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When I see the number and quality of our guests who have come again this year to attend the solemn hearing to mark the beginning of the Court's judicial year, it is a pleasant duty for me to thank you all for your presence in this room. And since, in accordance with a custom which is not perhaps a general principle of law but which is generally recognised, the period for good wishes only closes at the end of January, please allow me, on behalf of my colleagues and myself, to wish you a happy new year in 2008, to you and to those you hold dear.

I am also very pleased to be able to welcome Mrs Louise Arbour, United Nations High Commissioner for Human Rights, who kindly accepted our invitation and to whom, in a few minutes, I will give the floor. After a brilliant national and international career, Mrs Arbour now holds a post which symbolises the universality of human rights and their protection by the international community as a whole. Her presence is particularly gratifying at the beginning of a year which will mark the 60th anniversary of the Universal Declaration of Human Rights. Without the proclamation of the Universal Declaration, without the dynamic which it set in motion, we would not be here this evening because there would not have been regional conventions like the European Convention, or at any rate not so early and not in the same circumstances.

Ladies and gentlemen, the start of the 2007 judicial year coincided with the departure of my predecessor and friend, President Luzius Wildhaber, and with the beginning of my term of office. It is therefore natural for me to take stock of the Court's activity. But I would first like to return to the concept of human rights, which is at the very heart of our work.

The human rights situation in the world is one of great contrasts. In Europe, which in some respects is privileged in relation to other regions, the situation can vary from country to country, though it is subject to common dangers. Globalisation affects more than just the economy; it has an impact on all areas of international life. Terrorism, for example, has not spared Europe in recent years, and it remains a

constant threat, forcing States to make the difficult effort to reconcile the requirements of security with the preservation of fundamental freedoms. Similarly, immigration is both an opportunity and a challenge for our continent, which has to take in the victims of persecution and protect immigrants' private and family lives, but which at the same time cannot disregard the inevitable need for regulation, provided that this is done humanely and with respect for the dignity of each individual. The increase in private violence obliges criminal justice to deter unlawful acts and punish those responsible while upholding the rights of their victims; but that obligation does not dispense judges from respecting due process and proportionate sentences and prison authorities from guaranteeing prisoners' rights and sparing them inhuman or degrading treatment.

Our Court finds itself at the intersection of these tensions – I might even say these contradictions. And what can be said of the obvious correlation between internal and international conflicts and the aggravation of risks for human rights, other than that Europe is not a happy island, sheltered from wars and crises? Certainly, *pax europeana* holds good overall, but there are many dangerous pockets of tension, in the Balkans, in the Caucasus and at Europe's margins; after all, the conflict in the former Yugoslavia ended scarcely more than ten years ago. In short, our Court does not have only peaceful situations to deal with. In any event the human rights situation is fragile everywhere, it can deteriorate under the pressure of particular circumstances, and human rights always have to be won all over again. This very precariousness of fundamental rights was the reason our Court was set up and remains its permanent justification. It is true that the founder members of the Council of Europe and the drafters of the Convention expected a gradual improvement, based on the three linked pillars of human rights, the rule of law and democracy. Those three principles can only make progress together. If when taking stock we go back as far as the 1950s, there is no doubt that, despite ups and downs, that is what has happened. The European system has surely helped to consolidate fundamental rights, but it has also added to their number, in a movement which is both creative and forward-moving.

For us the year 2007 brought certain disappointments, of a kind which are symptomatic of an already long-standing crisis, but which are fortunately counterbalanced by more encouraging prospects. The figures show that the trends noted in recent years have only become stronger. In 2006, 39,000 new applications were registered with a view to a judicial decision. In 2007 the corresponding number rose to 41,000, an increase of 5%. The total number of judgments and decisions fell slightly (by 4%) to around the 29,000 mark. The logical result is that the number of pending cases has risen from 90,000 to 103,000 (including 80,000 allocated to a decision body) – an increase of about 15%. Just over 1,500 judgments on the merits were given. The proportion of applications declared inadmissible or struck out of the list remains considerable at 94%. That figure reveals an anomaly. It is not the vocation of a Court set up to protect respect for human rights to devote most of its time to dismissing inadmissible complaints, and their excessive number shows at the very least that what the Court is here to do is not properly understood.

To flesh out this statistical information I will make two further remarks. Firstly, the efforts of judges and Registry staff have not slackened in the slightest in 2007. In fact, they have stepped up their efforts even further, and I wish to pay tribute to them for rising to the challenge. Additional but important tasks have increased their workload. For example, there have never been so many requests for interim measures: in 2007 more than a thousand were received and 262 were allowed, usually in sensitive cases concerning the rights of aliens and the right of asylum, which require a great deal of work, usually in great haste.

In fact, the gap between applications received and applications dealt with is essentially attributable to the rise in the number of new applications, but also to the implementation of a new policy. We have decided to concentrate our efforts more on well-founded applications, particularly in complex cases. That explains the slight fall in applications rejected, particularly by three-judge committees. We are also thinking about ways to develop the pilot-judgment procedure (as recommended by the Group of Wise Persons, of which I will say more later) and have begun to elaborate a more systematic definition of priority cases. Secondly, the accumulated backlog is very unevenly distributed, since applications against five States make up nearly 60% of the total of pending cases: the Russian Federation alone accounts for nearly a quarter of the total "stock" of applications before the Court.

I must also point out that this situation, alarming though it is, has not prevented the Court from giving important judgments, of which I will mention a few examples in a moment. I can also vouch for the fact that the authority and prestige of the Court remain intact, as I have been able to observe during my visits to Contracting States and top- level meetings in Strasbourg. Visits to the Court have indeed become an essential part of any journey to Strasbourg, and some of our visitors come from other continents to find out about our Court and what it is doing. Our judgments are better known and, on the whole, better executed, even though there is still work to be done. Here I would like to take the opportunity to thank the Committee of Ministers, which is responsible for overseeing execution of the Court's judgments. In addition, the numerous meetings with national and international courts and the increasing participation by the Court in training programmes for judges and legal officers provide a way of improving knowledge of the Convention and our case-law. Considerable progress has been made in the area of data-processing and modern techniques to facilitate access to information from the Registry (including access to applications at the stage of their communication to Governments), and to open up access to hearings before the Court, which can be viewed on our website by Internet users in any part of the world. I thank the Government of Ireland for the invaluable assistance they gave the Court to make that possible.

I would now like to give a few examples – striking in their diversity – of the Court's recent case-law.

The *Behrami v. France and Saramati v. France, Germany and Norway cases*[1] concerned events in Kosovo. I will not discuss them in detail, since Mrs Arbour is better placed than I to analyse the relevant decisions, given in the context of United Nations peace-keeping operations in Kosovo conducted by KFOR and UNMIK. I will simply say that the Court held that the actions and omissions of the Contracting Parties were not subject to its supervision and declared the applications inadmissible.

Once again, the Court has had to record findings of torture on account of treatment inflicted on detained persons and hold that there had been a two-fold violation of the Convention, firstly on account of the ill-treatment itself and secondly, from the procedural point of view, in that there had been no effective investigation into the allegations of torture, despite medical reports. For example, in *Mammadov v. Azerbaijan*[2], an opposition party leader was subjected while in police custody to the practice of *falaka*, meaning that he was beaten on the soles of the feet. Another example was *Chitayev v. Russia*[3], in which two Russian brothers of Chechen origin endured particularly serious and cruel suffering.

In the *Gebremedhin [Gaberamadhien] v. France*[4] judgment, the Court looked into the procedure known as "asylum at the border", in which the asylum-seeker is placed in a holding area at the airport and refused admission to the territory. In the Court's view, where such asylum-seekers ran a serious risk of torture or ill-treatment in their country of origin, Article 13 of the Convention required them to have access to a remedy with automatically suspensive effect. No such remedy had been available in that case. Here I would like to point out that the legislature did introduce one a few months after our judgment and in order to comply with it.

The *Evans v. the United Kingdom*[5] case raised very sensitive ethical questions. It concerned the extraction of eggs from the applicant's ovaries for in vitro fertilisation. The applicant complained that under domestic law her former partner could withdraw his consent to the storage and use of the embryos, thus preventing her from having a child with whom she would have a genetic link. The Court accepted that "private life" encompassed the right to respect for the decision to become or not to become a parent. It therefore held that the legal obligation to obtain the father's consent to the storage and implantation of the embryos was not contrary to Article 8 of the Convention. On the other hand, in *Dickson v. the United Kingdom*[6], it took the view that there had been a violation of Article 8 on account of the refusal to allow a request for artificial insemination treatment by a prisoner whose wife was at liberty, since a fair balance had not been struck between the conflicting public and private interests.

Lastly, in two important cases the Court found violations of the right to education, guaranteed by Article 2 of Protocol No. 1. The first, F*olgerø and Others v. Norway*[7], concerned the refusal to grant pupils in public primary and lower secondary schools full exemption from participation in Christianity, religion and philosophy lessons. By a very narrow majority the Court held that the respondent State had not done enough to ensure that the information and knowledge the syllabus required to be taught in these lessons were put across in a sufficiently objective, critical and pluralistic manner. In the second case, *D.H. and Others v.*

1 (dec.) [GC], nos. 71412/01 and 78166/01, 2 May 2007.

2 No. 34445/04, 11 January 2007.
3 No. 59334/00, 18 January 2007.
4 No. 25389/05, 26 April 2007.
5 [GC], no. 6339/05, 10 April 2007.
6 [GC], no. 44362/04, 4 December 2007.
7 [GC], no. 15472/02, 29 June 2007.

the Czech Republic[8], it held to be discriminatory and contrary to Article 14 of the Convention a practice of placing Roma children in special schools intended for children suffering from a mental disability. It held that Roma, as a disadvantaged and vulnerable minority, were in need of special protection extending to the sphere of education.

As you can see, these few cases show the variety, difficulty and, frequently, the gravity of the problems submitted to the Court.

Let me turn now to the present situation and the future. The main source of disappointment for the Court, and the word is not adequate to do justice to what we feel, is that Protocol No. 14 has not yet come into force. At the San Marino colloquy in March last year I solemnly called on the Russian Federation to ratify this instrument, the procedural provisions of which, as everyone is aware, give the Court the means to improve its efficiency considerably. My appeal, which was backed by the different organs of the Council of Europe, was the subject of a number of favourable comments among the highest Russian courts. But it is a fact that it has still not produced the desired result – a fact which I deeply regret. As regards the reasons for this attitude, I do not expect to uncover every detail, since a certain mystery still surrounds them. On the other hand, I have read reports of allegations that the Court has become political or sometimes gives decisions on non-legal grounds. If such things have been said, that is unacceptable. This Court is no more infallible than any other, but it is not guided by any – I repeat any – political consideration. You all know this, but it is as well for me to confirm it. I still hope that reason and good faith will prevail and that, in the coming weeks, that great country, the main supplier of cases to Strasbourg, will reconsider its decision, or rather the lack of a decision, which weakens us and undermines the whole process of European cooperation. I therefore retain that hope, but as Albert Camus wrote: "hope, contrary to popular belief, is tantamount to resignation. And living means not being resigned."

Either it will be possible to apply Protocol No. 14 and, looking beyond its immediately beneficial effects, to plan rationally for the future by studying on the basis of Protocol No. 14 the report of the Group of Wise Persons, set up by the Council of Europe at its 3rd Summit in Warsaw in May 2005, and adopting some of its proposals concerning the long-term effectiveness of supervision under the Convention. Or, on the contrary, ratification will not take place in the near future, and the system must not be allowed to get bogged down by a continuous flow of applications, the majority of which have no serious prospect of success.

Individual petition is a major feature of the European system, and it is a unique feature, established with great difficulty and finally generalised less than ten years ago. I have repeatedly declared that it is quite simply inconceivable to abandon the right of individual petition deliberately, and I note in passing that to abolish it the Convention would need to be amended by a Protocol – which is no easy matter, as experience has shown! But it seems to me that no supreme court, be it national or international, can do without procedures whereby it can refuse to accept cases, or reject them summarily – in short a filtering mechanism. What the Court must now do, and in this I am sure it will be supported by the Committee of Ministers, is to introduce on its own initiative procedures which, without contravening

8 [GC], no. 57325/00, 13 November 2007.

the Convention, enable it to achieve a different balance. That is to say, it must be able to rule more rapidly and with a greater concentration of its resources on those applications which raise real problems, and to deal more summarily with those which, even when applicants are acting in good faith, are objectively unmeritorious or which concern situations that in themselves cause applicants no real prejudice. The policy I have already mentioned, of defining priorities more precisely, forms part of this shifting of the balance between applications, or in other words this differentiated treatment, which is both fair and inevitable. In short, the aim would be, if we cannot immediately apply the letter of Protocol No. 14, to remain as faithful as possible to its spirit, not forgetting that it was the States which drafted it and that all have signed it. We will not drive straight into the wall. If the obstacle remains in place we will try to find a way round it.

There are still, however, grounds for concern. For various reasons, but in particular the fact that Protocol No. 14 and its provisions on judges' terms of office have not come into force, the Court will lose many of its judges all at once in the first half of this year. Such a sweeping renewal cannot fail to raise problems of continuity and experience. Of course, we extend a warm welcome to the new judges, confident that they will blend in at the Court and bring it their own energy and their own qualities. But I wish to thank the judges who must leave us for everything they have brought to the Court. And without wishing to interfere in the member States' affairs, I sincerely hope that they will be employed at a level commensurate with their worth and their experience in the service of a high international court. It is in the best interests of them, the image of our Court, and the contribution which in view of their qualities they can make to their national systems.

I would add that judges who leave Strasbourg receive no pension, unlike those at other international courts.

That is why the Court has fought and continues to fight for the introduction of a social protection scheme worthy of the name for judges, including a pension scheme, thus ending an anomaly which can only be explained by historical reasons relating to the failure to define a real status for our judges. The report of the Group of Wise Persons mentions the vital importance of setting up a social security scheme including pension rights. We are currently engaged in discussions on that point with the Secretary General, as we soon will be with the Committee of Ministers.

Ladies and gentlemen, I told you that the situation holds out encouraging prospects. Some of them are to be found within our institutional system and some outside it.

The Steering Committee for Human Rights has been asked by the Committee of Ministers to examine the Wise Persons' recommendations. In any event, it will therefore have to propose what the response to these various recommendations should be – after ascertaining the Court's opinion, naturally.

The Committee of Ministers itself will have to raise once more the question of the means to be employed, both from a procedural point of view and in budgetary terms, to enable the system to function and survive, even if ratification of Protocol No. 14 is not forthcoming.

There are therefore possibilities – if the political will is there. It would be better for that will to be expressed by forty-seven States than by forty-six, but if it is expressed only by forty-six, that will already be an achievement.

There are also a number of reasons outside our system itself why we should not be discouraged.

First of all, experience shows that national courts, and especially supreme and constitutional courts, are increasingly incorporating the European Convention into their domestic law – are in a sense taking ownership of it through their rulings. National legislatures are moving in the same direction, for example when they introduce domestic remedies which must be exhausted on pain of having applications to Strasbourg declared inadmissible, or when they speedily draw the consequences of the Court's judgments in the tangible form of laws or regulations. The approach based on subsidiarity, or as I would prefer to say on solidarity between national systems and European supervision, is in my view likely to be a fruitful one. In the medium term it will reduce the flow of new applications. All the contact I have been able to have with national authorities has shown me that there is a growing awareness among executive, legislative and judicial authorities of the need for States to forestall human rights violations and to remedy those it has not been possible to avoid.

Nor should one underestimate the Court's cooperation with the organs and institutions of the Council of Europe, and I am gratified by the interest they show in our work and the assistance they endeavour to give us.

Recommendations and resolutions of the Committee of Ministers and the Parliamentary Assembly, reports of the Human Rights Commissioner and various committees working under the aegis of the Secretary General often serve as a source of inspiration for our judgments. But these texts may also play a role in preventing violations, thus removing causes for a complaint to the Court. In the same spirit we may expect, as the Wise Persons observed in their report, a beneficial effect from the work of national ombudsmen and mediators.

Lastly, I place great hopes in the European Union's accession to the Convention. That was delayed by the vicissitudes we are aware of; the Lisbon Treaty has made it possible once more, even though the necessary technical adjustments may take some time. The accession will strengthen the indispensable convergence between the rulings of the two great European Courts, the Court of Justice of the European Communities and our own, which are moreover by no means rivals but strongly complementary, and which are already cooperating in the best spirit. Above and beyond that rather technical benefit, accession can be expected to bring a synergy and a tightening of bonds between the two Europes, and to strengthen our Court's cooperation in the construction of a single European judicial space of fundamental rights. That will be in the interest of all Europeans, or in any event of those whose rights and freedoms have been infringed.

Ladies and gentlemen, it is time for me to conclude, before giving the floor to High Commissioner Louise Arbour.

At the end of my first year in office, I cannot hide, and have not hidden from you, the fact that our Court is running into difficulties. Perhaps one can say without exaggeration that the crisis it faces is without precedent in its already long history.

But the authority, the outreach and the prestige of the Court are intact. And above all, the cause of human rights is such a noble one that it forbids us to be discouraged; on the contrary it demands that we continue untiringly in our Sisyphean task of rolling the boulder uphill, in furtherance of that mission, which is the Court's objective and its *raison d'être*. At stake are the applicants' rights, proper recognition for the efforts of those who assist them, whether lawyers or non- governmental organisations, but also the States' own interests. They have freely entered into a covenant which results in their being judged, and they have everything to gain by ensuring that its implementation remains effective if they are not to disown what they willed into being.

In our work we need the assistance of all our member States. Allow me to quote the words of famous figures from two of them. The first is William the Silent, the Stadhouder of Holland, whose proud motto you will have heard: "One need not hope in order to undertake, nor succeed in order to persevere." Secondly, I would remind you of Goethe's words: "Whatever you can do, or dream you can, begin it. Boldness has genius, power and magic in it."

Not to give way to resignation, to undertake. It seems to me that the European Court of Human Rights, today, has no other choice.

Thank you.