



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

## Opening of the Judicial Year

### Seminar

Introductory speech by Ksenija Turković

*Strasbourg, 25 January 2019*

Ladies and Gentlemen,

I would like to join President Raimondi in extending, on behalf of the organising committee – Judge Paul Lemmens, Judge Dmitry Dedov, Judge Iulia Motoc, Judge Gabriele Kucsko-Stadlmayer and myself – and indeed all the judges of the Court, a very warm welcome to you all to this year's judicial seminar. From its inception the seminar was envisaged, and by now is traditionally organised, as a dialogue between judges at the highest level on a topic of particular relevance at this particular moment in Europe.

Last year the seminar took as its theme challenges to the authority of the judiciary. Owing to the complexity of the topic and its considerable relevance for society and for us all we have decided to explore this subject further, with specific emphasis on strengthening confidence in the judiciary. We have fewer speakers this year in order to have enough time for an exchange of views.

In *Morice v. France*, our Court said: "Questions concerning the functioning of the justice system, an institution that is essential for any democratic society, fall within the public interest. In this connection, regard must be had to the special role of the judiciary in society. As the guarantor of justice, a fundamental value in a law-governed State, it must enjoy public confidence if it is to be successful in carrying out its duties." The Court has emphasised this on many occasions.

In discussing mechanisms for strengthening confidence in the judiciary it is important to identify the factors involved in the public's confidence and the causes of popular dissatisfaction with the administration of justice. Traditionally, it has been emphasised that public confidence involves a belief in the fairness and impartiality of the tribunal, with the judge dispensing speedy decisions in accordance with "the law", and with judges living up to the requirements of integrity and propriety and remaining free from scandal and corruption in all of their activities, both judicial and non-judicial. Confidence is related to the extent to which judges act effectively. Efficiency, quality and independence are key parameters of an effective justice system.

However, these days some courts are facing additional key challenges in preserving the values essential in order to inspire public confidence. Courts, both domestic and international, especially those that can review legislative acts and limit the powers of other branches of government, are increasingly under attack today. Both the structural features of the courts as well as judges

themselves may be, and indeed sometimes are, targeted – and no longer only in fragile democracies – through undue political interference by the executive and legislature in judicial appointments, promotions and decisions (with disloyal judges being removed and loyal ones appointed, while others are made loyal), through budget cuts in the face of vastly-increased caseloads, jurisdiction stripping, docket control, changes to the procedural rules or the rules on access to a court, and so forth. The legitimacy and authority of the courts is also eroded through partial or delayed compliance or non-execution of judgments as well as through unfounded criticism of the judiciary. In *Morice* the Court further emphasised that it may prove necessary to protect public confidence in the judiciary against gravely damaging attacks that are essentially unfounded.

Furthermore, the use of social media, digitalisation and other technological developments pose new challenges to the preservation of judicial integrity.

But not only the authority of the judiciary is in danger and under attack. The Western paradigm of human rights is increasingly questioned along the age-long divide regarding the appropriate conceptualisation of human rights as universal or culture-specific. The “war on terror” itself had serious erosive effects on human rights, in addition to xenophobia and the spreading through social media of alternative or fake truths. We are facing nationalistic seclusion and social exclusion, the contestation of constitutional liberal democracy, failed economic policies promoting constant growth, and a lack of solidarity and equality. Of the 113 countries surveyed for the latest (2018) Rule of Law Index published by the World Justice Project, 71 reported that their fundamental human rights had been eroded.

Challenges such as poverty, environmental change, demographic explosion and artificial intelligence can hardly be addressed within existing frameworks based on the overwhelming demand for personal freedom. We are faced with unprecedented and unpredictable factors affecting the welfare of future generations. The environment in which we act and make decisions is increasingly challenging. In the midst of all of this we must not forget that confidence in the judiciary is to a great extent related to the ability of judges to handle complex social problems without applying double standards.

All this makes the judiciary vulnerable and at the same time makes a strong judiciary indispensable. Thus, in the first part of the seminar today we will discuss mechanisms for strengthening confidence in the judiciary. This session will be moderated by Judge Gabriele Kucsko-Stadlmayer, judge in respect of Austria. After the coffee break we will have a session addressing issues related to Protocol No. 16 – the new instrument we now have which broadens the scope for judicial dialogue. This session will be moderated by Judge Dmitry Dedov, judge in respect of Russia.

In your folders, as in previous years, you will find a background paper highlighting the key case-law of the Court dealing with themes related to the topics covered by our speakers. The paper and the speeches will be published on our web page in the coming days.

Each year we are trying to come up with some new ideas. This year for the first time we have created an opportunity for national judges and national delegations to meet with lawyers and representatives of the department for the execution of judgments, if they so wish, in order to discuss issues relevant to their respective countries. I hope that those who used that opportunity had a good experience. If the feedback is positive we will continue to offer that opportunity next year as well.

On behalf of the organising committee and on behalf of all of us present, I would like to thank wholeheartedly the whole team that helped us to put together this seminar – our Registrar, Roderick Liddell, who was closely involved in our discussions all the way through; Rachael Kondak and Valentin Nicolescu, who once again drafted an excellent background document which we hope you will find useful; Valérie Schwartz, who with marvellous ease is taking care of all the administrative issues; Patrick Titiun, who is making sure that all today's events run smoothly; Loredana Bianchi, Valérie's right hand; and the interpreters and many others acting in the background to ensure that everyone has a positive experience.

Finally, I would like to encourage you to make good use of this opportunity to share experiences and exchange good practices. Together with my colleagues on the organising committee, I look forward to yet another stimulating seminar filled with fruitful discussions and inspiring ideas. Thank you all for coming and for your attention.