Dean Spielmann

President
of the
European Court of Human Rights

Minister of Justice,
Presidents of Constitutional Courts and Supreme Courts,
Chairman of the Ministers' Deputies,
Secretary General of the Council of Europe,
Excellencies,
Ladies and Gentlemen,

I should like to thank you, both personally and on behalf of all my colleagues, for kindly attending this solemn hearing on the occasion of the opening of the judicial year of the European Court of Human Rights. Your presence here is a sign of the high regard and esteem in which you hold our Court, and for which we are most grateful. Allow me also, as there is still time, to wish you a happy new year 2013.

Today's hearing is one of particular significance for me. It is the first time that I have taken the floor on this occasion and I would add that it is a great honour for me to do so. Traditionally, this ceremony for the opening of the judicial year has provided an opportunity to look back at our Court's activity over the past year. This task is a particularly gratifying one to discharge, as 2012 has been an outstanding year for our Court.

We are all aware of the fragility of human rights and their protection. It was our Court itself that appeared fragile in the early part of 2012.

It had become fragile in a number of respects and, in particular, on account of the very high number of pending applications, which at the beginning of 2012 dauntingly crossed the 150,000 mark. That figure needs no comment. Even though a considerable majority of those cases were bound to lead to inadmissibility decisions, such a high number had negative repercussions. First of all, the massive influx of applications prevented the Court from examining, within a reasonable time, the most serious cases – those in which severe human rights violations had been committed, or in which major issues for the interprétation of the Convention were raised. Secondly, it could not be excluded that some would-be applicants might refrain from bringing their cases before the Court as a result of the length of its proceedings.

On top of these difficulties, this Court endured a veritable barrage of criticism as the year began – a good deal of it excessive and unfair. Time and again the Court was singled out for special criticism in the British press, and this was echoed in certain other parts of Europe. It was a harsh political climate in which to prepare the third high-level conference on Convention reform, which was convened by the United Kingdom in Brighton. There was a real prospect of a radical change in the tone and direction of the reform process.

At that turbulent time, the Court naturally looked to its President to deploy fully the authority of his office in defence not only of this institution but of the very principle of protecting human rights through international law. And that is what he did. I pay tribute here this evening to my predecessor, Sir Nicolas Bratza, who contributed in large part to the overall success of the Brighton Conference. In those – at times – heated discussions, his voice was influential and his counsel ever wise. To him we owe a great debt of recognition

and of gratitude. In his many years of service to this Court, he was an outstanding judge, and a great President.

The assessment of the year gone by must, I believe, be a positive one in all respects. First of all, and for the first time ever in its history, the Court managed to gain the upper hand over the inflow of new cases. Secondly, the Brighton Conference turned out to be a very positive event for the Court. And thirdly, the Court maintained a high degree of protection of human rights. I will develop each of these points.

Regarding the number of cases, I believe you have already received the figures, and they really speak for themselves:

The number of applications decided by judgment was 1,678, compared to 1,511 in the previous year. Overall, the Court decided almost 88,000 applications, which is an increase of 68% in relation to 2011. The number of pending application stood at 151,600 at the beginning of 2012 – by the end of the year it was 128,100, a decrease of 16%. The quite remarkable success is due to very hard work, as well as to the ingenuity of the Court and its Registry. We have managed to put together practical solutions to the problems caused by our excessive case load by modernising and rationalising our working methods. The Single Judge procedure has been utilised to the full. To adapt the phrase so often spoken in relation to this Court, it is no longer a victim of its own success.

An important element in the Court's practice is the pilot judgment procedure, now regulated in detail in the Rules of the Court. As encouraged by the States themselves, and by the Parliamentary Assembly, the Court applied the procedure more intensively than ever in 2012.

In essence, the procedure entails not just declaring a violation of the individual applicant's rights, but also analysing the underlying systemic – or structural – situation that is at variance with the Convention. From this analysis, the Court proceeds to give guidance to the State on suitable remedial measures.

In 2012, the situations and the States concerned were very diverse, including:

– The very poor material conditions in Russian remand jails;

– Excessive delay in judicial proceedings in Turkey, and also in Greece;

– The denial of citizenship to a category of persons living in Slovenia (known as the erased);

– In Albania, problems with the functioning of the system for paying compensating to those whose property was expropriated during the communist era.

At the very beginning of this year, a pilot judgment has been given concerning Italy, regarding prison overcrowding.

These examples show both the adaptability of the procedure, and how much of its potential has been realised.

I turn now to the Brighton Conference. Everyone agrees that the Court emerged from it in a stronger position. In particular, the intentions expressed by some to restrict access to the Court by changing the admissibility criteria were not ultimately successful. A significant number of States gave us their firm support and rallied round us. The Court is now undeniably strengthened in its mission of supervising compliance with the European Convention on Human Rights. Above all, the right of individual petition, to which we are all committed – a major characteristic of our system – has been preserved.

However, the most important thing remains the case-law and the quality of the Court's judgments. Efficiency has not undermined the quality and weight of our rulings. On the contrary, it is precisely because we have been able to deal with the numerous cases that had been creating a backlog that, at the same time, we have paid all due attention to the most serious cases.

To keep within my allotted time, I will not mention many examples of cases that we dealt with in 2012. Among the judgments that have made a decisive contribution to the harmonisation of European norms in the field of rights and freedoms, I should like to mention just two cases that I feel are emblematic of the essential role that our Court has played in the protection of human rights: first the judgment in *Hirsi Jamaa and Others*, delivered on 23 February 2012, against Italy. It concerned the interception at sea of

groups of refugees who were then pushed back by the authorities. We refused to allow the existence of a legal black-hole, even on the high seas. At a time when the phenomenon of migration by sea is increasing, we felt that the individuals in question, whose vulnerability was evident, needed to be protected by the Convention guarantees. As to the second case, you will not be surprised that I have chosen to cite *El Masri against "the former Yugoslav Republic of Macedonia"*, a judgment of 13 December. For the first time, the Court found against a State for taking part in an extraordinary rendition of prisoners to the CIA, putting an end to the impunity with which such operations had, for a long time, been carried out. Above all, our Court is the first in the world to have classified as torture the actions committed by the CIA in the context of such operations, even though it was the respondent State that was found responsible for the violation on account of the express or tacit approval of its authorities. These two key judgments remind us that European States cannot renege on their obligations under the Convention, whether in their fight against terrorism or in their efforts to curb illegal immigration.

In 2012 we pursued our dialogue with other national and international courts. I do not intend to give you an exhaustive list of all the visits we have received and which have allowed the dialogue of judges to progress. I will cite just two examples, as they illustrate our Court's renown even beyond the European continent. First, a very important visit was paid to the United States Supreme Court, where we received a particularly warm welcome. Secondly, there was a visit to the Inter-American Court of Human Rights, our sister court, so to speak, on the other side of the Atlantic. During those visits we were able to witness how much attention those courts paid to our Court and its case-law.

As regards the Inter-American Court of Human Rights, with its seat in San José, Costa Rica, our cooperation will continue in 2013 thanks to the generosity of the Luxembourg Government.

Speaking of generosity, I should also like to express gratitude to the following States, which have agreed to support the Court by contributing to the special account created after the Brighton Conference to help absorb the backlog, or by placing seconded lawyers at our disposal: namely, Germany, Austria, Armenia, Azerbaijan, Bulgaria, Cyprus, Croatia, the Russian Federation, Finland, France, Ireland, Italy, Liechtenstein, Luxembourg, Republic of Moldova, Monaco, Norway, the Netherlands, Poland, Romania, Sweden, Switzerland and Turkey.

Among the positive points of the past year should also be mentioned the assessment of our Court's performance by the French Court of Audit, which highlighted the results and efficiency of the Court and its Registry. That seal of approval is of the utmost importance for us.

Before closing I cannot avoid mentioning the very important question of the European Union's accession to the European Convention on Human Rights. Provided for by the Lisbon Treaty and made possible by Protocol No. 14, it can undoubtedly be counted among the great European legal projects and will complete the European legal area of fundamental rights. The idea of this accession is indeed in essence to ensure the coherence of Europe with regard to its most profound legal and ethical principles.

Since July 2010 the European Commission and the member States of the Council of Europe have been negotiating the terms of the treaty which will bring about the accession. They have now accomplished 95% of the work and that is certainly to be commended. Whilst a few stumbling blocks remain, none of them are insurmountable provided the political will is forthcoming. Admittedly, some doubts have been expressed about the usefulness of the accession, in view of certain difficulties encountered during the negotiations. That is quite understandable and nobody expected them to be easy, given the scale of the task. Those difficulties, however, must not serve as a pretext for calling into question this noble endeavour. By acceding to the Convention and thereby allowing external judicial supervision of its action, the European Union will prove that, like its member States, it is willing for its action to be bound by the same international requirements as those applying to the action of individual States. A hallmark of credibility, the external review by the European Court of Human Rights will also be a hallmark of progress. It will represent a powerful message from Europe to the world, indeed a solemn declaration that beyond all its differences and specificities, however legitimate, be they occasional, regional or systemic, Europe shares a common foundation of fundamental rights, which we call human rights. The time has now come for the negotiators to bring their work to fruition and for the European Union, recent recipient of the Nobel Peace Prize, to sign up to the Convention.

Over the past year, our Court has been considerably transformed by the departure of a large number of judges. But happily they have been replaced and thankfully our orchestra bears no resemblance to that of Joseph Haydn's "Farewell" symphony. Those of you who are familiar with this magnificent work by the great Austrian composer will recall that the musicians put down their instruments, one after the other, and leave. At the end, just two muted violins remain. Although many of our musicians have departed, our orchestra has certainly not been reduced to silence. On the subject of our former judges, I would express the hope that once they have returned to their country they are able to put to use the experience acquired in Strasbourg for the benefit of their respective States and at the appropriate level.

That is in their own interest, of course, but it is also important for the Court's image, and indeed for the attractiveness of serving as a judge at the Court. I hope to raise this matter with the Committee of Ministers in due course.

Ladies and Gentlemen,

I am aware that I have already spoken at some length, but I am sure you will agree with me that the achievements of 2012 warranted such consideration. I would now like to welcome, on a more personal note, our two guests of honour.

Mr Theodor Meron, who will take the floor in a few moments, is the President of the International Criminal Tribunal for the Former Yugoslavia. He presides over the Appeals Chamber of that Tribunal, and of the International Criminal Tribunal for Rwanda. He is also the President of the Mechanism for International Criminal Tribunals. President Meron is a leading figure of international law, and we are honoured by his participation in this year's formal ceremony. The advent of international criminal justice at the end of the 20th century was a landmark achievement, on a par with the post-war movement to protect human rights internationally. The ICTY and ECHR are courts with strongly complementary roles, and the norms developed by each serve as valuable points of reference for the other. It is therefore with the greatest of interest that we shall listen to him.

But, first of all, we are going to hear Madam Christiane Taubira, Garde des Sceaux, Minister of Justice.

Madam,

Your presence here bears witness to the host State's attachment to our Court. Your personal action and your determination, particularly as regards the humanising of prisons, are to be highly commended. Through your intermediary, I should like to express my gratitude to François Hollande, President of the French Republic who, when he received me at the Élysée in late December, emphasised your country's attachment – and I quote – "to the role, missions, authority and independence of our Court, whose action is essential for the progress of fundamental rights and freedoms on the European continent". That firm support encourages us to pursue our mission.

I thank you.