



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Solemn hearing for the opening of the judicial year of the European Court of Human Rights

Opening speech by President Guido Raimondi

Strasbourg, 25 January 2019

**Presidents of Constitutional Courts and Supreme Courts,
President of the Parliamentary Assembly,
Chair of the Ministers' deputies,
Secretary General of the Council of Europe,
Excellencies,
Ladies and Gentlemen,**

I would like to thank you personally and on behalf of all my colleagues for kindly honouring us with your presence at this solemn hearing for the opening of the judicial year of the European Court of Human Rights. In keeping with tradition, I also wish you a happy new year for 2019.

I would particularly like to welcome the representatives of the local authorities, whose support has been valuable. Our Court is known throughout the world as the "Court of Strasbourg". So when Strasbourg comes under attack, as was the case on 11 December, the European Court of Human Rights stands by the people of this city. It is important for me to emphasise this point.

This hearing is a particularly significant one for me. It is the last time I will be addressing you on such an occasion. Next year you will be hearing my successor speak to you from this very rostrum. For my part, although I will have returned to Italy, it will always be a source of pride to have presided over this Court and I will remain eternally grateful to the judges who elected me and helped me to fulfil my mission.

It is not my intention today to take stock of these past three years, but I would nevertheless like to share some personal thoughts.

As usual, I will begin by giving you some statistics about the Court's activity. I will start with a reminder: in January 2016, when I spoke here for the first time as President of the Court, nearly 65,000 applications were pending. At the end of 2018, that figure stood at around 56,000 – down by about 14%, which is clearly a satisfactory result. I would add that in 2018 the Court ruled in over 42,000 cases. This is the result of the efforts made by all the judges and members of the Registry, to whom I express my thanks.

Over 70% of pending cases concern just six countries. Among them, the high number of applications lodged against the Russian Federation (almost 12,000) should be highlighted in view of the current situation in the Council of Europe. I will return to this matter shortly, but the significant volume reflects, in my view, the degree of trust shown by Russian nationals in the European mechanism for the protection of human rights and the importance it represents for them.

A closer analysis of these figures reveals that the Court's workload is made heavier particularly by structural situations in certain countries, thus generating a considerable volume of applications. We have developed working methods, including automated processes, which have proved very efficient. Nevertheless, it is mainly at domestic level that these cases must be resolved, in accordance with the subsidiarity principle. More generally, the weight of the case-load emanating from a given country is an indicator of the effectiveness of Convention implementation in that country. Once again, for subsidiarity to function properly, the national authorities must play their full role as stakeholders in the Convention system.

Among all the pending applications, we have over 20,000 which are prioritised. To be clear, many of these cases are actually repetitive in nature, as they concern individuals complaining about prison overcrowding. However, they raise questions under Article 3 of the Convention, which justifies their priority status. Moreover, this is a very good example of a problem which can only find a long-term solution if efforts are made at national level.

In actual fact, the biggest challenge for the Court is undoubtedly the volume of Chamber cases which cannot be dealt with by a committee on account of their complexity or the novelty of the question raised. Our aim is to ensure that the Court can devote enough time to the most important and most complex of these cases so that they can be processed as soon as possible.

* * * *

In 2019 we will be celebrating the sixtieth anniversary of the European Court of Human Rights. You will have seen, in the entrance hall, the exhibition we have organised on this occasion, with the support of the Finnish authorities, whom I would like to thank; it was inaugurated this week by the President of Finland, Sauli Niinistö.

So for 60 years now our Court has been contributing to the harmonisation of European standards concerning rights and freedoms. This collective guarantee mechanism emerged from the willingness of Europeans who, having been traumatised by the atrocities of the Second World War, expressed, in adopting the European Convention on Human Rights, their attachment to democracy, to freedoms and to the rule of law. Above all, they set up a Court to ensure that their own obligations would be complied with.

Throughout this sixty-year period, the Court has interpreted the Convention dynamically in the light of living conditions, which have evolved considerably. Europe in the 1950s and the world we now live in are very different places. Our ways of life and moral standards are no longer the same. Science, medicine and biology have seen outstanding progress. The collection and retention of data concerning individuals, and the appearance of the Internet, with the extraordinary but also worrying consequences of these developments, have had a radical effect on our lives but also on the relations between the State and individuals, and between individuals themselves.

At worldwide level too, the changes have been far-reaching: migratory flows and environmental problems, not to mention the threat of terrorism, have altered our perception of the world and how we live.

I believe that the Court has been able to face up to the challenge of these upheavals.

Taking account of all these technological and societal developments, the Court has enabled the European Convention on Human Rights to remain relevant.

At a procedural level, the Court, which was set up in 1959, adapted itself to a new mechanism which represented a change of model, that of a single and full-time Court which radically transformed the original system. In 2018 we celebrated the twentieth anniversary of the “new” Court; twenty years during which period the Court has delivered a judgment or decision in over 800,000 applications. It now enjoys worldwide renown and is seen as a model for others. I would even say that it is a beacon which lights the way for all those, throughout the world, who seek to strengthen the principles of the rule of law and democracy.

Our Court enjoys close and cordial relations with the other regional human rights courts. In 2018 we signed a joint declaration, known as the “San José Declaration”, with the Inter-American Court of Human Rights and the African Court on Human and Peoples’ Rights. This text is testament to our accomplishments and to the significance of the links now established between our courts.

Nevertheless, in spite of all these achievements, there is no longer much cause for optimism – first of all, because of the serious and unprecedented crisis in the Council of Europe. It is both political and budgetary. On a budgetary level, let me be clear: if we want to pursue the progress that we have made for several years now, in fact since the start of the Interlaken process, our resources must be maintained. We have constantly strived to become more efficient and we are succeeding. On that point, we are launching, this year, a new process intended to bring about a significant increase in the non-contentious solutions so as to lighten the Court’s workload. However, as you know, we have no control over the volume of incoming cases and, if jobs are cut in 2019, this will inevitably have an impact on our processing capacity.

But the crisis is not only a financial one. What is at stake today is the possibility afforded to all Europeans – those of the Greater Europe – thanks to the European Convention on Human Rights, to be able to live on a continent where their rights and freedoms are recognised and protected: “from the Atlantic to the Urals”, to use the much-quoted phrase, particularly pertinent in the present circumstances. The departure of a

member State – and I am obviously talking about the Russian Federation – would be “*a huge setback for human rights*” not only for that country, as Thorbjørn Jagland, Secretary General of the Council of Europe, rightly pointed out, but for all member States. The signal that this would send to Europeans would be at odds with everything that the Council of Europe has built up over the past seventy years – another anniversary we will be celebrating in 2019.

But this crisis now facing the Council of Europe is not my only cause for concern. There are deeper issues at stake. Men and women of my generation had, for a long time, taken the view that once democracy was established it could not be undone. We were sure that democracy was here to stay. But, as some scholars have observed, we are witnessing a phenomenon of social disillusionment, which could lead to democratic deconsolidation. For the younger generations, automatic support for the idea of human rights is no longer a given.

The reasons for this situation are numerous and varied: stagnation of living standards; fears raised by waves of migration or stemming from isolationism; the anarchical development of social networks and large-scale dissemination of so-called “fake news”. Voters seem to be losing faith in their political system. The fact that citizens have turned their backs on the democratic model is such that the spread of extremist discourse, and even in some cases the rise to power of leaders who call into question the foundation of a pluralistic democracy, is facilitated. As the preamble to the European Convention on Human Rights clearly states, human rights are best maintained by an effective political democracy.

There is a risk of democracy being dismantled: first by undermining the rights of the opposition and the independence of the justice system, then by suppressing the media, and even by imprisoning opponents. Political leaders whose intention it is to dispense with the checks and balances, will seek to weaken, or even to eliminate, those institutional actors which nevertheless remain essential to the democratic process. They see the justice system, the press, the opposition as “enemies of the people”.

Our Court is a first-hand witness of these developments. Thus, one of the indicators of the decline in the rule of law is undoubtedly the application of Article 18 of the Convention. It provides – as you know – that any restriction of the rights and freedoms guaranteed by the European Convention on Human Rights must not be applied for any

purpose other than that for which it has been prescribed. This provision, which is crucial for a pluralistic democracy, has been breached only twelve times, but five times during the year 2018 alone. This is both a worrying and a revealing symptom. Without pinpointing any particular country, it can be seen that the aim is often to reduce an opponent to silence, to stifle political pluralism, which is an attribute of an “effective political democracy” – a concept contained, as I was saying, in the preamble to the Convention.

Faced with the situation that I have just described, what response should be forthcoming from the judicial protection mechanisms, such as that of the Strasbourg Court or of the domestic courts – as guarantors of the rule of law – that you represent? There is no easy answer but, to cite Yascha Mounk, a political analyst who has studied these phenomena in his work “The People versus Democracy”: “If we want to preserve both peace and prosperity, both popular rule and individual rights, we need to recognize that these are no ordinary times — and go to extraordinary lengths to defend our values.”

We are certainly ready and willing to go to such lengths, to pursue what we have been doing for the past 60 years. All of us, judges of superior domestic courts and international judges, have a role to play in the protection of democracy and the rule of law.

Our Court, for its part, will never renege on the very mission for which it was created. In 2018 our case-law has once again been testament to its resolve. I would like now to refer to a few examples, even though, as you know, it is always difficult every year to single out one case rather than another, in view of the significance and variety of the questions submitted to it.

I will begin with **two judgments** delivered by the Grand Chamber, which is seen by many as setting the benchmarks of our case-law.

The first, *S.V. and A v. Denmark*, concerns a phenomenon which has unfortunately been spreading in our present-day society, namely violence surrounding sports competitions. The applicants, football supporters who were in Copenhagen to watch a match, had been detained for more than seven hours by the authorities to prevent any risk of hooliganism. The Court found that there had been no violation of the Convention, relying on the fact that the Danish courts had struck a fair balance between the right of those

supporters to their freedom and the importance of stopping hooligans. In our Court's view, the domestic courts had carefully examined the strategy applied by the police to avoid clashes. The police had, in particular, taken account of the domestic-law rule limiting preventive custody to six hours, even though that limit had been slightly exceeded; they had begun by entering into a preliminary dialogue with the supporters, before having recourse to more radical measures such as deprivation of liberty; they had made every effort to detain only those individuals whom they regarded as representing a risk for public safety; and lastly they had carefully assessed the situation in order to be able to release the applicants once the situation had calmed down.

The judgment in *S.V. and A.* in particular emphasised the need to weigh in the balance the duty to avoid disorder against the rights secured to individuals in relation to custodial measures. The Court applied the subsidiarity principle, relying on the fact that the assessment by the domestic authorities had been neither arbitrary nor manifestly unreasonable and that the deprivation of liberty in question had been consistent with the rules of domestic law.

The second Grand Chamber judgment I wish to mention was delivered at the very end of last year. It is the case of *Molla Sali v. Greece* concerning the application of sharia law by the Greek courts. This judgment gave rise to erroneous interpretations, with some commentators suggesting that our Court wanted to pave the way for the application of sharia law in Europe. However, the *Molla Sali* judgment leads to precisely the opposite conclusion.

In that case, a Greek national belonging to the minority Muslim community, had bequeathed all his property to his wife in a will drawn up under the civil law of Greece. The sisters of the deceased had brought a case before the domestic courts, which took the view that questions of inheritance within the Muslim community had to be settled by the "mufti" according to the rules of Islamic law, pursuant to the Treaties of Sèvres and Lausanne of 1920 and 1923. The widow, who was thus deprived of three-quarters of her inheritance, considered that she had sustained a difference in treatment on religious grounds, because if her late husband had not been a Muslim she would have inherited his entire estate.

Ruling unanimously, the Court took the view that the difference in treatment sustained by the applicant did not have any objective or reasonable justification. First, freedom of religion did not oblige Contracting States to set up a given legal framework to grant religious communities a status carrying special privileges. But if such a status were to be created, the conditions of its application could not be discriminatory. The fact of not allowing followers of a minority religion to be able to opt voluntarily for the ordinary law had led to discriminatory treatment and infringed the right to free identification, in other words the right to choose not to be treated as someone belonging to a minority. This right, I would point out, constitutes the “cornerstone” of international law on the protection of minorities. Lastly, the Court noted that Greece was the only country in Europe which, up to the material time, had been applying sharia law to part of its citizens against their will. The Court thus found a violation of Article 14 of the Convention taken together with Article 1 of Protocol No. 1. The situation evolved in the course of the procedure as, on 15 January 2018, a law came into force with the aim of abolishing the specific rule imposing recourse to sharia law in respect of family matters of members of the Muslim community. By giving priority to the ordinary law over the religious law, in accordance with the applicant’s wishes, this was one of the leading judgments of the past year.

Some Chamber judgments in 2018 have also aroused great interest or have been widely reported in the media. I will briefly mention a number of those which, in my view, reflect the key questions with which our Court, just like our societies, is confronted.

New technologies have, once again, been at the forefront of our case-law. For example, in the case of *M.L. and W.W. v. Germany*, the Court had to arbitrate between different Convention rights. The case concerned individuals who had been convicted of premeditated murder and who sought a ban on the possibility for media organisations to retain references to their trial and conviction on their websites. Faced with a balance to be struck between the applicants’ right to respect for their private life and the public’s right to receive information, the Court gave priority to the latter. Like the German Federal Court of Justice, the Court acknowledged the applicants’ interest in no longer being confronted with their conviction, which was far from recent, but it took the view that the public had an interest in being informed about newsworthy subjects, and that the media had to be able to make information available to the public from its archives, however old it might be.

The last case I will mention tonight concerns my own country: *V. C. v. Italy*. This case concerned a minor who was the victim of a child prostitution ring. The Court found against Italy, taking the view that the domestic authorities, who had been aware of the girl's vulnerable situation, had not taken any measures to protect her from abuse. The judgment illustrates the Court's concern to protect, as it always has done, the weakest and the most vulnerable in society. We already had a considerable body of case-law protecting women from any forms of violence and this case is a further example.

But 2018 has also given us reasons to be thankful, and I am thinking in particular of the ratification by France of Protocol No. 16, on the initiative of President Macron. This tenth ratification triggered the entry into force of that instrument. This is a milestone in the history of the European Convention on Human Rights and a major development for the protection of human rights in Europe. Our Court is also now part of a well-established network with superior courts from around Europe. To show that this Protocol had been keenly awaited by the supreme courts concerned, just two months after its entry into force we received our first request for an advisory opinion, which came from the French Court of Cassation. It was announced by the President of the Court of Cassation, Bertrand Louvel, during his visit to the Court. I would like to pay tribute to him, as he is attending this solemn hearing for the last time in his current capacity; he is an eminent figure of the French judiciary, who has also been a loyal ally of the European Court of Human Rights.

The request for an opinion is now being examined and our Court is ready to take up this new challenge.

The subject of Protocol No. 16 leads me to say a few words on the case-law exchange network. It has developed significantly, because it now includes 71 superior courts from 35 countries. As this permanent dialogue with supreme courts has been one of the key aspects of my presidency, I am obviously pleased to note that there have been many meetings with these courts in 2018. In the course of the year we had exchanges with the Spanish Constitutional Court and Supreme Court, the Constitutional Authority of San Marino, the Greek Court of Cassation, the French *Conseil d'État*, the Supreme Court and other superior courts of the UK, the Supreme Court of Iceland, the French Court of

Cassation, the Irish Supreme Court, and, last but not least, the Supreme Court of the Russian Federation, on the occasion of the highly symbolic visit of Chief Justice Lebedev for the launch of an Encyclopaedia of Human Rights.

Presidents of Constitutional Courts and Supreme Courts,
Ladies and Gentlemen,

Before I conclude, allow me to take you beyond the confines of our continent for a moment. It is often said that India is the largest democracy in the world. In 2018 the judges of the Indian Supreme Court delivered a judgment declaring Article 377 of the Indian Criminal Code illegal, which criminalised same-sex intercourse. That historic decision, long awaited by human rights advocates, received worldwide coverage. Going beyond the decision itself and the progress it represents for those concerned, I was proud to see that, in its judgment, the Supreme Court in Delhi cited, in several places, our Court's well-known cases of *Dudgeon*, *Norris*, *Modinos* and *Oliari*, which have gone such a long way towards putting an end to the discrimination sustained by LGBT people. For me this was additional proof that our case-law is a source of inspiration even beyond the continent of Europe. It is also proof that, in spite of the differences in our cultures and traditions, human rights are universal, because in taking its decision the Indian Supreme Court looked to Europe – and indeed to Strasbourg.

The time has now come to give the floor to our guest of honour. In keeping with our tradition, we are receiving the president of a constitutional court or authority. But that is not his only credential.

Thus our guest of honour is Laurent Fabius, one of those figures who needs no introduction. He has not merely witnessed, but has played, a leading role in the history of France – the history of Europe – and even in that of the planet, because we all remember his key role as Chair of the international Climate Change Conference, held in Paris in 2015.

President Laurent Fabius,

President of the French Constitutional Council,

In view of all those credentials,

Because your experience is far-reaching,

And since your views are of value to us and your presence here is a major event, we are now keen to listen attentively to you.