

Solemn hearing for the opening of the judicial year 29 January 2016

**Presidents of Constitutional Courts and Supreme Courts,
Madam 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 honouring us with your presence at this solemn hearing for the opening of the judicial year of the European Court of Human Rights. By accepting our invitation you have shown once again the strength of your support for the Court. As we are still in January – albeit only for a few more hours – as is the tradition here, I would like to wish you a happy and fruitful new year 2016.

Today's hearing is one of particular significance. It is the first time that I have given an address on this occasion. It is a great honour to be in this position and I am grateful to my colleagues for showing their confidence in me by electing me as President of the Court.

In keeping with tradition, I would like to begin by referring to some statistical information about our Court's activity. But before doing so – and since the figures are very positive – I wish to pay tribute to my predecessors, and in particular to Dean Spielmann, under whose presidency the Court has considerably reduced its backlog, and also to its outstanding former Registrar Erik Fribergh, whose role in the Court has been essential.

In 2015, therefore, the Court continued to manage the flow of the cases brought before it. In total, it has decided over 45,000 cases. As you know, the elimination of the backlog of single-judge cases was one of the aims of 2015 and it was indeed fulfilled. We now have only 3,250 such cases pending. This is clearly a remarkable result and one to be commended. I hope that we will, within a short timeframe, dispose with similar efficiency of the 30,500 repetitive cases that are currently pending. We have the technical means to achieve that, but it will also depend on the capacity of the respondent States to deal with such cases.

The number of applications disposed of by a judgment remained high in 2015: 2,441, up on 2,388 the previous year. At the end of 2014, we had about 70,000 applications pending. That figure fell to just under 65,000 at the end of 2015, down 7%.

I would like to point out that this progress has to a significant extent, been made possible by those States which have agreed to support the Court, either by contributing to the special account set up after the Brighton Conference to help us deal with our backlog, or by making lawyers available to us through secondment.

I could simply express my satisfaction with these results and take the view that I now have an easy task ahead. But we cannot rest on our laurels. On the contrary, we will be facing some considerable challenges over the next few months. To start with, one of the new features in 2016 will be the introduction of improved reasoning for single-judge decisions. The reasoning in such decisions has, as you know, remained very laconic. That was a cause of frustration not only for

applicants but for judges too. But the number of applications (over 100,000) was so high that we were unable to resolve the issue. Of course, the need for reasoning, according to our case-law, is the essential basis of the trust that citizens must have in their systems of justice. Furthermore, at the High-Level Conference held in Brussels last March, the States expressly asked the Court to provide reasoning for single-judge decisions. I am therefore happy to announce that the Court will respond to that call during the first half of this year. Naturally, we will seek to meet that expectation while continuing to deal with admissible cases and avoiding the build-up of a new back-log.

My other concerns relate to priority cases – which currently total 11,500 – and ordinary Chamber cases, of which there are some 20,000. It is clear that these cases, which are by definition more complex, represent a challenge for us in the coming years. In any event, these figures will have to be brought down from their present unacceptable level. We will have to act on several fronts: dealing with the older cases while ensuring that new cases are resolved in a satisfactory time-frame. In order to succeed, it will be necessary to devise new working methods, including new forms of cooperation with national authorities.

This is one of the ambitions for my term of office as President. However, I am not alone in this endeavour. I am fortunate to be able to work with judges of the highest quality who are profoundly devoted to the Court. I would like to commend them publicly on this occasion. I am particularly happy to mention those of us here tonight who are taking part for the first time in this solemn hearing as judges of the Court. They have recently taken up office and will sit on the bench for the next nine years. They can rely on the assistance of the high-quality staff of the Registry and on this occasion I would also like to thank all of our staff for the work that they accomplish on a daily basis for the good of the Court.

As you all know, the authority of a court and its legitimacy depend largely on the quality of those who sit on its bench; hence the importance of the process by which our judges are appointed. Here I would like to pay tribute to the work of the Council of Europe's Parliamentary Assembly and the Advisory Panel of Experts on Candidates for Election as Judge, chaired by former Chief Justice [of Ireland] John Murray.

In 2015 we pursued our dialogue with other courts, both national and international. We have received and paid many visits, furthering the dialogue between judges, but I will not list them all here. I will confine myself to three examples, because they illustrate our Court's renown throughout the world. A very important visit was paid to the Supreme Court of Canada, and it was marked by the warm welcome we were given there. In Strasbourg we received a delegation of members of the International Court of Justice, with whom we were able to share working methods and discuss our respective case-law. Lastly, only a few days ago, it was the very prestigious Constitutional Court of South Africa which paid us a visit.

Another event related to this dialogue was the launch – on 5 October 2015 – of our network for the exchange of information on the case-law of the European Convention on Human Rights, as announced on this occasion last year. The aim of this initiative, welcomed in the Brussels Declaration, is to promote a reciprocal flow of information between us and the higher national courts. We are currently conducting a trial run with the two supreme French courts, the *Conseil d'État* and the *Cour de cassation*, and I am glad to welcome here tonight the distinguished heads of those courts: Vice-President Jean-Marc Sauvé, First President Bertrand Louvel and Prosecutor-General Jean-Claude Marin. Other courts have already expressed an interest in joining our network and I hope that this will be possible in 2016. This new cooperation between the European Court of Human Rights and national supreme courts is an embodiment of our shared responsibility for the

implementation of the European Convention on Human Rights – a subject which was the focus of the Brussels Conference.

However, an overview of the past year cannot be confined to figures or to a description of how the Court works. Of most importance, ultimately, are the decisions that we deliver, and especially those that demonstrate our capacity to rise to the challenges of the contemporary world. In this connection, the year 2015 has been particularly fruitful.

The Court is regularly called upon to deal with new problems. They are usually extremely sensitive matters on which there is little or no consensus, neither in Europe as a whole nor even at national level. These are issues which sometimes give rise to very heated debates in our societies. I do, of course, consider it to be a positive sign that citizens are turning to our Court to find the answers to their questions. It reflects the high level of trust that they place in the Convention system. This is a great responsibility for us.

On the subject of case-law, I will begin by referring to that of the Grand Chamber. These are the cases that give rise – and understandably so – to particular scrutiny by domestic courts and they are considered by some to be the cursors of the Court’s jurisprudential policy. These judgments are of equal legitimacy, regardless of the majority by which they are decided.

The leading cases of 2015 include that of *Lambert v. France* on the question of end-of-life situations. It is quite rare for a case to have attracted, to such an extent, the interest of the media worldwide. The Court was confronted with the fact that there was no consensus between the member States of the Council of Europe as to the discontinuance of treatment keeping a human being alive artificially. It took the view that the provisions of French law, as interpreted by the *Conseil d’État*, constituted a legal framework which was sufficiently clear to regulate with precision the decisions taken by doctors in such situations. The Court was fully aware of the issues raised by a case concerning medical, legal and ethical questions of the highest complexity. It found that it was primarily for the domestic authorities to verify whether the decision to stop such treatment was in conformity with domestic law and with the Convention, and to establish any wishes that may have been expressed by the patient.

We therefore reached the conclusion that the case had been the subject of an in-depth examination in which all views had been heard and all aspects carefully weighed up, having regard both to a detailed medical assessment and to general observations emanating from the highest medical and ethical bodies. This case is a fine example of the proper application of the subsidiarity principle.

Another case *Delfi v. Estonia* was much less distressing but equally important — on the question of freedom of expression in the digital-media context. This case illustrates the sort of new subject-matter we are called upon to address, often related to new technologies or scientific progress. This was the first case in which the Court had occasion to examine the responsibility of an on-line news portal for comments posted by its readers. Two contradictory realities lay at the heart of this case: on the one hand, the benefits of the Internet that we all appreciate, especially the fact that it is an unprecedented medium for the exercise of freedom of expression, and on the other, the risks that it presents, and in particular the danger of its being used for hate speech or calls to violence, reaching a worldwide audience instantly and remaining on line perhaps indefinitely.

The applicant company complained that the national courts had found it liable for offensive comments posted by third parties.

In its judgment, the Court attached particular weight to the extreme nature of the comments, and also to the fact that Delfi ran its news portal on a commercial basis. It then took account of the fact that Delfi had not ensured that the authors of the posted comments could be held to account for their own remarks. Lastly, it noted that the measures taken by Delfi to prevent the publication of defamatory comments or to delete such remarks promptly after their publication had been insufficient. The decision of the Estonian courts to find against Delfi was thus regarded as justified and as not constituting a disproportionate restriction of its right to freedom of expression.

Delivered at the end of last year, the case of *Zakharov v. Russia* is also of interest, for a number of reasons. First, because it dealt with a fundamental question in our societies – that of covert surveillance. Secondly, in terms of admissibility, as our Court found that the applicant was entitled to claim to be a victim of a violation of the Convention, even though he had presumably not been subjected to any real surveillance measure himself. In view of the lack of a remedy at national level, together with the covert nature of the measures and the fact that they affected all users of mobile telephone services, the Court thus examined the Russian legislation in the abstract. That led us to conclude that the provisions of Russian law governing the interception of communications did not contain adequate and effective safeguards against arbitrariness. Also finding shortcomings in the legal framework in a number of respects, we held that there had been a violation of Article 8 of the Convention.

End-of-life situations; issues about new technologies; arbitrary surveillance measures; those are just a few examples, among many others, of the diversity of our case-law in 2015.

To conclude this brief overview, I would like to mention one other case – not a Grand Chamber or Chamber judgment but an inadmissibility decision. A decision which brings us back to the essence of our mission, to the values that our Court has defended from the outset.

In the case of *M'Bala M'Bala v. France*, the applicant had tried to take advantage of his status as artist in order to propagate his racist ideas. In one of his shows he had called upon a well-known academic, who has been convicted a number of times in France for his negationist and revisionist views, to join him on stage in a gruesome and ludicrous scene which the audience were invited to applaud. The Court took the view that the show at that point was no longer a form of entertainment but had become a sort of rally and that, behind the façade of humour, it was promoting negationism. The applicant had sought to misuse Article 10 by claiming a right to freedom of expression for purposes that were incompatible with the letter and spirit of the Convention. It was important for the Court to reassert that the European Convention on Human Rights did not protect negationist and anti-Semitic expression.

But my overview of 2015 would not be complete without mentioning the crises that we have witnessed: not only the migrant crisis, which has been escalating over the past few months, but also and above all the terrorist attacks which have struck us in Europe – again recently – and which have left our democracies in a state of shock.

We cannot but commend the foresight of the Convention's drafters, who, by inserting Article 15 into our body of law, and thus providing for the possibility of derogating from certain rights in cases of danger threatening the life of the nation, gave our democracies the means to defend themselves in times of emergency; but importantly, to defend themselves without destroying the fundamental values on which our system is based and without abandoning the Convention system. Faced with the enemies of democracy, we must continue to uphold the rule of law.

Article 15 of the Convention leaves States a broad margin of appreciation. However, they do not enjoy unlimited powers and the Court will always be required to verify that their measures remain within the “extent strictly required by the exigencies” of the crisis at hand.

I felt that it was important to emphasise, on this occasion, that the Court is [, to use the words of its case-law,] “acutely conscious of the difficulties faced by States in protecting their populations against terrorist violence, which constitutes, in itself, a grave threat to human rights”. The Court thus finds it legitimate for “the Contracting States to take a firm stand against those who contribute to terrorist acts”, but without destroying our fundamental freedoms, for not everything can be justified by an emergency.

Presidents of Constitutional Courts and Supreme Courts,

Your presence among us here every year is something to which I attach great importance. Our Court and your courts protect rights which are, broadly speaking, the same.

Like you, we have the task of examining individual applications and a mission that is constitutional in nature.

Like us, you are sometimes exposed to criticism. But, in your respective countries, your very existence and the respect due to you are necessary conditions of democracy and you participate, like us and with us, in the construction of a Europe of rights and freedoms.

Ladies and gentlemen,

One of the oldest constitutions in the world is that of Poland. It dates back to 3 May 1791. It has enshrined, since then, the separation of powers and the independence of the judiciary, and the third of May is now the Polish national day. A fine symbol indeed!

I am particularly glad to welcome here this evening, to the European Court of Human Rights, Mr Andrzej Rzepliński, President of the Polish Constitutional Court.

President,

It is a pleasure for me to give you the floor.