Solemn Hearing
on the occasion of the opening of the judicial year

31 January 2020

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President of the European Court of Human Rights

Presidents of Constitutional Courts and Supreme Courts,
President of the Parliamentary Assembly,
Chairman of the Ministers' Deputies,
Madam Secretary General of the Council of Europe,
Your Excellencies,
Ladies and gentlemen,

I would like to thank you, on behalf of all my colleagues and also in my own name, for agreeing to attend the solemn hearing for the opening of the judicial year at the European Court of Human Rights. Your presence here bears witness to the strength of the bonds that unite us.

The tradition is that on this last day of January I can still wish you a happy New Year 2020. I would also like to take stock with you of the many events in 2019, which was an important year for both the Court and the Council of Europe.

As regards the Council of Europe, I am particularly pleased to be able to welcome the Organisation's new Secretary General, Marija Pejčinović Burić, who has honoured us with her presence, for the first time, at our solemn hearing.

Madam Secretary General, you have come upon an Organisation which is relaunching itself on very solid foundations, after an unprecedented political and financial crisis.

Right from the start of your term of office you emphasised your attachment to the Court. My colleagues and I myself are extremely grateful to you for this.

Dear Presidents of Superior Courts,

Over the past year our Network has undergone enormous expansion. It now comprises 86 courts from 39 States, making it the biggest network of this type worldwide. The presence in our midst of Chantal Arens, First President of the Court of Cassation, and Bruno Lasserre, Vice-President of the *Conseil d'État*, is an opportunity for me to thank them for having welcomed us all to a very successful conference of superior courts held in Paris on 12 and 13 September. The event bore witness to the growing importance over the years of dialogue between judges. In receiving us all at the Élysée Palace alongside the conference, President Emmanuel Macron clearly expressed his support for this gathering of judges, symbolising the rule of law Europe-wide.

2019 marked the completion of the Interlaken Process, which had begun in 2010. During this process, far-reaching reforms were made to our structures and working methods. It was really the decade of reforms. Our Court showed its capacity for reform and for turning to good account all the tools at its disposal.

The results of the policies implemented were conclusive, as you will see from the statistics which I would like to share with you.

Many of you will remember that at the end of 2011, as the Interlaken Process was just beginning, we had 160,000 applications pending. That astronomic figure has been significantly reduced, and at the beginning of this year it stands at just under 60,000. I might add that in 2019 the Court heard and determined more than 40,000 cases. That is the result of the efforts expended by all the judges and the members of the registry, whom I thank.

However, the situation is still open to improvement in terms of backlog, and major effort will be needed over the months and years to come.

The biggest challenge is that of the 20,000 Chamber cases pending. Even though in 2019 the number of such cases decreased slightly from their 2018 figure, they still constitute the “hard core” of our stock of cases. It is vital that we manage to devote all the requisite attention to them. Indeed, many of them are major cases, sometimes raising very serious issues. The Court is fully aware of this and is constantly refining its working methods to address this issue. It will, however, require additional resources to do so.

One of the main events for the Court in 2019 was the first advisory opinion issued pursuant to Protocol No. 16, in response to a request from the French Court of Cassation.

The case concerned the situation of a child born abroad by gestational surrogacy, conceived from the biological father’s gametes. The father’s parentage was recognised under French law following the first few judgments delivered by our Court. Question marks remained over the status of the intended mother.

Our advisory opinion stated that the right to respect for the child’s private life required domestic law to provide for the possibility of recognising the legal parent-child relationship with the intended mother. Such recognition could be achieved by means of adoption.

A few months after our advisory opinion, the Court of Cassation, sitting as a full court, finally opted for having foreign birth certificates registered in France in order to establish the parent-child relationship between such children and their intended mothers. It thus went even further than our opinion. This is a perfect example of the dialogue-based approach established under Protocol No. 16.

This protocol is a challenge for our Court, because proceedings are pending when we receive the request, and we must therefore adjudicate very rapidly on highly sensitive matters. And that is what we have done.

Protocol No. 16 is clearly not designed to be applied on a day-to-day basis. It must be confined to questions of principle. Nevertheless, because European justice must be an area of dialogue and complementarity, Protocol No. 16 is now the most advanced instrument available to us in this sphere. Its first application therefore marks a milestone in the history of the European system of human rights protection. A second request, this time from the Armenian Constitutional Court, has already been lodged and is under examination.

The second major legal development in 2019 concerned the execution of our judgments. We all know that the success of our whole system relies on the complete enforcement of our judgments. The role of the Committee of Ministers, which is enshrined in the Convention in order to guarantee the effectiveness of their supervision, is therefore vital in safeguarding the credibility of the system. We can well imagine what happens to that credibility when a judgment is not executed.

This shows the importance of the new infringement proceedings introduced under Article 46 § 4 of the Convention. That provision was applied for the first time in 2019.

In the framework of these first infringement proceedings the Court was invited to determine whether Azerbaijan had refused to comply with a judgment delivered in 2014. The case concerned an imprisoned political opponent, Ilgar Mammadov. The question was whether the respondent State had failed in its obligations by refusing to release that political opponent further to our judgment.

Our Court considered that the State in question had indeed failed in its obligation to comply with a judgment previously delivered by the Court.

That first application of infringement proceedings, above and beyond the case in question, bears witness to the advanced institutional cooperation between the Court and the Committee of Ministers. The Committee of Ministers and the Court intervene in the system in different ways. One is political and the other legal. They nevertheless pursue the same aim, that is to say ensuring the efficiency of the system. Infringement proceedings, as implemented for the first time, bring us closer together. They reinforce our shared responsibility, which is a vital component of the European mechanism for human rights protection.

The opening of the judicial year would not be complete without reference to the key cases of the past year.

Although the cases which I have selected differ widely, they nevertheless all concern major issues which will most certainly increase in importance over the next ten years: protecting children; preventing violence against women; migration issues and protecting the environment.

The first is a Grand Chamber case, *Strand Loben v. Norway*, which concerned the removal of a child from its mother. On that occasion the Court pointed to the importance of the biological bonds between parents and their children, which must be protected. In this judgment, the Court specified the meaning and scope of the concept of the "best interests of the child" and harmonised the different approaches which exist at the pan-European level.

Our Court is also present on another front which has taken on cardinal importance, that is to say combating violence against women. As we have pointed out in one of our judgments, that kind of violence is a widespread problem confronting all member States, and is particularly alarming in contemporary European societies.

As you know, for several years now the Court has been delivering judgments on that subject. In fact, the *Opuz v. Turkey* judgment was clearly in line with the growing international awareness of the vital need for a specific convention. Thus *Opuz* led the way for the Council of Europe's Convention on preventing and combating violence against women and domestic violence. *Opuz* is a good example of the synergy operating between the work of the Council of Europe and that of the Court. The so-called Istanbul Convention now constitutes an additional tool for the Court in safeguarding the fundamental rights.

In 2019, for the first time in this sphere, the Court found a violation concerning Russia. In its *Volodina* judgment it observed that Russian law did not recognise marital violence and therefore failed to provide for exclusion and protection orders. In our Court's view, these omissions showed clearly that the authorities had not acknowledged the seriousness of the problem of domestic violence and its discriminatory effects on women.

In 2019 the Court took up another of the challenges currently facing States. Over the last few years it has received many applications concerning the situation of migrants in Europe. Three major judgments were delivered in 2019 concerning different aspects of this difficult issue: first of all, the confinement of migrants in an airport transit zone (*Z.A. v. Russia*); secondly, "chain refoulements" in the case of *Ilias and Ahmed v. Hungary*; and lastly, the situation of unaccompanied children, in the case of *H.A. v. Greece*. In these different cases the Court was careful, firstly, to protect the case-law *acquis* in the sphere of refugee law, and secondly, to map the way forward for the States' migration policy.

The last judgment which I would like to mention also concerned a vital issue, albeit a global one. It was delivered in the case of *Cordella v. Italy*. In that case the applicants had complained of the effects of the toxic emissions from a factory on the environment and on their health. The Court held that a continued situation of environmental pollution endangered the health of the applicants and of the whole population of the areas affected. The Court therefore invited the Italian authorities promptly to introduce an environmental plan to ensure the protection of the population.

This judgment is tragically topical. A few months ago we all watched, dumbfounded, images of Amazonia in flames. At the beginning of this year the bushfires in Australia have again reduced us to stunned silence. We have unfortunately entered the Anthropocene age in which nature is being destroyed by man.

In that context, more than ever, it is right and proper for the Court to continue with the line of authority enabling it to enshrine the right to live in a healthy environment. However, the environmental emergency is such that the Court cannot act alone. We cannot monopolise this fight for the survival of the planet. We must all share responsibility.

That is why I would like to conclude this case-law round-up with a recent example from the Netherlands. At the end of December last the Supreme Court of the Netherlands delivered a judgment which prompted an immediate reaction around the world. In that case the Supreme Court ordered the Dutch State to reduce greenhouse gas emissions by at least 25% by the end of 2020.

In giving this decision, which has been hailed as historic, the Dutch Supreme Court relied explicitly on the European Convention on Human Rights and the case-law of our Court.

By relying directly on the Convention, the Dutch judges highlighted the fact that the European Convention of Human Rights really has become our shared language and that this instrument can provide genuine responses to the problems of our time.

I will now turn to English. The cases I have just mentioned clearly attest to the modernity and relevance of the Convention as interpreted by the Court. For 60 years now the Court has been using its case-law to promote rule of law, democracy and human rights, the core values of the Council of Europe. This year, in 2020, we will celebrate the 70th anniversary of the Convention. The European Convention is no doubt one of the greatest peace projects in the history of humanity.

Today's formal opening session is also our first opportunity to commemorate this Treaty. It might therefore be useful briefly to take stock of the main achievements of the system.

The Court's case-law is based on the idea that the rule of law underpins the entire Convention. The rule of law is not the rule of just any law. It is the rule of law based on the values of the Convention.

In my view, there are three reasons for the universal success of the European mechanism for the protection of human rights.

First of all, the Convention permeates all the branches of law: criminal and civil law, private and public law, not to mention such new areas as new technologies and environmental law. It is, so to speak, present on all fronts. In short, this text provides answers to a wide variety of complex questions arising in our societies.

The second reason for this success has a great deal to do with its evolutive interpretation, first of all by our Court and then by your courts. This interpretative methodology is clearly in line with the wishes of the founding fathers. They had a perception of human rights which was not static or frozen in time but dynamic and future-oriented. The generic terms used by the Convention, together with its indeterminate duration, suggest that the parties wished the text to be interpreted and applied in a manner that reflects contemporary developments. This viewpoint is backed up by the Preamble to the Convention, which refers to not only the "maintenance" but also the "*further* realisation of human rights and fundamental freedoms", in other words their development.

This evolutive interpretation method has allowed the text of the Convention to be adapted to "present-day conditions", without any need for formal amendments to the treaty.

This mode of interpretation has also been confirmed on several occasions by the case-law of the International Court of Justice.

And most importantly, we have all of us, in our respective courts, ensured the permanence of the Convention, since it is still incredibly modern in 2020.

The third reason for the Convention's success over its seventy years of existence is the crafting of a specific European legal identity. By interpreting the Convention, the Court has helped to harmonise European rules in the sphere of rights and freedoms.

From its beginnings right up to the present, the Court has reinforced respect for human dignity by guaranteeing observance of such fundamental safeguards as: the right to life and the abolition of the death penalty; prohibition of ill-treatment; prohibition of slavery, servitude and human trafficking.

It has introduced safeguards protecting individuals against arbitrariness, injustice and abuse of power. It has ensured the protection of the dignity of persons deprived of their liberty. And it has also built up comprehensive case-law to protect private and family life.

Where political rights are concerned, the Court has endeavoured to protect pluralistic democracy by guaranteeing respect for the basic democratic principles in such areas as participation in free elections and freedom of expression, religion, assembly and association. The concern to promote tolerance and broad-mindedness has consistently underpinned the Court's case-law.

It is essential here to remember that democracy is the only political model envisaged by the European Convention of Human Rights and the only system compatible with it. No other international body has established in such a crystal-clear manner this link between democracy and human rights.

That is why the Court remains particularly vigilant when the foundations of democracy are imperilled, including any attempt at undermining the independence of judges. It should be noted that the Court of Justice of the European Union recently applied our principles in this sphere.

This also explains our Court's concern about cases of violation of Article 18 of the Convention concerning misuse of power. In three politically sensitive cases in 2019, the Court found violations of that provision. Such cases are always symptomatic of regression on the part of the rule of law. Whether they involve attempts to silence an opponent or to stifle political pluralism, such cases run counter to the notion of an "effective political democracy" set out in the Preamble to the Convention.

As we can see, the work completed over 70 years has been immense, covering a large number of fields. In 2020, a series of events and conferences will be held enabling us to go back over all these achievements. In order to mark this anniversary, a commemorative book has just been published. It looks at 47 judgments which have changed Europe, one from each Member State. It also includes other documents from the Court archives as well as a number of stunning photographs. Copies will be available for you at the end of this hearing and I warmly invite you to take one.

Ladies and gentlemen,

Sixty years ago the first judgment delivered by the European Court of Human Rights, under the presidency of the illustrious René Cassin, was *Lawless against Ireland*. Indeed, our ties with Ireland are close and deep-rooted. Our early case-law includes several leading Irish judgments. We are all acquainted with *Open Door and Dublin Well Woman*, an important case concerning freedom of expression regarding abortion; *Norris*, which concerned the prohibition of same-sex relationships between consenting adults; *Bosphorus Airways*, a case of cardinal importance in terms of relations between European Union law and Convention law; and, of course, *Airey*, which was fundamental as regards the right to a court.

In a common law country, which benefits from a Constitution, the Convention has played a fundamental role in guaranteeing respect for Human Rights.

On several occasions the Irish political authorities have signalled their attachment to the Court, and we have been honoured to welcome three Presidents of the Republic of Ireland.

Lastly, for several years now, thanks to Irish generosity, all our hearings are filmed and can be broadcast on the Internet. That obviously also applies to this solemn hearing marking the new judicial year.

For all these reasons I am delighted to welcome an Irish friend of the Court to this hearing. More than thirty years ago he was one of the lawyers in the famous *Open Door and Dublin Well Woman* case. But today, we are welcoming him in his capacity as President of the Supreme Court of Ireland. The friend in question is Chief Justice Frank Clarke.

Dear Chief Justice, you have the floor.