



## Guido Raimondi

President of the  
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### OPENING ADDRESS

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

I would like to thank you all for honouring us with your presence at this solemn sitting marking the new judicial year of the European Court of Human Rights. We are pleased that you can be with us this evening.

This traditional event is an opportunity to look back, momentarily, at the year 2017, from which many lessons are to be learned, in various respects.

One year ago I was referring, in this very place, to the large number of cases before our Court. We then had 80,000 applications pending.

Twelve months later this figure has fallen considerably and it now stands at 56,000. While this is undeniably a success, we are still a long way from finding ourselves in a satisfactory situation in terms of the backlog.

To give you a full picture of our situation, I would point out that the biggest challenge currently facing us is that of the pending 26,000 Chamber cases. These cases constitute the hard core, so to speak, of our backlog and it is essential for us to give these applications the full attention that they deserve, as they are often significant and raise more serious issues.

Since the beginning of the Interlaken process, we have been continuously finding ways to streamline our working methods to boost our efficiency and productivity. We will be pursuing those efforts and continuing to use our imagination.

However, our creativity has its limits. As you know, the Council of Europe is going through a very difficult period in budgetary terms. Behind the statistics that I mention at the start of every year – behind those thousands of case files – there are applicants who are waiting for an answer. In spite of the current budgetary situation, the Court must be in a position to provide them with that answer in a timely manner. This means that we need to keep our current level of staff, especially at a time when our efforts to streamline our working methods are, I would hope, about to bear fruit. It is perhaps too early to speak of a breakthrough, but I am optimistic. We must not go backwards. I should also mention the probability of Protocol No. 16 entering into force in 2018, thus entailing an additional workload.

From the promising figures I mentioned just now, it could be inferred that the human rights situation has improved on our continent, as fair winds seem to be blowing on the statistics front.

But that is not the whole picture, unfortunately, and those statistics are rather deceptive. What they demonstrate is nevertheless of interest.

One of the reasons for the considerable fall in pending applications is the striking-out of a large number of cases following the *Burmych* case against Ukraine. Those were cases which raised the same questions as those already examined in the *Ivanov* pilot judgment, namely the failure to execute final judgments in Ukraine.

Our Court, as you well know, sometimes has to deal with large-scale complaints which disclose structural or systemic problems. To address such cases it invented the pilot judgment, which is now a tried and tested solution.

Once the principles have been established in the pilot judgment, it will be for the State concerned to legislate or take the necessary measures, and it will do so under the supervision of the Committee of Ministers.

In the *Burmych* case, since the pilot judgment had not been executed, the Grand Chamber had to ascertain whether or not the Court should pursue its examination of the individual applications received in the wake of *Ivanov*.

Our Court took the view that the interests of the current or potential victims of the systemic problem at issue in *Burmych* would be better protected in the context of the execution of the *Ivanov* pilot judgment. It thus decided to strike out over 12,000 pending cases, which were then transmitted to the Committee of Ministers for consideration in the context of the existing execution procedure.

It goes without saying that the statistical repercussion of those strike-outs has been beneficial to the Court, but we are aware that the figures are somewhat illusory as they do not necessarily reflect an improvement in the situation on the ground.

The solution thus adopted does not mean that the Court is failing to assume its responsibilities. Cases which arise from the ineffective execution of a pilot judgment call for solutions of a financial or political nature which do not fall within our remit. They will therefore be dealt with more appropriately by the respondent State and by the Committee of Ministers, whose responsibility it is to ensure that the pilot judgment is fully implemented through general measures and a satisfactory form of redress for the applicants.

At the heart of the *Burmych* judgment thus lies the principle of subsidiarity. Subsidiarity and its corollary, shared responsibility. Each of the stakeholders in the European human rights protection mechanism – the Court, the Committee of Ministers and the State concerned – must fulfil its obligations. That is what makes *Burmych* one of the leading judgments of 2017.

But subsidiarity also comes into play before a case is brought before our Court. To be sure, it follows from this principle that the member States are required to introduce remedies – both preventive and compensatory – which must be exercised by would-be applicants before they turn to Strasbourg.

That is the reason why we dismissed, on grounds of failure to exhaust domestic remedies, over 27,000 applications which were directly related to the measures taken following the attempted *coup d'état* in Turkey or – most recently – 6,000 cases concerning prison overcrowding in Hungary.

In the latter example, the Court observed that a new law introducing remedies had entered into force following our pilot judgment in *Varga*, where the Court had found a general problem with the functioning of the Hungarian prison system. The lodging of applications before those new remedies have been exhausted is thus premature.

And those new remedies, whether in Turkey or in Hungary, must still prove to be effective. Time will tell.

With today's emphasis on subsidiarity and the strengthening of our relations with domestic courts, in applying the European Convention on Human Rights it must be said that a Constitutional Court certainly plays its part.

In that connection, one of the major features of our closer relations is without doubt the Network of Superior Courts, which has been an outstanding success since its creation. Having been launched in this very place with only two courts, the French *Conseil d'État* and Court of Cassation, in October 2015, it can now boast the participation of 64 superior courts. This shows the considerable interest of the highest courts in this exchange of information.

Since I have mentioned the *Conseil d'État* and the Court of Cassation, allow me to thank, from those courts, Vice-President Jean-Marc Sauvé, First President Bertrand Louvel and Prosecutor-General Jean-Claude Marin, for their contribution to the creation of the Network.

I would particularly like to address my regards to Vice-President Jean-Marc Sauvé and Prosecutor-General Jean-Claude Marin, who are attending this event for the last time in their current capacities. Over the years we have built not only institutional relations with these high-ranking figures of the French judiciary, but also a genuine and faithful friendship.

The Network – a forum of permanent exchange – is one of the tools of subsidiarity, pending the application of Protocol No. 16, which will institutionalise our relationship. In fact only two more ratifications are needed for the Protocol to enter into force, so this is one of our wishes for 2018.

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One of the developments towards the end of 2017, which it would be remiss of me not to mention, was the first use of the infringement procedure under Article 46 § 4 of the Convention. This procedure, introduced into the European Convention on Human Rights in 2010, enables the Committee of Ministers to refer to the Court the question whether a State has refused to abide by a final judgment.

The Committee of Ministers decided in December to launch such proceedings against Azerbaijan owing to the authorities' persistent refusal to ensure the unconditional release of Mr Mammadov, an opposition politician, following the Court's 2014 finding that there had been violations of Articles 5 and 18 of the Convention, taken together. The question will be considered by a Grand Chamber and this hitherto unused procedure raises a new challenge for our European system of human rights protection.

In that connection I would emphasise the crucial importance of the execution of our judgments, under the supervision of the Council of Europe's Committee of Ministers, for the whole credibility of our system depends upon it.

This overview of the Court's activities would not be complete without mentioning one of the major innovations of 2017: the introduction of reasoning for single judge decisions.

The requirement of reasoning goes to the heart of the trust that citizens must have in their courts. This was one of the requests put to us at the Brussels Conference. We are glad to have been able to respond, at last, to applicants' expectations, which were both strong and legitimate in this area. The fact that we have managed to do so without increasing the staff assigned to such tasks can be attributed to our efficient IT system, which is another resource that must be maintained at its current level in spite of the budgetary pressure.

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The opening of the judicial year also calls for the usual look at the leading cases over the past year.

In 2017 a number of sensitive and significant issues were once again brought to the Court, which is asked to deal with unresolved and often complex matters. The variety of subject matter illustrates the scope and diversity of the role of the European Court of Human Rights.

The cases that I would like to mention this evening have all received media coverage throughout the world. This is most certainly because they relate to real-life situations and are meaningful to a great many of us.

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The Grand Chamber judgment of *Barbulescu* is one such example. It is illustrative of the ubiquitous nature of new technologies, which have pervaded our everyday lives. They regulate our relationships with others. It was thus inevitable that they should permeate our case-law. As was quite rightly observed by Professor Laurence Burgorgue-Larsen: “New technologies have led to an implosion of the age-old customs based on respect for intimacy”. What is the point of communicating more easily and more quickly if it means being watched over by a third party or if it entails an intrusion into our private lives?

The subject of the *Barbulescu* case was the decision of a private company to terminate the employment contract of one of its staff members after monitoring his electronic communications and accessing their content. Our Court took the view that the national authorities had not properly protected the applicant’s right to respect for his private life and correspondence. The domestic courts had failed to determine, in particular, whether the employee had received prior notice from his employer of the possibility that his communications might be monitored; nor did they have regard to the fact that he had not been informed of the nature or extent of the monitoring, or to the degree of intrusion into his private life and correspondence.

In our Court’s view, the instructions of an employer cannot negate the exercise of the right to respect for private life in the workplace.

While the Contracting States must be granted a wide margin of appreciation in establishing the applicable law on such matters, their discretion cannot be unlimited.

In *Barbulescu* the Court thus lays down a framework in the form of a list of safeguards that the domestic legal system must provide, such as proportionality, prior notice and procedural guarantees against arbitrariness. This is a kind of “*vade mecum*” for use by domestic courts.

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While Grand Chamber judgments, being fewer in number and rendered by our Court’s most authoritative formation, tend to be paid the greatest attention, the same can be said of certain final judgments delivered by Chambers; those which, on account of the subject matter or solution, are also of particular interest to public opinion. I would like to take this opportunity to commend the work accomplished throughout the year by the Court’s five Sections, under the authority of their respective Presidents.

An example of such a Chamber judgment is *Osmanoğlu and Kocabaş* against Switzerland – a new illustration of how religious matters come to the fore in our case-law.

The applicants were Muslims who wanted their daughters to be exempted from compulsory mixed swimming lessons. They brought their case to our Court after the Swiss authorities refused that exemption and they were fined.

In this case, which received significant coverage, the Court emphasised the importance of schooling for social integration, especially in the case of children of foreign origin.

It first pointed out that the children’s interest in a full education, thus facilitating their successful social integration according to local customs and mores, prevailed over the parents’ wish to have their daughters exempted from mixed swimming lessons.

The Court then expressed the view that a child’s interest in attending swimming lessons was not just to learn to swim but more importantly to take part in that activity alongside the other pupils, with no exception on the basis of the child’s origin or the parents’ religious or philosophical convictions.

The Swiss authorities, in refusing to grant an exemption from mixed swimming lessons to the two Muslim pupils, had given precedence to the obligation to follow the full school curriculum and had not breached their right to freedom of religion.

Such a case is representative of the fact that we are seeing an increasing judicialisation of religious matters in our society.

The important thing is not to impose a model that prevails over individual choices but to foster the principles of openness to others and “living together”.

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At a time when technological progress – as I was saying just now – has never been so advanced, how could we not have been shocked, at the end of last year, to see pictures of migrants being sold in Libya on slave markets? They serve to remind us that slavery remains a reality in the twenty-first century.

While forced labour does not reach the same level of intensity as slavery, in certain cases it is not much different. It is also prohibited by the same Article 4 of the European Convention on Human Rights.

The judgment in *Chowdury* against Greece provides an example of forced labour and reminds us that the notion of dignity prevails. Even though it is not expressly provided for in the Convention, the Court has enshrined it as an implicit principle, finding that “*human dignity and freedom are the very essence of the Convention*”.

In the *Chowdury* judgment the Court ruled for the first time on the exploitation of migrants through work. The applicants were 42 Bangladeshi nationals who, without work permits, were subjected to forced labour. Their employers recruited them to pick strawberries on a farm, but then failed to pay them their wages and made them work in unbearable physical conditions, watched over by armed guards.

The Court found that the applicants’ situation amounted to human trafficking and forced labour, explaining that exploitation through work was one of the aspects of human trafficking within the meaning of the relevant Council of Europe Convention and the United Nations Palermo Protocol.

This judgment reminds us that the Court protects the weakest and most vulnerable and that the European Convention on Human Rights is open to all human beings, regardless of nationality or residence.

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Among the highlights of 2017 was most certainly the visit by French President Emmanuel Macron, who kept the promise he had made to me only a few weeks after his election to come to the Court and speak to us.

We heard him describe our Court as “*a unique achievement that does honour to Europe*” and “*a major point of reference for Europe’s citizens*”. It was certainly a historic occasion and the President’s words will ring out for a long time within our walls.

But going beyond those words of praise, which of course we much appreciated, President Macron recalled the most fundamental aspect underpinning the relationship between the States and the Court. “*We have not handed over our legal sovereignty to the Court*”, he said, but rather “[w]e have provided the citizens of Europe with an additional guarantee that human rights will be upheld”.

He compared our Court to “*an essential bulkhead in protecting the nationals of the 47 member States from abuses, totalitarian trends and the dangers that tomorrow’s world will bring with it*”, thus emphasising the weight of the responsibility on our shoulders.

But that responsibility, we are proud and happy to have assumed it for nearly 60 years now, so that we can “*bequeath this institution intact to subsequent generations*” to use the words of the French President. Allow me to add that, for someone of my generation who was born when the horror of the Holocaust was still a recent memory, and for those of us who have known the survivors – I am thinking of Simone Veil, who left us last year, and also of Liliana Segre, who has just been made a life Senator by the Italian President – this takes on a particular significance for me and drives home the duty that we have to transmit these values to our children and grandchildren. They must not lose sight of the origins of the European mechanism for the protection of human rights.

Presidents of Constitutional Courts and Supreme Courts,

Before concluding this ceremony, I would like to turn to you more specifically.

Over the years, this event for the opening of the judicial year of the European Court of Human Rights has become, I believe, a unique and unparalleled gathering, as it brings together the Presidents of the highest courts of Europe. Our guest speaker is always the president of a superior national or international court.

Your presence here is particularly meaningful. The European mechanism for the protection of human rights can only function if you are able to participate in it to the full. Together and collectively we protect human rights.

Without you, the protection of human rights would be incomplete and that is why your presence here is essential for us.

Without you, there can be no common area of protection of rights and freedoms.

Without you, there is no rule of law.

It is indeed noteworthy that the authority of the judiciary was the very theme of the seminar which took place here earlier today and I would mention that, quite exceptionally, one of the speakers was the Council of Europe's Secretary General, Thorbjørn Jagland.

When a democratically elected regime disregards the constitutional limits to its power and deprives its citizens of their rights and freedoms – when democracy becomes illiberal – it is always and mainly you who are on the front line.

Like our Court at the European level, you are indispensable points of reference in your respective countries.

This evening I would like you to tell you solemnly that we stand by you.

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Ladies and Gentlemen,

The time has now come for me to turn to our guest of honour, the President of the Court of Justice of the European Union, Koen Lenaerts.

For the European citizen, the co-existence in Europe of two international courts, the Court of Luxembourg and that of Strasbourg, even though they do not cover the same geographical sphere, and notwithstanding the difference in jurisdiction, may appear surprising or even puzzling.

We are all aware of this and it is the reason why we attach such importance to our cooperation. Our very credibility is at stake.

Over the past few years our exchanges with the Court of Justice have been considerably strengthened, and I believe that the harmonious nature of our relationship today can largely be attributed to the efforts of our guest this evening.

The presence here of the President of the Court of Justice of the European Union, as guest of honour at our solemn hearing, is most certainly an exceptional event.

Ladies and Gentlemen,

The two European courts have, this evening, symbolically come together in Strasbourg.

For me it is an honour, but above all it gives me great pleasure, to welcome here our good friend, President Koen Lenaerts.

We give him the floor!