective redress mechanisms should be seriously envisaged.

---

<sup>31</sup> For a summing-up of the applicable principles, see App. no. 77765/01, *Laskowska v. Poland*, Judgment (Merits and Just Satisfaction), 13 March 2007.

<sup>32</sup> App. no. 28249/95, *Kreuz v. Poland*, Judgment (Merits and Just Satisfaction), 19 June 2001, § 59.

<sup>33</sup> For a summing-up of the applicable principles, see App. no. 50939/99, *Bakan v. Turkey*, Judgment (Merits and Just Satisfaction), 12 June 2007, §§ 66 et seq.

<sup>34</sup> App. no. 52658/99, *Mehmet and Suna Yiğit v. Turkey*, Judgment (Merits and Just Satisfaction), 17 July 2007. In that case the Court held that the requirement for the applicants, who had no income, to pay court fees amounting to four times the minimum monthly wage at the time amounted to a disproportionate restriction of their right of access to a court (§ 38).

<sup>35</sup> App. no. 68490/01, *Stankov v. Bulgaria*, Judgment (Merits and Just Satisfaction), 12 July 2007.

<sup>36</sup> For a summing-up of the applicable principles, see App. no. 44404/02, *Cour v. France*, Judgment (Merits and Just Satisfaction), 3 October 2006.

<sup>37</sup> See App. no. 75218/01, *Collectif National d'information et d'opposition à l'usine Melox-Collectif stop Melox et Mox v. France*, Judgment (Merits), 12 June 2007, § 15. It should be recalled that the reimbursement of court costs by the losing party was traditionally presented, including within the Council of Europe (Recommendation No. R (81) 7 of the Committee of Ministers of the Council of Europe to member States on measures facilitating access to justice of 14 May 1981), as a means of promoting access to justice for the least well-off.

But, ultimately, as O. De Schutter explains, ensuring meaningful access to justice for persons living in poverty does not depend only on legal tools or access to legal services, lawyers and courts, but also requires a more holistic approach that takes into account broader structural, social and economic factors. The causes of this limited access are the lack of expression, education and access to decision-making and also political disempowerment as a result of a lack of accountability. To improve access to justice and reduce poverty, States must tackle all these obstacles in a holistic manner, creating the conditions to enable those who are socially or economically disadvantaged to enjoy a real opportunity for justice or the benefits of due process of law in an equal manner. So ‘access to justice’, rule of law and legal empowerment are the key ingredients in poverty reduction.<sup>38</sup>

### **B. Right to the Peaceful Enjoyment of Possessions**

Paradoxically, the Court’s constructive interpretation of Article 1 of the First Additional Protocol to the European Convention on Human Rights has resulted in some remarkable advances being made in the field of social protection.<sup>39</sup>

The leading decision in *Stec v. the United Kingdom* summarised and expanded upon the existing case-law, accepting that the notion of ‘possessions’ contained in that Convention provision could extend to all social security benefits, whether contributory or non-contributor.<sup>40</sup> Significantly, the Court observed 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’.<sup>41</sup>

Of course, this does not mean that the States Parties to the Convention are henceforth required to guarantee social security benefits that do not exist within their legal system.<sup>42</sup> However, Article 1 of Protocol No. 1, read in conjunction with Article 14 of the Convention, precludes refusing such benefits, where they exist, on grounds of sex,<sup>43</sup> marital status<sup>44</sup> or nationality.<sup>45</sup> This combination is all the more effective since, in a parallel development, the recent case-law of the European Court has produced an interpretation of Article 14 particularly favourable to the protection of groups that are structurally vulnerable, whether by accepting the legitimacy of positive action,<sup>46</sup> asserting the

---

<sup>38</sup> De Schutter, ‘Closing Speech: The Contribution of Access to Justice to the Post-2015 Agenda’, in *How Access to Justice Can Help Reduce Poverty*, *supra* note 29.

<sup>39</sup> App. no. 17371/90, *Gaygusuz v. Austria*, Judgment (Merits and Just Satisfaction), 16 September 1996. See also App. no. 40892/98, *Koua Poirrez v. France*, Judgment (Merits and Just Satisfaction), 30 September 2003; App. no. 58453/00, *Niedzwiecki v. Germany*, Judgment (Merits and Just Satisfaction), 25 October 2005 and App. no. 59140/00, *Okpiz v. Germany*, Judgment (Merits and Just Satisfaction), 25 October 2005; App. no. 77782/01, *Luczak v. Poland*, Judgment (Merits and Just Satisfaction), 27 November 2007.

<sup>40</sup> App. nos 65731/01 et 65900/01, *Stec and Others v. the United Kingdom*, Decision [GC], 6 July 2005.

<sup>41</sup> *Ibid.*, § 51.

<sup>42</sup> *Ibid.*, § 54.

<sup>43</sup> App. no. 36042/97, *Willis v. the United Kingdom*, Judgment (Merits and Just Satisfaction), 11 June 2002.

<sup>44</sup> App. no. 34462/97, *Wessels-Bergervoet v. the Netherlands*, Judgment (Merits and Just Satisfaction), 4 June 2002.

<sup>45</sup> *Koua Poirrez v. France*, *supra* note 39.

<sup>46</sup> App. nos 65731/01 65900/01, *Stec and Others v. the United Kingdom*, Judgment (Merits) [GC], 12 April 2006, esp. §§ 61 et seq.

prohibition of indirect discrimination<sup>47</sup> or ruling that the burden of proof regarding discrimination must be shared.<sup>48</sup>

### **C. *Right to Private and Family Life and Respect for the Home***

Article 8 of the European Convention, which enshrines the right to respect for private and family life, has also proved to be of particular benefit to the least well-off as regards social implications.<sup>49</sup>

In its judgment in *Moldovan v. Romania*,<sup>50</sup> the Court examined, from the standpoint of Article 8 and the right to respect for *private life*, the extremely precarious situation of persons whose houses had been burned down, and found a violation of that provision. In the *Stanková v. Slovakia* judgment of 9 October 2007, the Court found a violation of Article 8 of the Convention concerning the obligation on the applicant to leave the flat where she had lived without being provided with any alternative accommodation.<sup>51</sup>

With regard to respect for *family life*, the *Wallova and Walla v. the Czech Republic* judgment of 26 October 2006 is significant. 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. It noted that the domestic courts had admitted that the fundamental problem for the applicants was how to find housing suitable for such a large family. Neither the applicants' capacity to bring up their children or the affection they bore them had ever been called into question, and the courts had acknowledged the efforts they had made to overcome their difficulties. In the Court's view, the underlying problem were thus material difficulties, which the authorities could have made up for by means other than the total separation of the family, which seemed to be the most drastic measure and could be applied only in the most serious cases. To comply with the requirement of proportionality in this case, the authorities should have had recourse to less drastic measures than the taking into care of the children. Indeed, 'the role of social welfare authorities is precisely to help people in difficulties who lack knowledge of the system, to guide them through the necessary steps and to advise them, among others, on the different form of social allowances, on the opportunities of obtaining social housing or on other means to improve the situation and find a solution to their problems'.<sup>52</sup>

This is not an isolated judgment. The *R.M.S. v. Spain* judgment of 18 June 2013 reflects exactly the same philosophy. The Court noted that in August 2005, the applicant's daughter, aged three years and ten months at the time, had been taken away from her mother, who had been to the social services office with her companion and their daughter to ask for assistance due to her distress situation. Some days later, the girl was placed in a children's home. In the present case, the Court observed that the administrative authorities had motivated their decision finding that a situation of child abandonment

---

<sup>47</sup> App. no. 57325/00, *D.H. and Others v. the Czech Republic*, Judgment (Merits and Just Satisfaction), 13 November 2007.

<sup>48</sup> *Ibid.*

<sup>49</sup> In addition to the judgments cited below, see, in relation to the eviction of a tenant without alternative accommodation being provided, App. no. 7205/02, *Stanková v. Slovakia*, Judgment (Merits and Just Satisfaction), 9 October 2007 (violation of Article 8).

<sup>50</sup> App. nos 41138/98 64320/01, *Moldovan and Others v. Romania (no. 2)*, Judgment (Merits and Just Satisfaction), 12 July 2005.

<sup>51</sup> *Stanková v. Slovakia*, *supra* note 49, §§ 57 et seq.

<sup>52</sup> App. no. 23848/04, *Wallova and Wallova v. the Czech Republic*, Judgment (Merits and Just Satisfaction), 26 October 2006, §§ 73-74. In the same vein, see also App. no. 23499/06, *Havelka and Others v. the Czech Republic*, Judgment (Merits and Just Satisfaction), 21 June 2007, esp. § 61.

existed by basing themselves on the lack of resources of the applicant, who was living in extreme poverty. In contrast to other cases the Court has already had occasion to examine, the applicant's daughter had been exposed neither to a situation of violence or of physical or mental ill-treatment, nor to sexual abuse. The courts had not noted any affective disorders, worrying state of health of the child, or psychic instability of the parents. While it is true that in some cases that have been declared inadmissible by the Court, the placement of the children may have been motivated by unsatisfactory living conditions or material deprivation, this had however never been the only reason on which the national courts' decision had been based, in that other elements had come into play, such as the parents' psychological state or their affective, educational or pedagogical inability.<sup>53</sup> The Court found that the Spanish administrative authorities should have considered less radical measures than to take the child into care. It held that the role of social welfare authorities was precisely to help people in difficulties who lack knowledge of the system, to guide them through the necessary steps and to advise them, among others, on the different form of social allowances, on the opportunities of obtaining social housing or on other means to overcome their difficulties, which is what the applicant had initially sought to do.<sup>54</sup> Therefore, the time elapsed, which had been the result of the inertia of the authorities, and the own inertia of the domestic courts, which had not found unreasonable the reasons given by the administration to deprive a mother from her daughter solely on the basis of economic grounds, had contributed decisively to the absence of any possibility of family reunion between the applicant and her daughter.<sup>55</sup>

With regard to *respect for the home*, I would mention the *McCann v. the United Kingdom* judgment of 13 May 2008, in which the Court stated, on the subject of the applicant's eviction from a local authority-owned dwelling, that '[t]he loss of one's home is a most extreme form of interference with the right to respect for the home', with the result that any such measure was permissible under the Convention only if it was possible to have its proportionality effectively reviewed by the courts.<sup>56</sup>

In contrast, in the context of Article 8, in the *Bah v. the United Kingdom* judgment of 27 September 2011, the Court found no violation of Article 14 in conjunction with that provision in respect of a refusal to grant the immigrant applicant priority for the allocation of social housing, noting that the provision of housing to those in need being predominantly socio-economic in nature, the margin of appreciation accorded to the Government was relatively wide.<sup>57</sup> However, taking another direction, the Court has in the *Yordanova and Others v. Bulgaria* judgment of 24 April 2012 indicated that an obligation to secure shelter to particularly vulnerable individuals may flow from Article 8 of the Convention in exceptional cases.<sup>58</sup>

---

<sup>53</sup> App. no. 28775/12, *R.M.S. v. Spain*, Judgment (Merits and Just Satisfaction), 18 June 2013, § 84.

<sup>54</sup> *Ibid.*, § 86.

<sup>55</sup> *Ibid.*, § 92.

<sup>56</sup> App. no. 19009/04, *McCann v. the United Kingdom*, Judgment (Merits and Just Satisfaction), 13 May 2008, § 50.

<sup>57</sup> App. no. 56328/07, *Bah v. the United Kingdom*, Judgment (Merits and Just Satisfaction), 27 September 2011, §§ 47-49.

<sup>58</sup> App. no. 5126/05, *Yordanova and Others v. Bulgaria*, Judgment (Merits and Just Satisfaction), 24 April 2012. See the comment by Henrard, 'Noot bij Yordanova e.a. t. Bulgarije', 11 *European Human Rights Cases* (2012) 149.



#### D. Towards a Right to Housing?

The issue of the position occupied by the *right to housing* in the law of the European Convention on Human Rights is worth raising.<sup>59</sup> It is true that, as matters stand, the Convention does not protect a ‘right to housing’ as such, although the possibility of a change in that situation cannot be discounted should the Court be called upon to examine cases that might permit it to extend or fine-tune its case-law. However, it would be just as much an overstatement to say that, because it has not attained that status, housing is simply consigned to a legal limbo where the Convention is concerned, beyond the reach of the European human rights judges. In the space between full-blown personal rights and pure facts we have, as pointed out by F. Ost,<sup>60</sup> legally protected interests. It seems indisputable, in the light of the case-law of the European Court of Human Rights, that housing already enjoys that status.

The recognition of the right to housing as an interest protected by the Convention emerges very clearly from the case-law concerning the limits that may be imposed on property rights. As far back as the landmark judgment of 21 February 1986 in *James and Others v. the United Kingdom*, the Court did not hesitate to state: ‘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>61</sup>

*Mutatis mutandis*, the same motivation underlay the judgments and decisions which found to be justified, or at least justifiable *a priori* from the standpoint of Article 1 of Protocol No. 1, measures restricting property rights, such as those freezing or reducing rents or staying the enforcement of court eviction orders<sup>62</sup> – provided that the measures concerned did not extend beyond a reasonable period.<sup>63</sup> In the case of *Mellacher and Others v. Austria* of 19 December 1989, where rent reduction measures were contested as violating Article 1 of Protocol No. 1 to the Convention, the Court considered that ‘such laws are especially called for and usual in the field of housing, which in our modern societies is a central concern of social and economic policies.’<sup>64</sup> In a convergent line of reasoning, the European Commission on Human Rights found it legitimate that a legislature should enact measures regulating the market in order to better respond to social need for housing during periods of a market crisis in this sector.<sup>65</sup>

The *Hutten-Czapska v. Poland* judgment of 19 June 2006, which concerned rent control measures in the context of a housing crisis situation, is significant. With regard to Article 46 of the Convention, the Court first reiterated that ‘the pilot-judgment procedure is primarily designed to assist the Contracting States in fulfilling their role in the Convention system by resolving such problems at national level, thereby securing to the persons concerned their Convention rights and freedoms as required by Article 1 of the Convention, offering to them more rapid redress’<sup>66</sup>. Next, the Court turned to general

---

<sup>59</sup> On this issue, see F. Tulkens and S. Van Drooghenbroeck, ‘Le droit au logement dans la Convention européenne des droits de l’homme. Bilan et perspectives’, in N. Bernard and C. Mertens (eds), *Le logement dans sa multidimensionnalité. Une grande cause régionale* (2005) 311.

<sup>60</sup> F. OST, *Droit et intérêt*, vol. 2, *Entre droit et non-droit: l’intérêt* (1990).

<sup>61</sup> App. no. 8793/79, *James and Others v. the United Kingdom*, Judgment (Merits), 21 February 1986, § 47.

<sup>62</sup> App. no. 12868/87, *Spadea and Scalabrino v. Italy*, Judgment (Merits), 28 September 1995.

<sup>63</sup> See, among many other authorities, App. no. 19133/91, *Scollo v. Italy*, Judgment (Merits and Just Satisfaction), 28 September 1995, and App. no. 22774/93, *Immobiliare Saffi v. Italy*, Judgment (Merits and Just Satisfaction) [GC], 28 July 1999.

<sup>64</sup> App. Nos 10522/83, 11011/84 and 11070/84, *Mellacher and Others v. Austria*, Judgment (Merits), 19 December 1989, § 45.

<sup>65</sup> See App. No. 15674/89., *Aires v. Portugal*, Decision, 28 June 1993; App. No. 25315/94, *Bernaldo Quiros Tacon and 492 Others v. Spain*, Decision, 10 April 1995.

<sup>66</sup> App. No. 35014/97, *Hutten-Czapska v. Poland*, Judgment (Merits and Just Satisfaction) [GC], 19 June 2006, § 234.

measures. In this respect, ‘as regards the general measures to be applied by the Polish State in order to put an end to the systemic violation of the right of property identified in the present case, and having regard to its social and economic dimension, including the State’s duties in relation to the social rights of other persons ..., the Court considers that the respondent State must above all, through appropriate legal and/or other measures, secure in its domestic legal order a mechanism maintaining a *fair balance between the interests of landlords, including their entitlement to derive profit from their property, and the general interest of the community– including the availability of sufficient accommodation for the less well-off* – in accordance with the principles of the protection of property rights under the Convention’.<sup>67</sup>

More recently, in its judgment in *Almeida Ferreira and Melo Ferreira v. Portugal* of 21 December 2010, the Court found that a statutory bar to terminating a long-term lease did not infringe the applicants’ property rights because, in that specific case, the impugned legislation was based on concern to protect a section of society deemed by the State to require special protection<sup>68</sup>. In a different context, in the *Société Cofinco v. France* decision of 12 October 2010, the Court declared inadmissible a complaint under Article 6 § 1 and Article 1 of Protocol No. 1 alleging that the public authorities had refused to enforce a final court ruling ordering the clearing of a block of flats, on the grounds, *inter alia*, that the squatters were in a precarious and vulnerable situation and therefore deserved enhanced protection.<sup>69</sup>

Lastly, in the case *A.M.B. and Others v. Spain* which was brought before the Court on 6 December 2012 and is currently pending, the President of the Third Section decided to indicate to the Government not to carry out the applicant and her children’s eviction from the home they occupy.<sup>70</sup>

Studying these different examples, we see that the issue of housing has already been given a certain weight in the balancing exercise, in cases which entailed restricting all or some of the classic property-related prerogatives on that account. It may be that even greater weight will be attached to it, thanks to a more fundamental change in the way that we perceive property itself and the reasons traditionally advanced to justify protecting it. ‘Property entails obligations’, as Article 14 § 2 of the German Constitution states.

### ***E. Inhuman and Degrading Treatment***

From the point of view of Article 3 of the Convention, we can and should raise questions as to the suitability of this provision as a basis for a State duty towards persons in difficulty. It would be unthinkable not to consider that extreme poverty ‘humiliates the individual in his own eyes and in the eyes of others’ and ‘is such as to arouse feelings of fear, anguish and inferiority’. As P.-H. Imbert put it: ‘Is it really so ridiculous to think that if corporal punishment in schools is considered to be degrading, the same should apply to the situation of someone who “lives” in a slum?’<sup>71</sup>.

That said, the absolute nature of the prohibition contained in Article 3 – it means that the situations coming within the ambit of that provision are not normally justified on any grounds, including

---

<sup>67</sup> *Ibid.*, § 239 (emphasis added).

<sup>68</sup> App. no. 41696/07, *Almeida Ferreira and Melo Ferreira v. Portugal*, Judgment (Merits and Just Satisfaction), 21 December 2010, § 33.

<sup>69</sup> ECtHR, *Société Cofinco v. France* decision of 12 October 2010.

<sup>70</sup> App. no. 77842/12, *A.M.B. and Others v. Spain*, communicated to the Government on 12 December 2012.

<sup>71</sup> Imbert, ‘Ouverture’, in C. Grewe and F. Benoît-Rohmer (eds), *Les droits fondamentaux ou la démolition de quelques poncifs* (2003) 12.

budgetary grounds<sup>72</sup> – calls, almost as a matter of necessity, for a certain degree of restraint in applying it in practice, in other words, for a raising of the threshold of human suffering beyond which Article 3 will be held to apply. The decision of the European Commission of Human Rights of 9 May 1990 in *Van Volsem v. Belgium*, which was severely criticised,<sup>73</sup> was partly echoed ten years later in the case of *O'Rourke v. the United Kingdom*.<sup>74</sup> Here again, this time in relation to an ex-prisoner forced to live on the streets after being evicted by the local authority from the temporary accommodation he had obtained, the Court held that there had been no violation of Article 3, as the suffering which the applicant had experienced as a result of his eviction had not attained the requisite threshold of severity. However, had the applicant's situation been the result of State inaction rather than his own choice (he had refused all temporary accommodation as well as two offers of permanent housing), the Court's conclusion would have been different.

However, this line of case-law was subsequently qualified, not to say superseded, by the *Larioshina v. Russia* decision of 23 April 2002, which states as follows: '[T]he Court recalls that, in principle, it cannot substitute itself for the national authorities in assessing or reviewing the level of financial benefits available under a social assistance scheme ... *This being said, the Court considers that a complaint about a wholly insufficient amount of pension and the other social benefits may, in principle, raise an issue under Article 3 of the Convention which prohibits inhuman and degrading treatment*'.<sup>75</sup> In the *Budina v. Russia* decision of 18 June 2009, the Court pursued the same line and addressed the arguments which, in the view of some observers, weigh in favour of a change in the case-law.<sup>76</sup> The Court did not rule out the possibility that the State's responsibility could be engaged on account of the treatment meted out to the applicant, who was wholly dependent on State support and found herself faced with official indifference despite living in a state of great hardship incompatible with human dignity.<sup>77</sup>

Lastly, '[a]nother consequence of the economic crisis which the Court has dealt with in the context of Article 3 is the increasing influx of migrants and asylum seekers'. Thus, in the *M.S.S. v. Belgium and Greece* judgment of 21 January 2011, in which an asylum seeker, because of the authorities' inaction, had found himself living on the streets for several months with no resources or access to sanitary facilities and without any means of providing for his essential needs, the Court found that the applicant had been the victim of humiliating treatment showing a lack of respect for his dignity and that the situation had aroused in him feelings of fear, anguish or inferiority capable of inducing desperation. The Court considered that such living conditions, combined with the prolonged uncertainty in which he had remained and the total lack of any prospects of his situation improving, had attained the level of severity required to fall within the scope of Article 3 of the Convention.<sup>78</sup>

In the *Hirsi Jamaa and Others v. Italy* judgment of 23 February 2012, the Court observed that '[t]he economic crisis and recent social and political changes have had a particular impact on certain regions of Africa and the Middle East, throwing up new challenges for European States in terms of

---

<sup>72</sup> With regard to situations contrary to human dignity in a prison setting (overcrowding etc.), see App. no. 41707/98, *Khokhlich v. Ukraine*, Judgment (Merits and Just Satisfaction), 29 April 2003, § 181.

<sup>73</sup> See Sudre, 'La première décision "quart-monde" de la Commission européenne des droits de l'homme: une "bavure" dans une jurisprudence dynamique', *R.U.D.H.*(1990) 349; J. FIERENS, *Droit et pauvreté. Droits de l'homme, sécurité sociale et aide sociale* (1992), at 134 et seq.

<sup>74</sup> App. no. 39022/97, *O'Rourke v. the United Kingdom*, Decision, 26 June 2001.

<sup>75</sup> App. no. 56869/00, *Larioshina v. Russia*, Decision, 23 April 2002 (emphasis added).

<sup>76</sup> D. ROMAN, *Le droit public face à la pauvreté* (2002).

<sup>77</sup> App. no. 45603/05, *Budina v. Russia*, Decision, 18 June 2009.

<sup>78</sup> App. no. 30696/09, *M.S.S. v. Belgium and Greece*, Judgment (Merits and Just Satisfaction) [GC], 21 January 2011, § 263.

immigration control'.<sup>79</sup> In that case, the Court did not hesitate to assert that 'having regard to the absolute character of the rights secured by Article 3, that [situation] cannot absolve a State of its obligations under that provision'.<sup>80</sup>

#### 4. Conclusion

This last judgment takes me back to my starting point. If we accept the idea that crisis and economic crisis are not just cyclical but are the sign of an underlying shift, then I believe that, as far as human rights are concerned, this should prompt us to lend greater meaning, scope and effect to the indivisibility of fundamental human rights which is without doubt the guiding line (*l'horizon régulateur*) for the international protection of those rights.

As President Bratza reminded us in January 2012, in his opening speech of the judicial year of the European Court of Human Rights, in times of crisis, the protection of human right is not a luxury, but it is, more than ever, a necessity.<sup>81</sup> Conversely, the paradox of our democracies today would be to make poverty the place of inequality in fundamental human rights.<sup>82</sup>

To conclude, I would like to refer to this essential but criticized notion of human dignity. Hannah Arendt's criticism of reference to human dignity is based on experience of the Holocaust. She says that the invoking of dignity risks being tragically useless if certain conditions are not fulfilled. A person cannot have rights, and cannot therefore see his or her dignity respected, unless he or she is part of a political and legal community.<sup>83</sup> If human rights were not able to prevent extermination camps, it is because the human beings who perished there no longer had any legal status. Human rights and dignity cannot content themselves with concerning an abstract man but must necessarily refer to the person included in a political community. It is essential to recognize men and women, all equal beings, the quality of 'subjects of dignity': the poor, foreigners, those excluded. That's the reason why those who have accepted the daunting function of judging must restore vulnerable people's quality of subjects of dignity.

---

<sup>79</sup> App. no. 2775/09, *Hirsi Jamaa and Others v. Italy*, Judgment (Merits and Just Satisfaction), 23 February 2012, § 176.

<sup>80</sup> *Ibid.*, § 122.

<sup>81</sup> Solemn hearing of the European Court of Human Rights on the occasion of the opening of the judicial year Friday 27 January 2012, Address by Sir Nicolas Bratza President of the European Court of Human Rights, available at online at [http://www.echr.coe.int/Documents/Speech\\_20120127\\_Bratza\\_JY\\_ENG.pdf](http://www.echr.coe.int/Documents/Speech_20120127_Bratza_JY_ENG.pdf) (last accessed on 2 August 2013).

<sup>82</sup> See *Living in Dignity in the XXIst Century. Poverty and Inequalities in Societies of Human Rights: The Paradox of Democracies*, *supra* note 14.

<sup>83</sup> H. ARENDT, *Les origines du totalitarisme, II. L'impérialisme* (1982), at 238 et seq.

