



High level Conference

Brighton 18-20 April 2012

Sir Nicolas Bratza, President of the European Court of Human Rights

Mr Chairman, Ministers, Secretary General, Excellencies, Ladies and Gentlemen,

May I begin by thanking the United Kingdom Government for organising this conference following on from those held in Interlaken and Izmir and for the efforts made to consult the Court throughout the process. We appreciate too the initiatives of different Governments to maintain the impetus of the reform process launched at Interlaken and to reinforce the effectiveness of the Convention system. I would also take this opportunity to express my gratitude to all those who have contributed to this process, including the Non-Governmental Organisations which have been tireless in their support for the Court.

Let me say immediately that I welcome the fact that, as at the Interlaken and Izmir conferences, the Declaration starts by a reaffirmation of the firm commitment of member States to the Convention and to the protection of fundamental rights. At a time



when human rights and the Convention are increasingly held responsible in certain quarters for much that is wrong in society, it is worth recalling the collective resolve of member States of the Council of Europe to maintain and reinforce the system which they have set up. We should not lose sight of what that system is intended to do, that is to monitor compliance with the minimum standards necessary for a democratic society operating within the rule of law; nor should we forget the Convention's special character as a treaty for the collective enforcement of human rights and fundamental freedoms. It is no ordinary treaty. It is not an aspirational instrument. It sets out rights and freedoms that are binding on the Contracting Parties.

The Declaration also reaffirms the attachment of the States Parties to the right of individual petition and recognizes the Court's extraordinary contribution to the protection of human rights in Europe for over 50 years. In setting up a Court to guarantee their compliance with the engagements enshrined in the Convention, the member States of the Council of Europe agreed to the operation of a fully judicial mechanism functioning within the rule of law. The principal characteristic of a court in a system governed by the rule of law is its independence. In order to fulfil its role the European Court must not only be independent; it must also be seen to be independent. That is why we are, I have to say, uncomfortable with the idea that Governments can in some way dictate to the Court how its case-law should evolve or how it should carry out the judicial functions conferred on it.

I would respectfully submit that these elements must be borne in mind in any discussion of proposals for reform. Convention amendment must be consistent with the object and purpose of the treaty and must satisfy rule of law principles, notably that of judicial independence. The true test of any proposed amendment is the extent to which it will actually help the Court cope more easily with the challenges facing it.

Having said that, there is much in this Declaration with which the Court is in complete agreement. I refer in particular to the emphasis placed on steps to be taken by the States themselves, the recognition of the shared responsibility for the system requiring national authorities to take effective measures to prevent violations and to provide remedies. The text outlines the different areas for action in a comprehensive manner. It also rightly underlines the important role of the Council of Europe in providing assistance.

Let us be clear: the main issue confronting the Court has been, and continues to be, the sheer quantity of cases. Failure to implement the Convention properly at national level is a primary source of the accumulation of meritorious cases which constitute the most serious problem that the Court has to cope with. It is also a regrettable fact that over 30,000 of the pending cases relate to repetitive violations of the Convention, in other words cases where Contracting Parties have failed to take effective steps to remedy the underlying systemic problem previously identified by the Court. It is to be hoped that the Declaration will provide a stronger basis for dealing with this unacceptable situation.

Yet we also know that while more effective action by States both generally and following a judgment finding a violation is indispensable for the long-term survival of the Convention system, it will not provide a solution in the short to medium term. That is why the Court has developed a clear strategy as to how to approach its case-load. We fully accept that we have a responsibility, particularly in the current difficult economic climate, to make the most efficient use of the resources made available to us. We are pleased that in a recent report, which has not yet been made public, the Council of Europe's external auditors have expressed their clear approval of the policy and strategy choices that the Court has made in the organisation of its work. I should also say that the latest figures are likewise a source of encouragement, with a 98% increase in the number of decided applications and a significant decrease in the number of pending applications since last summer. Cases are also coming in at a lower rate than in previous years. The perspective of reducing or even eliminating backlog, and attaining the balance referred to at Interlaken, is now a real one but this will require additional resources and that is why I strongly welcome the Secretary General's proposal to set up a fund.

These promising statistics should not, however, lull us into a false sense of security, into a feeling that no further action is needed to help the Court. In particular, as the Court points out in its preliminary opinion for this conference, efficient filtering and more effective prioritisation still leave a very large volume of cases not catered for.

Moreover these are cases which are likely to be admissible and well-founded.

So what more needs to be done? In its preliminary opinion the Court set out its own view on future action. But in the process of the preparation for the conference there has been much discussion on whether it is right and necessary to reinforce the notion of subsidiarity and the doctrine of margin of appreciation; whether some new form of admissibility criterion should be added to the arsenal of admissibility conditions that are already available to the Court and which allow it every year to reject as inadmissible the vast majority of the applications lodged with it; or again whether dialogue with national courts should be institutionalised through advisory opinions?

As to subsidiarity, the Court has clearly recognised that the Convention system requires a shared responsibility which involves establishing a mutually respectful relationship between Strasbourg and national courts and paying due deference to democratic processes. However, the application of the principle is contingent on proper Convention implementation at domestic level and can never totally exclude review by the Court. It cannot in any circumstances confer what one might call blanket immunity.

The doctrine of margin of appreciation is a complex one about which there has been much debate. We do not dispute its importance as a valuable tool devised by the Court itself to assist it in defining the

scope of its review. It is a variable notion which is not susceptible of precise definition. It is in part for this reason that we have difficulty in seeing the need for, or the wisdom of, attempting to legislate for it in the Convention, any more than for the many other tools of interpretation which have been developed by the Court in carrying out the judicial role entrusted to it.

We welcome the fact that no proposal for a new admissibility criterion is now made in the Declaration and we are grateful for the efforts to take on board the Court's concerns in this respect. In this context may I repeat that it is indeed the Court's practice to reject a case as inadmissible where it finds that the complaint has been fully and properly examined in Convention terms by the domestic courts.

The Court has discussed the idea that superior national courts should be enabled to seek an advisory opinion from Strasbourg and distributed a reflection paper on it; it is not opposed to such a procedure in principle, although there remain unanswered questions about how it would work in practice.

Mr Chairman, before concluding, I would wish to reiterate the Court's unequivocal support for the rapid accession of the European Union to the Convention. We of course fully subscribe to the call in the declaration for a swift and successful conclusion of the work on the accession agreement.

Mr Chairman, the introduction by the Convention of the right of individual petition before an international body changed the face of international law in a way that most people would hope and believe was lasting. We do not have to look very far outside Europe today to understand the continuing relevance of the principle that States which breach the fundamental rights of those within their jurisdiction should not be able to do so with impunity.

It is nevertheless not surprising that Governments and indeed public opinion in the different countries find some of the Court's judgments difficult to accept. It is in the nature of the protection of fundamental rights and the rule of law that sometimes minority interests have to be secured against the view of the majority. I would plead that this should not lead governments to overlook the very real concrete benefits which the Court's decisions have brought for their own countries on the internal plane. At the same time I am confident that they understand the value of the wider influence of the Convention system across the European continent and indeed further afield. It is surely not controversial to maintain that all European partners are best served by the consolidation of democracy and the rule of law throughout the continent. The political stability and good governance which are essential for economic growth are dependent on strong democratic institutions operating within an effective rule of law framework.

Mr Chairman, ladies and gentlemen, the Convention and its enforcement mechanism remain a unique and precious model of international justice, whose value in the Europe of the 21st century as a guarantee of democracy and the rule of law throughout the wider Europe is difficult to overstate. While much has changed in the past 50 years, the need for the Convention and for a strong and independent Court is as pressing now as at any time in its history.