Proceedings/Actes

High Level Conference on the Future of the European Court of Human Rights

Conférence de haut niveau sur l'avenir de la Cour européenne des droits de l'homme

Interlaken, 18-19 February/février 2010

Council of Europe
Switzerland 2009–2010

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The future of the European Court of Human Rights

L'avenir de la Cour européenne des droits de l'homme

High-level conference organised in Interlaken, Switzerland, on 18 and 19 February 2010 by the Swiss chairmanship of the Committee of Ministers of the Council of Europe
Conférence de haut niveau organisée à Interlaken, Suisse, les 18 et 19 février 2010, par la présidence suisse du Comité des Ministres du Conseil de l'Europe

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Directorate General
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Interlaken, 18-19 February/février 2010

Thursday 18 February
Jeudi 18 février

8.30-14.00	Excursion: Departure from the lobby of the Grand Hôtel Victoria Jungfrau and excursion to the alpine village of Mürren, offering panoramic views of the Swiss Alps, for heads of delegation at ministerial level and high officials of the institutions of the Council of Europe	Excursion : Départ du lobby du Grand Hôtel Victoria Jungfrau et excursion au village alpine de Mürren, qui offre une vue panoramique sur les Alpes suisses pour les chefs de délégation au niveau ministériel et les hauts représentants des institutions du Conseil de l'Europe
13.00-15.00	Casino Kursaal Interlaken: Conference registration	Casino Kursaal Interlaken : Enregistrement à la Conférence
15.00-15.15	Opening address by the Swiss Chairmanship of the Committee of Ministers of the Council of Europe	Discours d'ouverture par la Présidence suisse du Comité des Ministres du Conseil de l'Europe
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15.25-15.35	Address by the President of the Parliamentary Assembly of the Council of Europe	Discours du Président de l'Assemblée parlementaire du Conseil de l'Europe
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15.55-16.05	Address by the Council of Europe Commissioner for Human Rights	Discours du Commissaire aux droits de l'homme du Conseil de l'Europe
16.05-16.35	Coffee break	Pause café
16.35-18.35	Statements by the heads of delegation – Part One	Déclarations par les chefs de délégation – premier bloc
18.35-18.50	Statements by the President of the Conference of International Non-Governmental Organisations of the Council of Europe and by the Chair of the European Group for National Institutions for the Promotion and Protection of Human Rights	Déclarations du Président de la Conférence des organisations internationales non gouvernementales du Conseil de l'Europe et de la Présidence du Groupe européen des institutions nationales de promotion et de protection des droits de l'homme

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20.10-20.15	Group photo of the assembled heads of delegation and high officials of the institutions of the Council of Europe, Salon Napoléon III	Photo de groupe des chefs de délégation et des hauts représentants des institutions du Conseil de l'Europe, Salon Napoléon III
20.15	Dinner hosted by the Swiss Chairmanship of the Committee of Ministers of the Council of Europe to heads of delegation and high officials of the institutions of the Council of Europe, Salle de Versailles	Dîner géré par la Présidence suisse du Comité des Ministres du Conseil de l'Europe pour les chefs de délégation et les hauts représentants des institutions du Conseil de l'Europe, Salle de Versailles

Friday 19 February
Vendredi 19 février

9.00-11.00	Statements by the heads of delegation – Part Two	Déclarations par les chefs de délégation – deuxième bloc
11.00-11.30	Coffee break	Pause café
11.30-12.00	Conclusions of the Swiss Chairmanship of the Committee of Ministers of the Council of Europe and adoption of the Declaration of Interlaken	Conclusions par la Présidence suisse du Comité des Ministres du Conseil de l'Europe et adoption de la Déclaration d'Interlaken
12.00-14.00	Aperitif buffet	Buffet d'apéritif
14.00	End of the Conference and departure of delegations	Fin de la Conférence et départ des délégations
14.00-15.00	Press conference by the Swiss Chairmanship of the Committee of Ministers of the Council of Europe	Conférence de presse par la Présidence suisse du Comité des Ministres du Conseil de l'Europe

Opening addresses – Discours d'ouverture

M^me^ Eveline Widmer-Schlumpf

Conseillère fédérale, cheffe du département fédéral de Justice et Police (Suisse)

Au nom du Comité des Ministres du Conseil de l'Europe et au nom du Gouvernement suisse, je vous souhaite la bienvenue à Interlaken.

Avant toutes choses j'aimerais excuser M^me^ la Ministre des Affaires étrangères Micheline Calmy-Rey : elle est en route pour Interlaken, mais rentrée en retard d'un voyage à l'étranger urgent et imprévu, il ne lui était pas possible d'être parmi nous dès l'ouverture de cette Conférence. Elle nous rejoindra donc dans le courant de la journée.

C'est avec plaisir que la Suisse a répondu positivement à l'appel de M. le Président Costa d'organiser, début 2010, une Grande Conférence politique. La situation dramatique dans laquelle se trouve la Cour – depuis un certain temps déjà – la présence nombreuse en ce lieu de personnalités de haut rang, de même que les efforts intensifs que vous avez consentis pour la préparation de la manifestation d'aujourd'hui sont autant de signes de l'importance et de l'urgence de cette conférence. Nous sommes convaincus qu'une adhésion la plus large possible à la déclaration est une condition indispensable pour pouvoir améliorer sensiblement et durablement la situation de la Cour. La Cour est tributaire du soutien de tous les Etats Parties.

Le 13 mai 2004, les Etats contractants ont adopté le Protocole n° 14. J'ai aujourd'hui la grande satisfaction de pouvoir vous annoncer qu'avec M. le Secrétaire Général Jagland, je viens d'assister à la remise de l'instrument de ratification de la Russie par mon homologue, M. Konovalov. Le Protocole n° 14 pourra donc entrer en vigueur le 1^er^ juillet 2010. Je pense que nous pouvons adresser nos félicitations à la Russie, et nous congratuler de ce résultat.

Le Protocole n° 14 permettra à la Cour de traiter davantage de recours que par le passé, mais il ne suffira pas à résoudre durablement les problèmes auxquels nous faisons face. D'autres mesures seront nécessaires, et c'est la raison pour

laquelle nous sommes réunis aujourd'hui à Interlaken. L'objectif est l'adoption d'une déclaration politique sur l'avenir de la Cour européenne des droits de l'homme.

Certains sont peut-être déçus des réformes proposées dans cette déclaration et auraient souhaité des objectifs plus ambitieux. Par exemple une adaptation permanente des moyens dont dispose la Cour pour faire face à l'augmentation du nombre de requêtes. Cette approche, selon nous, n'est pas la bonne. D'autres verraient le salut dans une limitation substantielle du droit de recours individuel. Le Plan d'action proposé souligne toutefois d'emblée que le principe du droit de recours individuel doit être maintenu. Le moment ne semble pas encore venu de s'écarter radicalement de la philosophie actuelle. Nous devrons peut-être en discuter un jour, mais cela dépendra du degré d'amélioration de la situation de la Cour qu'induiront les mesures à court et à long terme proposées dans le Plan d'action.

Par quels moyens cette amélioration peut-elle être atteinte ?

Les causes de l'engorgement de la Cour et du nombre sans cesse croissant de requêtes sont diverses, et diverses devront donc être aussi les mesures prises pour remédier à cette situation. Ces mesures devront se situer aux trois niveaux pertinents, à savoir les Etats membres, la Cour elle-même et le Comité des Ministres.

La constatation n'est pas nouvelle. La plupart des mesures figurant dans le Plan d'action sont en discussion depuis longtemps, beaucoup d'entre elles avaient déjà été proposées dans le rapport des Sages de 2006. Je pense notamment au renforcement de l'autorité de la jurisprudence de Strasbourg dans les Etats membres, à l'amélioration des voies de recours au niveau national, à l'introduction d'un nouveau mécanisme de filtrage interne à la Cour, au recours à des arrêts pilotes et, *last but not least*, à la possibilité d'une procédure simplifiée d'amendement des dispositions de la Convention d'ordre organisationnel.

Quelques-unes des mesures du Plan d'action peuvent être mises en œuvre immédiatement, à chacun des trois niveaux mentionnés. Pour d'autres, davantage de temps sera nécessaire, en particulier pour celles qui nécessiteront l'amendement de la Convention. Le Plan d'action se fonde sur une démarche par étapes. En fonction de l'efficacité du Protocole n° 14 et des autres mesures réalisables à court terme pour désengorger la Cour, d'autres actions devront être entreprises. La dernière partie de la déclaration fixe des délais concrets pour les mandats donnés aux organes compétents (ch. 5) et pour l'évaluation des progrès accomplis (ch. 6). Ces progrès devront être mesurés à l'aune de l'amélioration de la situation de la Cour.

Toutes les mesures contenues dans le Plan d'action – et j'insiste : toutes les mesures – visent à aider la Cour. Si l'on cherchait leur dénominateur commun, ce serait sans doute celui de la responsabilité partagée, dont M. Costa a parlé

dans son mémorandum. Le renforcement du principe de subsidiarité joue un rôle central dans la résolution de notre problème. Il s'agit de l'obligation qu'ont les Etats parties de mettre en œuvre la Convention au niveau national en s'appuyant sur les lignes directrices claires et cohérentes tracées par la jurisprudence de la Cour. Pour ce faire, la volonté politique est essentielle. A défaut de cette volonté, toute réforme de la Cour est vouée à demeurer incomplète. C'est la mise en œuvre de la CEDH au niveau national, dans les Etats parties, qui permettra à la Cour de réduire sa fonction de contrôle, confiante dans le fait que les tribunaux nationaux auront dûment pris en compte dans leur appréciation les normes de la Convention. Le fait qu'aujourd'hui, la majorité des requêtes recevables sont des requêtes dites répétitives, doit nous alerter, tout comme l'augmentation continue du nombre de requêtes pour beaucoup d'Etats, sans corrélation aucune avec une pratique plus restrictive des juridictions nationales dans l'examen de recours concernant les droits de l'homme.

Permettez-moi encore de vous exposer le point de vue de la Suisse sur certaines des réformes proposées, dont il a beaucoup été discuté avant la Conférence.

Le chiffre 3 du Plan d'action parle de nouvelles règles ou pratiques d'ordre procédural en matière d'accès à la Cour. Nous sommes d'avis que nous devons sans tarder discuter de ces possibilités, en particulier de l'introduction de frais judiciaires. Il serait certes problématique que des requêtes justifiées échouent parce que le requérant ne parvient pas à réunir les moyens financiers nécessaires, mais il serait bon de pouvoir éviter des requêtes manifestement irrecevables dont le jugement n'apporte rien à personne, pas même au requérant lui-même.

Le chiffre 7 du Plan d'action traite du mécanisme de filtrage : il semble évident qu'un tribunal qui reçoit chaque année des dizaines de milliers de nouvelles requêtes doit mettre en place un mécanisme interne de filtrage. Il s'agit avant tout d'une question relevant de l'organisation interne de la Cour. Des solutions réalisables rapidement ne sont possibles que si elles se fondent sur l'organisation existante. Les solutions pour le long terme ne devraient pas entraîner un retour à l'ancien système de contrôle à deux niveaux ; elles devront ne pas mettre en péril la cohérence de la jurisprudence et rester financièrement supportables.

L'efficience des procédures de contrôle doit inclure l'efficience de la surveillance par le Comité des Ministres de l'exécution des arrêts de la Cour. La question est posée (ch. 12 du Plan d'action) de savoir si le système actuel est encore adapté à tous points de vue.

Au chiffre 9 b) d , il est dit que la Cour doit disposer au sein du Conseil de l'Europe, de l'autonomie administrative nécessaire. Une autonomie suffisante en matière administrative est, de notre point de vue, une demande absolument justifiée, on peut même dire qu'elle va de soi ; il paraît cependant tout aussi clair qu'il ne peut s'agir d'une autonomie financière.

J'en arrive ainsi au dernier point, celui de la question budgétaire. Je l'ai déjà dit : vouloir résoudre les problèmes de la Cour en dégageant sans cesse de nouvelles ressources ne nous semble pas constituer une voie praticable. Pour des raisons financières, d'abord, mais aussi parce que la cohérence de la jurisprudence est mise en cause. D'un autre côté, on ne peut pas s'attendre à ce que la masse de cas en suspens– devant la Cour et devant le Comité des Ministres – diminue tant que le nombre de nouvelles requêtes dépasse le nombre de cas réglés. Il n'est guère possible de souhaiter une résorption rapide des affaires en suspens sans accepter la libération, pour un temps, de moyens financiers supplémentaires.

La Conférence d'Interlaken ne marque ni le début, ni la fin des discussions sur les réformes. Mais Interlaken doit être l'occasion de poser des jalons sur la voie d'un désengorgement durable de la Cour. Cette conférence sera un succès si nous parvenons progressivement, par un assortiment de mesures, à un équilibre entre le nombre de requêtes entrantes et le nombre de cas traités, dans l'idéal à un niveau plus bas qu'aujourd'hui. Tout comme la présidence suisse a pu se fonder sur les efforts de réformes entrepris depuis de la Conférence de Rome en 2000, nous devons faire en sorte que la déclaration que nous adopterons demain trouve une continuation sous l'égide des futures présidences. La Suisse participera activement à ces travaux.

Permettez-moi de conclure sur ces quelques mots :

En Suisse, le compromis et la recherche du consensus sont considérées comme des vertus nationales. J'aimerais exprimer le vœu que cet esprit règne aussi sur notre conférence. Je nous souhaite à tous un travail fructueux et une conférence réussie.

Mr Thorbjørn Jagland

Secretary General of the Council of Europe

I should like to start by thanking the Swiss Chairmanship of the Committee of Ministers for organising this extremely important Ministerial Conference. I also want to congratulate our hosts for their choice of venue. Interlaken not only pro-

vides a beautiful setting, it also symbolises the magnitude of the task ahead of us. In reforming the Court we have many mountains to climb.

But as high and as steep as these mountains may be, we must and we shall conquer them. We owe this to the people of Europe who have the right to expect that we shall succeed in safeguarding the mechanism which has looked after their human rights over the past half a century. I do not think that I am overly dramatic when I say that what is at stake is not only the effectiveness but the survival of the European Court of Human Rights.

What is the situation today?

First, there are almost 120 000 pending applications before the Court. The Court's "output" of decisions is increasing but, clearly, it is not enough. And the backlog is increasing by almost 2 000 applications each month.

Second, over 90% of these applications are inadmissible. This is a huge amount. And what does it say about human rights protection in our member States; about implementation of the Convention; about knowledge – or ignorance – of the Convention and the Court's case-law, and about public confidence in public institutions?

Third, every year the cost of the Court is increasing within the overall budget of the Council of Europe, and you know that this budget is a zero real growth budget.

The system is facing serious problems.

We have to find urgent solutions to lower the number of applications which reach the Court, and to deal in a more efficient way with applications which will continue to reach the Court.

But, first, we have to be clear. What do we want? Do we want to slowly kill the programme of activities of the Council of Europe so that the Court survives? Or do we want to have a streamlined and impact-oriented programme of activities of the Council of Europe supporting an efficient Court of Human Rights? I will come back to this point further.

I do not intend to repeat everything that I set out in my written contribution to this Conference. I stand by my proposals. For now, I will simply recall some of the most important points.

Above all, we need a better and more systematic use of the principle of subsidiarity. State Parties have the primary responsibility to respect human rights, to prevent violations and to remedy them when they occur.

All States Parties have now incorporated the Convention into their national legal systems, but not all have done so with satisfactory effect.

What we need to achieve is a genuine structural integration of the Convention into national systems, in order to secure its direct application; we need a better implementation of its provisions, including, above all, the obligation to provide effective domestic remedies for alleged violations.

The Convention cannot be fully and effectively implemented at national level unless the authority of the Court's case-law is properly recognised in the national legal order.

Most obviously, states must promptly and fully execute judgments in cases to which they are party, including any general measures that may be required.

But that is not all. National authorities must also take sufficient account of the general principles in the Court's case-law that may have consequences for their own law and practice. There is much room for improvement here in many countries.

We must look for ways to deal with the fact that most of the applications which are submitted to the Court are eventually declared inadmissible. They are still causing a bottle-neck in the system.

I believe that better provision of objective information to potential applicants may lead to fewer inadmissible applications.

We should explore whether and how the Council of Europe and independent national human rights structures can contribute to this.

And it is not only the applicants who should have a better knowledge and understanding of the Convention system and the admissibility criteria, it is also, in many cases, their legal representatives. This should be improved through clear, consistent and accessible case-law of the Court on admissibility and just satisfaction.

In part, this is a task for the Court itself, when drafting judgments and decisions. But accessibility is also an important task for the States Parties, who have a responsibility to translate, where necessary, and to disseminate the Convention and the case-law, as well as to ensure that they are integral parts of university law teaching and professional legal training.

It is also clear that the Court must be given new procedures for dealing with inadmissible cases, in addition to those found in Protocol No. 14.

One of the most important tasks for this Conference, therefore, is to propose an avenue for future work to improve the filtering of applications.

A key short-term measure, applicable without an amendment of the Convention, is to set up a filtering mechanism made up of the judges of the existing Court, based on a system of rotation among the judges, to deal with inadmissible cases and applying strict management procedures.

The third point I attach crucial importance to is to looking at the situation of the Convention system against the background of the Council of Europe as a whole.

The Convention is a treaty of the Council of Europe and there are strong institutional links between the two. The Committee of Ministers, the Secretary General, the Parliamentary Assembly and the Commissioner for Human Rights play important roles.

The Court is not an isolated body and cannot operate in an institutional, political or social vacuum.

On the one hand, its judgments provide authoritative interpretation of Convention provisions, underpinning our standard-setting and co-operation activities and giving important references for our other human rights mechanisms.

On the other hand, those other Council of Europe mechanisms, institutions and programmes which help member States to fulfil their obligations without the need for Court judgments in individual cases, are a reference point for the Court.

The Council of Europe's other human rights mechanisms, including the Commissioner and the various monitoring bodies as well as standard-setting and co-operation activities are therefore indispensable to the effective functioning of the Convention system.

We must not deceive ourselves that we can save the Convention system and improve the respect for human rights in Europe by feeding the Court by starving other Council of Europe activities in the field of human rights, the rule of law and democracy.

While such an approach may help the Court increase its output, it would reduce the scope and impact of our work to help states improve their implementation of the Convention. The more such help we can give, the less, in the long term, should be the need for individuals to apply to the Court.

We need to consider how best to invest in the future of the Convention system at all levels, in order to achieve the greatest long-term results. Not only financial investment, but also investment in co-operation with other actors, whether governmental or non-governmental.

As Secretary General, I am ready to take the necessary action to focus the allocation of the Council of Europe's resources on our core activities of promoting and protecting democracy, human rights and the rule of law – but let me be clear about one thing – I am unreservedly against any further transfers of funds from the Council of Europe programmes of activities to the Court.

If we want to preserve our unique mechanism for the protection of human rights, we need to safeguard the Court's capacity to deal with individual applications on violations which already occurred, as well as the Council of Europe's capacity to transform the Court's case-law in general measures preventing new violations from taking place.

The fact is that the Council of Europe needs the Court, and *vice versa*. Our organisation without the Court would risk to be seen as a toothless tiger. On the other hand, an organisation which would only deal with breaches of human rights which already occurred, without doing anything to prevent them happening in the future, could be perceived as a fig-leaf operation for the governments,

providing them with a human rights reputation at the lowest possible cost – but also with the lowest possible effect.

The objective of this Conference, in my view, is to find new, creative and effective measures to save the Court and avoid the two risks. This is not going to be easy, but we will do it. We will climb this mountain because we do not have any other choice. People in Europe – and their human rights – deserve no less and will get no less.

M. Mevlüt Çavuşoğlu

Président de l'Assemblée parlementaire du Conseil de l'Europe

Je me réjouis d'être parmi vous aujourd'hui, en tant que Président de l'Assemblée parlementaire, pour ouvrir cette importante conférence dont l'enjeu est crucial pour le Conseil de l'Europe et, à vrai dire, pour l'Europe tout entière.

Je remercie la Présidence suisse du Comité des Ministres d'avoir pris cette initiative qui doit beaucoup – si je puis me permettre – au caractère suisse. Je me suis fait cette réflexion en venant ici. En effet, l'impressionnant système de tunnels et la façon dont la route qui vient de Berne épouse les reliefs entre lacs et montagnes illustrent bien la volonté des habitants de ce pays de trouver un chemin pour sortir des difficultés. A nous de les imiter au cours de cette conférence !

Le titre de la conférence, « L'avenir de la Cour européenne des droits de l'homme », donne-t-il une idée juste de ce à quoi nous devons nous attaquer ? On peut en douter car une audition organisée en décembre dernier par la commission des questions juridiques et des droits de l'homme de l'Assemblée parlementaire a clairement montré que, pour résoudre les problèmes du système de protection des droits de l'homme du Conseil de l'Europe, il faut aussi régler d'urgence des problèmes extérieurs à la Cour.

Je fais référence ici, en particulier à l'insuffisante mise en œuvre des normes de la Convention européenne des droits de l'homme dans les Etats membres et de la nécessité d'une mise en conformité rapide et complète avec les arrêts de la Cour dans les pays concernés. C'est notre meilleure chance d'endiguer le flot de requêtes qui submergent actuellement la juridiction de Strasbourg.

Naturellement, j'ai lu et étudié de près le projet de déclaration d'Interlaken dont je partage globalement les objectifs, à savoir :

- la réaffirmation par les Etats de leur attachement au système de la Convention européenne des droits de l'homme, y compris au droit de recours individuel ;
- le soutien à la Cour de Strasbourg ;
- un programme de réforme en profondeur pour garantir l'efficacité à long terme du système ;
- un plan d'action en 8 points.

Cela dit, j'espère de tout cœur que notre conférence aura le courage de faire face aux vraies questions de droits de l'homme et aux problèmes rencontrés par les Etats membres et par le Conseil de l'Europe.

Soyons conscients de trois réalités au moins. Premièrement, la Cour de Strasbourg n'est pas à même de traiter les atteintes aux droits de l'homme à grande échelle. Ainsi, le Comité des Ministres ne devrait-il pas utiliser plus résolument sa déclaration de 1994 sur le respect des engagements pris ? L'Assemblée devrait également faire plus à cet égard en recentrant ses priorités en matière de suivi sur le respect des engagements des Etats membres.

Deuxièmement, parmi les principaux « clients », de la Cour de Strasbourg, plusieurs n'ont pas fait les efforts qui s'imposaient pour appliquer le train de réformes de la Convention élaboré entre 2000 et 2004. En agissant ainsi, n'ont-ils pas menacé l'existence même du système de la Convention ? Et si c'est le cas, pouvons-nous compter sur le Comité des Ministres pour désigner clairement « les coupables » et pour aider ces Etats à affronter leurs problèmes – plutôt que de demander toujours et encore à tous les Etats membres de protéger les droits de l'homme ?

Troisièmement, la Cour est financée par le budget du Conseil de l'Europe. A cet égard, les contributions des Etats sont clairement insuffisantes. Le financement de la Cour doit être réexaminé d'urgence, mais pas au détriment du reste de l'Organisation. Pourquoi le projet de « Déclaration d'Interlaken » n'accorde-t-il pas la priorité absolue à ce sujet ?

En ce qui concerne l'autorité et l'efficacité de la Cour européenne des droits de l'homme, comme vous le savez, l'Assemblée élit les juges sur une liste qui lui est présentée par les Etats parties. La qualité des candidats est cruciale. Si les procédures nationales de sélection des candidats sont inadéquates, l'Assemblée ne peut pas faire grand-chose. Les candidats, s'ils sont souvent bons, ne sont pas toujours exceptionnels. Pour que les arrêts de la Cour de Strasbourg fassent autorité auprès des plus hauts organes judiciaires dans les Etats membres, l'Assemblée doit être à même d'élire d'excellents juges sur des listes de la plus haute qualité.

Pour ce qui est du volume de nouvelles requêtes, les statistiques sont déprimantes. On a atteint le chiffre ahurissant de presque 120 000 affaires pendantes,

ce qui représente 4 km de dossiers mis bout à bout et un déficit de requêtes traitées par rapport aux requêtes introduites de 1 800 par mois…

L'arriéré est-il également réparti entre tous les Etats membres du Conseil de l'Europe ? Non. Près de 60 % des affaires en souffrance concernent quatre Etats. Les dix Etats les plus souvent mis en cause représentent quant à eux plus des trois quarts de l'arriéré. En 2008, presque 90 % des arrêts de la Cour ont été prononcés dans des affaires se rapportant à douze Etats seulement.

La question de l'exécution tardive – et, carrément, de la non-exécution – des arrêts de la Cour de Strasbourg est un autre sujet de préoccupation. Fin 2000, le Comité des Ministres comptait 2 300 affaires pendantes, un chiffre qui a grimpé à plus de 8 600 fin 2009, dont 80 % de requêtes répétitives. Devant la présence de plus de 30 ministres à cette conférence, il est de mon devoir d'insister sur le fait que cette situation inacceptable doit être traitée en priorité. Et ce dès aujourd'hui, n'attendons pas demain !

Une conclusion s'impose : le système de la Convention européenne des droits de l'homme est à deux doigts de l'asphyxie. Devant la gravité du danger, il semble absurde que la Cour et ses agents doivent perdre du temps et de l'énergie à traiter des affaires répétitives.

De nombreux Etats se soustraient à leurs obligations conventionnelles. Les parlements nationaux – et, pourquoi pas, l'Assemblée parlementaire – ne pourraient-ils pas auditionner les ministres responsables en présence des médias ? Lorsque le Protocole n° 14 à la Convention entrera en vigueur, il serait bon que le Comité des Ministres introduise des recours en manquement contre les Etats qui resteront en infraction.

Le fait est que la Cour de Strasbourg a une charge de travail considérable et un arriéré qui s'accentue. Cela signifie-t-il que nous devrions prendre une décision précipitée pour nous lancer une nouvelle fois dans un grand processus de réforme interne de la Cour ? Faut-il vraiment, comme certains l'ont suggéré, créer au sein de la Cour une nouvelle instance de filtrage judiciaire ? Ne pourrait-on pas confier cette mission à une équipe tournante de juges ou à un organe ad hoc issu du Greffe de la Cour ou du corps judiciaire des Etats membres ?

Il me semble qu'une meilleure application de la Convention dans les Etats membres est essentielle. De ce point de vue, les parlements nationaux ont un devoir particulier, celui de veiller à ce que les projets de loi, les textes en vigueur et les pratiques administratives, telles qu'interprétées par la Cour, respectent les normes de la Convention. Il ne s'agit pas simplement d'accorder réparation au niveau des juridictions internes mais de prévenir les atteintes aux droits de l'homme – ce qui relève avant tout de la responsabilité des parlements nationaux et des gouvernements. L'Assemblée a beaucoup travaillé sur cette question, comme l'a bien montré l'audition du mois de décembre dont j'ai déjà parlé.

Nous ne devons pas oublier que le système de Strasbourg est intrinsèquement subsidiaire. Les gouvernements et les autorités nationales sont donc responsables au premier chef de la bonne application de la Convention. Autrement dit, il devrait exister des mécanismes de recours effectif en matière de droits de l'homme au niveau national.

Il reste beaucoup à faire pour former les avocats, les procureurs et les juges à l'interprétation et à l'application de la Convention et de la jurisprudence de la Cour. Cela contribuerait sûrement à endiguer le flot de requêtes.

En d'autres termes, s'il existait des dispositifs nationaux de protection des droits de l'homme efficaces, on pourrait se passer d'une instance de filtrage spécifique à la Cour. Il convient de rendre la responsabilité première de la protection des droits de l'homme aux systèmes juridiques et aux pratiques internes : c'est à eux qu'elle incombe.

J'espère ne pas avoir brossé un tableau trop noir. Lorsque l'on s'engage dans un tunnel ici, en Suisse, il y a toujours une clarté au loin qui en laisse imaginer le bout. L'entrée en vigueur imminente du Protocole n° 14 nous aidera sans aucun doute à en sortir.

N'oublions pas non plus l'entrée en vigueur du Traité de Lisbonne qui permettra, je l'espère, l'adhésion rapide de l'Union européenne à la Convention européenne des droits de l'homme et garantira ainsi un système cohérent de protection des droits de l'homme à l'échelle européenne. Faisons tout notre possible pour accélérer cette adhésion dans les mois à venir.

Enfin, je vous en conjure, ne nous laissons pas paralyser par l'ampleur des difficultés auxquelles doit faire face le système de la Convention. La peur est mauvaise conseillère. Depuis 60 ans qu'elles existent, la Convention et la Cour ont incontestablement favorisé les droits de l'homme et les libertés en Europe en élevant les critères de protection et en contribuant progressivement à harmoniser les pratiques nationales.

De Berne à Interlaken, la route traverse d'abord une large plaine. L'histoire de la Convention et de la Cour pendant leurs 40 ou 50 premières années d'existence est simple comme le tracé d'une voie dans un tel paysage. Puis la route arrive au pied des montagnes, comme nous aujourd'hui. Nous comptons sur l'ingéniosité et l'audace – non seulement de nos hôtes suisses mais aussi de tous nos Etats membres – pour nous frayer un chemin sur les reliefs accidentés qui se dressent devant nous.

J'attends avec intérêt la suite de nos travaux et espère que nous réussirons à prendre ensemble un tournant décisif. Vous pouvez compter sur le soutien sans faille de l'Assemblée parlementaire pour aller de l'avant.

M. Jean-Paul Costa

Président de la Cour européenne des droits de l'homme

Quel avenir pour la Cour européenne des droits de l'homme ? Tel est l'objet de cette conférence, organisée par les autorités suisses, que je remercie vivement.

Créée par les membres du Conseil de l'Europe, la Cour est la clé de voûte d'un système de caractère juridictionnel, qui a constitué son originalité et qui fait sa force. Elle concourt, au plan pan-européen, au maintien et au développement de la démocratie et de l'Etat de droit. Elle assure le respect de la Convention européenne des droits de l'homme, applicable dans quarante-sept Etats. Cette tâche me semble plus utile que jamais.

La Cour a rendu 250 000 décisions mettant fin à une requête et plus de 12 000 arrêts. Elle a profondément influencé les systèmes juridiques nationaux. Son rayonnement dépasse les frontières de l'Europe ; elle inspire d'autres mécanismes régionaux.

Pourtant, la Cour est menacée, menacée par le risque de ne plus pouvoir jouer son rôle efficacement. Malgré la rationalisation de ses méthodes et son activité toujours plus performante, la Cour est engorgée. Le nombre de décisions et d'arrêts a presque décuplé en dix ans. Mais l'arrivée de requêtes demeure supérieure aux sorties. Le chiffre des affaires en instance, pour ne pas dire en souffrance, croît donc encore davantage : 120 000 requêtes pendantes, neuf fois plus qu'il y a dix ans. Certes, plus de la moitié des affaires ne concernent que quatre Etats sur 47, mais cela relativise le problème, sans le nier.

L'extrapolation est vertigineuse. Si rien n'est fait il sera bientôt difficile de stocker les dossiers, et impossible de traiter les requêtes dans un délai raisonnable. Les mesures prises par la Cour (simplification des procédures, politique de priorités sélectives, pratique des arrêts-pilotes, encouragement aux règlements amiables et aux déclarations unilatérales) restent insuffisantes et risquent de devenir illusoires.

Comment sauver le système ? Telle est la question.

Je salue vivement l'entrée en vigueur du Protocole 14 (comme il faut se réjouir de celle du Traité de Lisbonne, qui prévoit l'adhésion de l'Union européenne à la Convention). Le juge unique, les nouveaux pouvoirs des comités, l'introduction d'un nouveau critère de recevabilité, grâce à cela plus d'affaires simples seront jugées plus rapidement. Mais le Protocole 14 a été signé il y a près de six ans. Dès l'origine il était considéré comme nécessaire, non comme suffisant, d'où le rapport des Sages déposé à la fin de 2006. L'efficacité accrue induite par le Pro-

tocole sera réelle, comme le montre son application provisoire pour quelques Etats, mais ne sera certainement pas à la hauteur du flot de requêtes nouvelles.

La conséquence est simple. Des réformes sont urgentes. Interlaken ne vient pas trop tard, mais il est grand temps. Si l'on veut maintenir un contrôle de nature internationale, qui a fait ses preuves, il faut assurer son efficacité.

Efficacité pour qui et par qui ?

Pour qui ? Certes, pour la Cour. Sa capacité à juger se heurte à des limites physiques et, si on veut les reculer, à des risques sérieux de diminution de la qualité, de la cohérence, de la crédibilité de ses décisions. Elle doit échapper à l'asphyxie.

Les personnes ont besoin que le système ne se détériore plus et s'améliore. Les personnes : des êtres humains qui souffrent, ou sont convaincus qu'ils souffrent de violations de leurs droits. S'ils s'adressent à « Strasbourg », s'ils usent du remarquable instrument qu'est le droit de recours individuel, longtemps limité, et généralisé depuis 1998, c'est qu'ils croient que la Cour existe pour les protéger. Le pari sur lequel repose la Convention sera perdu si leurs recours sont jugés dans un délai trop long. Une justice trop lente est un déni de justice. Les justiciables sont les premiers bénéficiaires du contrôle juridictionnel ; en cas d'étouffement, ils seraient les premiers perdants.

C'est également l'intérêt des Etats que d'assurer la pérennité du système. Vous, les Etats, avez bâti un mécanisme de garantie collective. Tout échec serait collectif ; au lieu du progrès des droits, nous risquerions la régression des droits, déjà confrontés aux impératifs, certes non illégitimes en soi, de la sécurité. Nul, j'en suis sûr, ne souhaite un tel échec. Il faut donc prendre des mesures. Cette conférence est politique. Elle doit permettre de les prendre. Le rassemblement, pour la première fois depuis longtemps, de très nombreux membres des gouvernements européens est un signe de l'importance des actions à lancer et un gage de réussite.

Des réformes, par qui ?

Par tous les acteurs ensemble.

Le système se veut complémentaire et comme subsidiaire. Chaque Etat garantit aux personnes relevant de sa juridiction les droits de la Convention, donc applique celle-ci. Il appartient aux Etats d'instituer des recours effectifs devant des instances nationales, de préférence judiciaires, ainsi que de se conformer aux arrêts de la Cour. A elle de statuer sur les requêtes, après avoir vérifié leur recevabilité – notamment l'épuisement des voies de recours internes – et, le cas échéant, de dire que la Convention a été, ou non, violée.

Les améliorations à un système créé par un traité dépendent au premier chef de ses auteurs, et des institutions chargées de le faire fonctionner, le Conseil de l'Europe et ses organes – ainsi que la Cour elle-même. Celle-ci compte sur les institutions du Conseil (le Secrétaire Général, le Comité des Ministres, l'Assemblée

parlementaire, le Commissaire et d'autres) pour faire évoluer la Convention et son application en liaison avec notre Cour.

Dans la situation actuelle, il ne s'agit pas de rechercher des responsables, mais plutôt, en commun, des remèdes.

Il existe trois grandes catégories d'affaires portées à Strasbourg, et les remèdes doivent être trouvés sur cette base.

Il y a d'abord les très nombreuses requêtes irrecevables ou manifestement mal fondées, pour des raisons très diverses. Sans porter atteinte au recours individuel, il est nécessaire d'étudier sous quelles conditions, en pratique, on peut éviter les abus, volontaires ou non, de ce droit.

Il faut que les Etats, dans un effort concerté avec la Cour, mettent à la disposition du public – la société civile peut y aider – des informations objectives sur les conditions de recevabilité et sur les formalités à respecter. Beaucoup de requérants attendent trop d'un système trop mal connu, et finalement n'en obtiennent rien. Si, en dépit d'une meilleure information, des requêtes clairement irrecevables parviennent à la Cour, il faut mieux organiser le tri au sein de celle-ci. A plus long terme, un nouveau mécanisme de filtrage doit être étudié et pourrait être mis en place ; allant au-delà de la procédure de juge unique, il impliquerait l'instauration au sein de la Cour d'un corps judiciaire additionnel.

Ensuite, viennent les requêtes bien fondées, mais répétitives. Semblables à des affaires réglées selon une jurisprudence bien établie, elles ne posent aucun problème nouveau. Le rôle de la Cour se borne à répéter un constat de violation et à statuer sur la satisfaction équitable. Est-il normal qu'une juridiction internationale remplisse une telle fonction ? Ne vaut-il pas mieux que ces requêtes soient examinées au niveau national, à condition que l'Etat donne satisfaction, à tous égards, au requérant ? En outre, une meilleure et plus rapide exécution des arrêts de la Cour, que surveille le Comité des Ministres, préviendrait nombre de requêtes répétitives. C'est particulièrement vrai pour les arrêts-pilotes. Ceux-ci identifient un problème concernant potentiellement des centaines d'affaires identiques, voire plus.

Restent les affaires posant des questions non encore résolues ou qui se distinguent des cas déjà jugés. C'est sur celles-ci que les ressources doivent être concentrées.

Ces trois catégories de requêtes existent dans l'arriéré en instance (backlog), et continueront à exister dans le futur. Elles appellent donc des solutions différenciées.

Mais certaines mesures de caractère général peuvent s'appliquer.

Au niveau national, des solutions existent en théorie, mais pas toujours en pratique. Ainsi, dans beaucoup de pays il n'y a pas encore de recours effectifs pour prévenir ou réparer des violations de la Convention, y compris pour les

délais de procédure ou la non-exécution des jugements nationaux. La législation ou la jurisprudence nationale doivent créer de tels recours.

Il faut aller plus loin. Sans même modifier la lettre de l'article 46 de la Convention, rien n'empêche que les Etats tirent les conséquences d'arrêts rendus dans des affaires où ils ne sont pas défendeurs, et qui constatent des problèmes analogues. Plusieurs pays le font déjà. Cette autorité de la chose interprétée éviterait bien des requêtes.

Une fonction consultative accrue de la Cour assurerait enfin un dialogue encore meilleur avec les systèmes judiciaires nationaux. A terme, il faudrait modifier la Convention sur ce point, mais il n'est pas trop tôt pour étudier l'opportunité d'une telle évolution. Cela s'ajouterait au recours individuel, mais aurait pour effet de prévenir des contentieux inutiles.

Si les efforts conjugués des Etats, du Comité des Ministres et de la Cour sont couronnés de succès, on peut espérer une amélioration du fonctionnement du système. Les délais de jugement devraient être plus raisonnables. Mais pourra-t-on, sans moyens supplémentaires, résorber l'arriéré ? Je ne le pense pas. La crise financière pèse de tout son poids. Mais il faut espérer qu'elle ne sera pas éternelle, et ne rien exclure, car les droits de l'homme ont un prix. En outre, des ressources volontaires peuvent être trouvées. Ainsi, le détachement temporaire de juges ou juristes nationaux, pratiqué déjà par quelques Etats, aiderait les juges de la Cour et le Greffe, tout en permettant à ces personnes, à leur retour, de faire profiter leur pays de leur expérience, renforçant ainsi la subsidiarité.

Demain, je l'espère, la conférence adoptera une Déclaration, comportant un Plan d'action. Ainsi va s'ouvrir un processus rendu possible par « Interlaken », mais qui prendra, sur certains points, plusieurs mois, sur d'autres, plusieurs années. Nombre de mesures peuvent être prises à court terme, sans modifier la Convention. Les amendements à celle-ci, même si on simplifie les procédures, supposent qu'on les étudie rapidement mais impliquent un délai pour leur entrée en vigueur. Des réunions de suivi, sous les présidences successives du Comité des Ministres, devraient permettre d'évaluer périodiquement les mesures prises au niveau national et au plan européen à la suite d'Interlaken.

Que cette conférence à haut niveau ait lieu est en soi un événement majeur. Je souhaite qu'elle provoque un élan et qu'elle donne à un système quinquagénaire un second souffle – pour les années et décennies à venir. Je peux vous assurer que notre Cour, fière d'œuvrer, en toute impartialité, pour les droits de l'homme, est prête à contribuer à ce nouveau départ.

Ms Viviane Reding

Vice-President of the European Commission

It is a great pleasure to attend this ministerial conference just a few days after my nomination as Vice-President of the European Commission in charge of Justice, Fundamental Rights and Citizenship. My presence today confirms the determination of the European Commission to work closely with the Council of Europe to put into practice the common principles upon which both our institutions are founded.

All the components for developing an ambitious fundamental rights policy at the level of the European Union are now in place:

- First of all, with the entry into force of the Lisbon Treaty, the Charter of Fundamental Rights of the European Union is legally binding;
- Secondly, the European Union will launch as soon as possible the accession negotiations to the European Convention on Human Rights. President Barroso has entrusted me with looking after this important dossier of constitutional significance.
- Thirdly, the promotion of fundamental rights is one of the priorities of the Stockholm programme setting the strategic guidelines for developing an area of freedom, security and justice in Europe;
- Fourthly, the very creation of a new "Justice, Fundamental Rights and Citizenship" portfolio shows the importance that President Barroso attaches to strengthen even further the action of the Commission in this area.

The Charter of Fundamental Rights-policy I will develop is directly relevant for the subjects which are discussed at this ministerial conference. The more the European Commission ensures the effective full respect of fundamental rights whenever European Union law comes into play, the more efficiently the European Court of Human Rights will be in a position to do its job.

The declaration and the action plan being discussed today call for an effective implementation of the Convention at national level and for the full execution of the judgments of the European Court of Human Rights.

The Union can, and will contribute to address these calls through a rigorous policy.

- My first priority will be to ensure that the Union is beyond reproach whenever making legislation. When the European Commission proposes legislation, this must fully respect the Charter of Fundamental Rights. The Charter will be the compass for all European Union policies. It will be the base for rigorous

impact assessments on fundamental rights concerning all new legislative proposals.

- My second priority will be to watch over the European Union legislative process to ensure that the final texts emerging from it are in line with the Charter. It will be a collective responsibility of all the institutions and the member states to ensure that European Union law is and remains consistent with fundamental rights throughout the legislative process.
- My third priority is at the level of the member states. The EU Charter of Fundamental Rights applies not only to EU institutions, but also to Member States when they implement EU law. I will use all the tools available under the Treaty to ensure compliance with the Charter of national legislation that transposes EU law. I will apply a "Zero Tolerance Policy" on violations of the Charter. I will certainly not shy away from starting infringement proceedings whenever necessary.

The key objective is to render as effective as possible the rights enshrined in the Charter for the benefit of all people living in the EU. This is indispensable to reach a high level of integration in the area of Justice, Freedom and Security, as well as for the credibility of the EU external policy on human rights.

The EU Charter of Fundamental Rights is a key instrument for achieving these objectives. Our EU Charter represents the most modern codification of fundamental rights in the world. We, Europeans can be proud of it. The Charter entrenches all the rights found in the European Convention on Human Rights. The meaning and scope of these rights are the same as those laid down by the ECHR. The Charter, however, goes further and also enshrines other rights and principles, including economic and social rights resulting from the common constitutional traditions of the EU member states, the case-law of the European Court of Justice and other international instruments. In the Charter we also find the so-called "third generation" fundamental rights, such as data protection, guarantees on bioethics and on good and transparent administration. And Article 53 of the Charter makes it clear that the level of protection provided by the Charter must be at least as high as that of the Convention. Often, it will go beyond.

This legally binding Charter for 27 countries represents a major step forward in terms of political commitment for fundamental rights, of legibility and of legal certainty. The new European Commission will make this visible by adding to the solemn oath we will be taking soon before the European Court of Justice in Luxembourg an explicit reference to the Charter.

The accession of the EU to the Convention will complete the EU system of protection of fundamental rights. The constitutional significance of this accession was noted by the European Court of Justice back in 1994. Now the EU has the competence it lacked back then. What is more, the Lisbon Treaty makes it

clear that accession is not only an option, it is the destination. We will reach that destination, while of course safeguarding the special characteristics of the Union legal order.

Accession to the Convention will ensure that the case-law of both Courts – the Court in Strasbourg and our Court in Luxembourg – evolves in step. It is therefore an opportunity to develop a coherent system of fundamental rights protection throughout the continent, with a strong promise for a Europe truly united by law and in values. I am proud and honoured to take part in this worthwhile endeavour, which is also of symbolic importance. In view of the strength of the EU Charter – which is in many instances more ambitious than the Convention – the European Union will not find it difficult to meet the standards required by the Convention. Accession will nevertheless show that the European Union itself, with its 27 member states, will put its weight behind the Strasbourg system of fundamental rights protection. The European Union judiciary will become part of the Strasbourg court and strengthen its efficiency. This will make Strasbourg even more so than it is today the European capital of fundamental rights protection.

In the coming months I will submit to the Council a formal recommendation for negotiation directives on the accession of the European Union to the Convention. I am happy that the Spanish Presidency of the Council of the European Union is equally determined to push for a rapid agreement on these directives in order to start the negotiations with the Council of Europe.

I welcome the fact that the accession process will coincide with the reform of the European Court of Human Rights. The European Union has a strong interest in the efficient functioning of the Court. Justice delayed is justice denied. That is why the European Union will work with you to clear the big backlog of cases and the long delays. I am confident that the Ministerial Conference will succeed in launching a process that aims to enhance the effectiveness of the Court. Of course, the right of individual application and the principle of subsidiarity must remain essential pillars of the system.

I am convinced that the accession of the European Union to the Convention is an opportunity for both institutions. As the Secretary General of the Council of Europe rightly pointed out, "protecting human rights in not just about the Court condemning states. It is about anticipating problems and co-operating in their solution". Protecting human rights is not about creating a culture of litigation; it is about upholding human dignity and the full enjoyment of rights. The accession of the European Union to the Convention is an incentive to develop the policies that strengthen the effectiveness of the fundamental rights that people enjoy in Europe.

We should feel proud of all our common accomplishments in the protection of human rights over the last six decades. These accomplishments should serve as guiding inspiration to continue to do what still needs to be done.

Mr Thomas Hammarberg

Council of Europe Commissioner for Human Rights

The story of the European Court of Human Rights is undoubtedly a success story. Over the past fifty years, the Court has opened new paths for the protection of human rights in Europe: the path allowing individuals to directly submit complaints about human rights violations; the path to a dynamic conceptualisation of human rights through an impressive body of case-law; last but not least, the path to positive changes in law or practice at the national level, with concrete effects on people's lives.

It has been said that the drafters of the Convention were determined not to allow any more governments to shelter behind the argument that what a state does to its own people is within its own exclusive jurisdiction and beyond the reach of the international community.

Today, the Court has become a unique model, an inspiration, a symbol.

More importantly, for the individuals who experience or fear human rights abuses in Europe, it is even more: the Court is regarded as their ultimum remedium, their last source of hope to seek redress for human rights violations.

But the path has become more difficult: the story of the Court is also a story of backlog, of substantial delays, with a Court threatened with drowning under the vast numbers of applications which are being submitted to it, largely because of European states' failure to prevent or remedy structural, systemic human rights violations.

Like some others did sixty years ago, it is now our turn to think ahead and to sow the seeds for the future.

All measures aimed at increasing the efficiency of the Court should be welcomed. Above all, the right to individual petition – the fact that all 800 million individuals in the Council of Europe area have the right to seek justice, as a last

resort, at supranational level – should be preserved. This is the key characteristic of this system.

The figures which underline the need to reform the proceedings of the Court are known: the number of applications constantly on the rise, the fact that 90% of new applications before the Court are clearly inadmissible or manifestly ill-founded, and that approximately 50% of the admissible cases are "repetitive applications", that is cases raising issues that have already been the subject of Court judgments in the past, and which normally should have been resolved by the respondent member states.

This confirms that there is a serious gap of systematic implementation by member states of the Court judgments. Behind these figures one cannot but see the necessity to improve human rights protection at national level.

Any discussion about the difficulties of the European Court must focus on the need for prevention. The main question is not why the Court has difficulties to cope, but why so many individuals feel the need to go there with their complaints.

I have underlined in my earlier memorandum the main features of a systematic and holistic strategy at national level for the prevention of violations and implementation of the standards agreed upon.

The development of a national plan for the implementation by states of their human rights obligations would be an ideal framework for such a systematic approach. In order to bridge the implementation gap, governments should for instance integrate human rights into the ordinary work of the public administration and ensure effective co-ordination and co-operation between the authorities; set up adequate systems for data collection and analysis; and foster a human rights culture through the full integration of human rights in education and training as well as through awareness.

The establishment of national systems of information on the Convention and the Court's procedures is also part of this strategy, as well as translation of leading judgments of the Court into national languages so that domestic courts understand important Convention principles when they apply the law.

Any national work on prevention should be guided by the recommendations adopted by the Committee of Ministers in the 2000-04 reform package.

Equally important is the fact that the Court is not a solo player. Rather, it is complemented by major European monitoring bodies, such as the European Committee of Social Rights, the European Committee for the Prevention of Torture, the Advisory Committee on the Framework Convention for the Protection of National Minorities, and the European Commission against Racism and Intolerance. The reinforcement of the valuable work of these independent monitoring bodies should be seriously considered. The effective implementation of other major Council of Europe treaties should also be given priority since they are in

effect complementary to the European Convention on Human Rights. They all belong to the European human rights protection system.

Other parts of the Council of Europe, such as the Venice Commission, offer advisory services to member states in order to facilitate the adoption of systematic measures for the domestic realisation of human rights. Verification of the compatibility of draft laws, existing laws and administrative practices with the standards laid down in the European Convention on Human Rights is deemed to constitute one of the main remedies of the Court's excessive workload.

The Committee of Ministers, assisted by the Department for the Execution of Judgments of the Court, plays also an important role in addressing the shortcomings identified by the Court in order to prevent recurrence of violations. A prompt, full and effective execution of the Court's judgments constitutes a key element for the effective implementation of the Convention's standards in domestic law.

The above require also the active involvement of the national human rights structures, as well as of civil society.

My own office has proven that it can play a catalytic role in the prevention of human rights violations by acting flexibly and rapidly, promoting awareness of the Council of Europe human rights standards as well as their implementation. One of our main objectives is to identify possible shortcomings in the law and practice of member states concerning the compliance with human rights as embodied in the instruments of the Council of Europe, starting with the Convention.

I remain ready to assist member states in their efforts to remedy such shortcomings, and provide guidance for a better implementation of existing standards at national level, for example by indicating legal and other reforms that may be necessary in order to give full effect to the Convention, as interpreted by the Court. This is part of the dialogue I have developed with national authorities during the numerous country visits I conduct every year.

Yet, what we have achieved up until now has created new expectations which we strive to meet. This will only be feasible on condition that the necessary resources for the fulfilment of that mission are allocated.

It is our responsibility to guarantee the continued effective functioning of the Court; and it is the member states' primary responsibility to ensure a better implementation of the Convention at the national level: prevention lies first and foremost with the states, in line with the fundamental principle of subsidiarity which is enshrined in the Convention.

The ideal is indeed that that one day each individual will be able to seek and receive justice at home.

Statements by heads of delegation – Déclarations des chefs de délégation*

Member states

Albania: Ms Brikena Kasmi

Deputy Minister of Justice

Please allow me to express, on behalf of the Albanian Government, our appreciation to the host country for organising this conference on the future of the European Court of Human Rights, to which we wish success for the achievement of the preset objectives toward the human rights continuous reform based on human right values.

I take this opportunity to thank all participating member states that have continuously shown their political will to strongly support the role of the Court toward the protection of human rights and fundamental freedoms.

The commitment to a continuance approach in the framework of this institution for the guarantee and improve of the protection of the human rights and the fundamental freedoms laid out by the European Convention is a testimony of the importance and attention given from the member states of their willingness to undertake all adequate measures for the functioning of the system for the protection of the human rights.

I am personally convinced that any such measure adopted for guaranteeing and improving human rights and the administration of justice contributes to the strengthening of our democratic values and standards, guaranteeing liberty and promoting the rule of law in our home countries.

* Only statements for which the text was made available to the Swiss Presidency Secretariat appear in this publication. Where delegations submitted a longer version exceeding the three-minute time-limit for oral interventions, it is the longer version that was included.

In 1995, when Albania became part of the Council of Europe, apart from its new membership, it brought the historical influence of its past in its legal system. Since then, our legal system has been the result of many committed reforms aiming at establishing the necessary rules and consolidated practice to ensure the accurate application and implementation of the Convention's standards and the Court's case law.

Following the valuable recommendations of the European Court of Human Rights, the Albanian Government has undertaken initiatives for the improvement of the domestic legislation to make progress and to strengthen our legal systems, as well as to ensure that the conditions of a fair trial are guaranteed at all stages of procedures.

Such changes are sometimes imposed to ensure and make possible the improvement of the effectiveness of the Albanian justice, especially related to property issues.

I personally feel that through the issues being dealt with and laid out, this conference will be a very helpful instrument in the hands of all the member states for the defence of democracy, the rule of law and the protection of fundamental freedoms.

The Interlaken Declaration makes a further step towards creating closer ties between the national courts and the European Court itself, complementing each other on all human rights issues.

Taking into consideration the importance of this conference I would like to state the willingness of the Government that I represent for its full commitment in ensuring the adoption of the necessary measures for the implementation of the declaration.

I hope we may all together contribute to the strengthening of the role of the European Court of Human Rights within the Council of Europe, maintaining the Strasbourg system as the important nucleus for the development and guarantee of the human rights system.

Therefore, we fully support the Interlaken Declaration which will give a new vision to this purpose.

Andorra: M. Xavier Espot Miró

Ministre des Affaires étrangères et des Relations institutionnelles

Permettez-moi tout d'abord de remercier nos hôtes suisses pour la qualité de leur accueil à Interlaken et pour l'excellente organisation de cette conférence ministérielle.

Le travail mené à terme par la Cour européenne des droits de l'homme est remarquable. Au nom de mon Gouvernement, je voudrai assurer les Etats membres du Conseil de l'Europe et les autorités de la Cour européenne des droits de l'homme du soutien, sans faille, de l'Andorre à cette institution.

Nombreux sont les problèmes qui entravent le bon fonctionnement de la Cour. Sauvegarder et assurer le futur de ce système unique au monde est tout à fait primordial. Pour cela, il faut que nous soyons tous prêts à y consacrer les moyens financiers suffisants sans pour autant que la Cour européenne des droits de l'homme devienne un gouffre financier.

Des efforts doivent être menés à terme au niveau national pour éviter que la Cour soit engorgée par des affaires répétitives étant donné que certains principes qui découlent des arrêts de la Cour n'ont pas été, ou pas correctement, transposés en droit national. Cette situation est intenable et exige une action urgente. Tous les pays, y compris le mien, doivent être prêts à faire cet effort. Il en va du futur de la Cour européenne des droits de l'homme.

Le système de requête individuelle ne peut pas être remis en question mais une solution doit être trouvée pour faire face aux trop nombreuses requêtes non recevables. Cela passe, entre autres, par une meilleure formation des avocats en général et une meilleure communication de la jurisprudence de la Cour envers les citoyens.

D'autre part, la Cour européenne des droits de l'homme en tant que Cour internationale se doit d'avoir un personnel judiciaire le plus efficace possible afin de faire honneur au rôle qu'elle joue au niveau européen. Il revient donc aux Gouvernements des Etats membres de présenter les meilleurs candidats aux postes de juges nationaux.

Par ailleurs, mon pays est favorable à une meilleure coopération de la Cour avec d'autres acteurs nationaux et internationaux notamment avec les parlements nationaux et les autres organes du Conseil de l'Europe ou la Commission de Venise par exemple. Ceci permettrait d'améliorer l'efficacité de celle-ci. De nombreuses sources de coopération restent très certainement encore à explorer.

Outre les solutions techniques que nous pouvons embrasser pour améliorer le bon fonctionnement de la Cour européenne des droits de l'homme, il est indis-

pensable de veiller au niveau national au respect de la Convention européenne des droits de l'homme, pierre angulaire de notre organisation.

Finalement, nous nous félicitons de la future entrée en vigueur du Protocole n° 14 suite à la ratification de la Fédération de Russie. L'entrée en vigueur de ce Protocole marquera une étape essentielle dans le processus de réforme de la Cour européenne des droits de l'homme. Mais comme nous le savons tous, celle-ci est loin d'être suffisante à elle seule et c'est pour cela que le processus de réforme doit être mené à terme le plus rapidement et le plus efficacement possible.

Armenia: M. Gevorg Danielyan

Ministre de la Justice

L'initiative d'améliorer le fonctionnement des instituts internationaux de la défense judiciaire des droits de l'homme est certainement digne d'approbation. Et pour que cette amélioration soit efficace, je pense que nous devons être prêts à faire face aux défits qui sont déjà évidents, et qui, si le cas se présente, feront échouer toute affaire juste.

Aujourd'hui je ne veux pas traiter en détail ces questions-là, car elles sont présentées dans un dossier à part, remis aux organisateurs.

Ici je vais essayer de traiter quelques unes de ces questions importantes. Je pense que tout d'abord nous devons être conséquents dans nos actions, pour que les instances judiciaires au sein d'un Etat, ainsi que la Cour européenne des droits de l'homme, puissent éviter les problèmes purement politiques et ne pas se transformer en un outil maniable. Malheureusement, les procédures qui existent aujourd'hui peuvent entraîner involontairement la Haute Cour à résoudre des problèmes politiques.

La grande quantité des plaintes non-justifiées est vraiment préoccupante, mais il est à noter que, dans la plupart des cas, ce sont les forces politiques qui, au lieu de défendre les droits de l'homme, portent des plaintes, dans le but de résoudre des problèmes uniquement politiques et d'exercer des pression à ce niveau.

Parfois, dans un court délai, le nombre des plaintes qui ont le même contenu, atteint quelques centaines. Et ce n'est pas par hasard. Ce stratagème sert à obtenir une position prédominante non seulement dans les relations internationales, mais aussi dans les relations entre l'opposition et les autorités au sein d'un Etat afin de s'exercer des pressions les uns sur les autres.

A mon avis ce qu'on vient de dire prouve qu'il faut différencier clairement les affaires entre Etats des affaires privées.

Bien sûr, je ne veux pas traiter toutes les questions pour des raisons exclusivement politiques, car c'est évident que sans leurs solutions juridiques, il n'est pas possible de surmonter les difficultés.

Je suis d'accord avec les représentants de la Cour européenne et avec mes collègues, qui trouvent que, le cadre des réformes doit inclure tout le système d'Etat : les instances juridiques, ainsi que les services publiques.

J'essaierai ici de parler en gros de nos démarches.

- Pendant la révision des lois, les projets sont discutés obligatoirement du point de vue des demandes du droit de précédent judiciaire de la Cour européenne. En même temps il est mise en place un institut de l'expertise de l'influence sociale des actes juridiques.
- Les actes de précédent judiciaire de la Cour européenne vont être considérés comme de nouvelles circonstances pour réviser les actes juridiques.
- On a nettement réglé les rapports qui régissent l'accomplissement des actes juridiques de la Cour européenne et la réalisation des poursuites contre les fonctionnaires coupables.

Les réformes de ce domaine au sein de l'Etat continuent. Nous comptons sur les réformes équivalentes au niveau international. Surtout nous pensons que ce sont des questions qui sont très actuelles :

- Différencier les plaintes des infractions aux droits de l'homme des problèmes portant sur les litiges entre Etats et établir des procédures spéciales de discussion.
- Réviser d'une manière radicale les procédures de la compensation car ce sont des problèmes publics et surchargent vainement cette instance juridique internationale.

Nous sommes persuadés que nous avons tous le même chemin à suivre ensemble, et les malentendus inévitables ne nous empêcheront pas de mener à bonne fin les réformes que nous avons entreprises.

Pour conclure, je remercie encore une fois nos collègues suisses et les organisateurs de cette manifestation très importante de la part des autorités de la République d'Arménie.

Austria: Ms Claudia Bandion-Ortner

Federal Minister of Justice

I wish to express my sincere gratitude to Switzerland and the Council of Europe for the organisation of this important conference.

Austria fully supports the aim of this conference.

The effective protection of human rights and fundamental freedoms has been the cornerstone of the Austrian domestic and foreign policy for many decades. This concept of protection is largely based on the right to individual petition as enshrined in the Convention. The level of protection for individuals would be severely diminished, should the Court no longer deal with all alleged violations of the Convention in the case of failure of national protection systems. Therefore, and given our long-standing legal tradition, we are looking forward to the EU's envisaged accession to the Convention.

The importance of the Court's role as the guardian of human rights becomes particularly evident in times of economic challenges. If the Court's legal and moral authority is to be maintained, in our view, watering-down the principle of the right to individual petition is not an option: neither through additional restrictions on admissibility nor through the transferral of cases to another organ of the Council of Europe or even back to the respective state after a short examination by the Court.

Austria therefore fully supports all efforts which aim at successfully maintaining access to the Court as enshrined in the Convention and at securing the Court's full efficiency. In this spirit we welcome the ratification of Protocol No. 14 to the Convention by the Russian Federation. The entry into force of this protocol, however, is not the end of the process. Further challenges lie ahead of us and will have to be addressed. This Conference is an important first step in this regard.

Like most delegations we attach crucial importance to the process of examining the admissibility of applications, the so-called "filtering" mechanism. A thorough examination of admissibility and merits in all cases certainly is necessary and cannot be done without. In our view the recent reform measures initiated by the Court allow for optimism. However, we are convinced that the efficiency of the Court can be enhanced by additional internal measures such as the appointment of an already discussed specialised "rotating pool of judges" for the examination of admissibility of applications or optimising the so-called pilot judgment procedures.

Above all we consider it crucial that in the light of their shared responsibility, states intensify their endeavours to guarantee human rights and fundamental freedoms, be it through the establishment of adequate prevention mechanisms, such as raising awareness for the respect of human rights and fundamental freedoms or swift and correct implementation, and broad dissemination of translations, of the Court's judgments and involve the legal profession, academia, judges and public authorities as well as journalists. In Austria the teaching of human rights and the Court's jurisprudence are an integral part of the training of Austrian judges. Austria will also consider the possibility of temporary secondment of judges to assist the Registry of the Court.

Last but not least, it is also the states' responsibility to improve the examination of the implementation of the Court's judgments by the Committee of Ministers. In this context, the establishment of an ad-hoc task-force, consisting of independent specialists and seconded national experts could be envisaged to support the Committee of Ministers.

An efficient European Court of Human Rights is of particular importance to Austria, as the European Convention of Human Rights has been attributed constitutional rank in Austria. The Court's jurisprudence therefore constitutes a direct guideline for all Austrian courts and public authorities. Thus Austria is especially committed to the reform process undertaken here in Interlaken.

Azerbaijan: Mr Fikrat Mammadov

Minister of Justice

First and foremost, I should like to acknowledge the efforts of the Council of Europe and the Government of Switzerland in organizing this conference devoted to such a critical issue. We have already enjoyed an excellent welcome and enjoyed warm hospitality.

As it was once wisely noted, human rights are the quintessential values through which we affirm together that we are a single human community.

The adoption of the 1950 Convention and the establishment of the Court was an extraordinary step in creating a unique system of human rights protection. Today, in the eyes of many, the Strasbourg Court represents a last resort. How-

ever, we realise that this institution is not the 4th instance for the national courts and its activity was envisaged in accordance with the principle of subsidiarity.

It is often said that the European Court has become "a victim of its own success", facing a giant increase in the flow of complaints which has resulted in excessive delays in delivering judgments. It is well known that moderation in the pursuit of justice is no virtue.

At the same time I do hope that the expectations of President Jean-Paul Costa will be justified and the conference will give a second wind to the 50-year-old Court. We are confident that the entry into force of Protocol No. 14 will give a serious impetus to this process.

Nevertheless, since the protocol cannot completely remove the imbalance between incoming applications and delivered judgments, we should like to express our support for the draft declaration, which provides for urgent action at European and national levels. Review of the filtering mechanism, consistency in the application of the case-law, wider use of advisory opinions on request from the national courts, and improving the internal structure of the Court and its working methods seem highly desirable.

Alongside this, use of the Council of Europe's official languages in applications, acceptance of completed application forms only, introducing fees for applicants, language training for judges, when necessary, as well as recruitment of local judges in the registry might also be considered.

Measures at the national level should also be strengthened. Given that the package of 2004 documents has not lost its relevance, Azerbaijan deems its implementation very efficient.

Thus, a profound judicial reform implemented with the Council of Europe, establishment of the Judicial Legal Council, introducing the most transparent and progressive selection of judges, modernisation of the courts in association with the World Bank in order to increase access to justice are all aimed at improving the effectiveness of domestic remedies.

The fact that every second complaint lodged with the Court is "repetitive" reminds us that widespread knowledge is an important element in protecting human rights. The case-law of the European Court is not just a collection of decisions on violations of fundamental rights, but a unique source of legal thoughts.

While studying the precedents we use the capacity of the Justice Academy which has a wide range of trainees: judges, prosecutors and lawyers – the major players in the field of human rights. I am delighted to note the efficiency of international co-operation in this field. Many of our foreign colleagues, as well as the honourable judges of the European Court, are involved in training on the Convention.

We have already seen that translation and dissemination of the case-law, the study of violations of the Convention and permanent seminars on this issue,

analysis of national jurisprudence, taking into account the precedents of the European Court held by the higher national courts, and focussed training for judges who have difficulties applying of the Convention, all give good results.

Enhancing the role of the Council of Europe information offices in these issues will undoubtedly make a significant contribution towards implementation of the Convention and generally to increasing the human rights culture.

Thus, given the political will and the twin aims of increasing the effectiveness of national systems and improving the work of the European Court, we shall be able to achieve this goal. We shall start immediately. Since as Martin Luther King once said: "A right delayed is a right denied".

Belgium: M. Stefaan de Clerck

Ministre de la Justice

Je remercie les autorités suisses pour l'organisation de cette conférence.

Nous sommes réunis ici en vue de réaffirmer notre engagement pour la protection des droits de l'homme en Europe ainsi que notre détermination à permettre à la Cour de jouer son rôle essentiel de mécanisme de protection.

La Cour et tous les magistrats ne peuvent sous-estimer l'énorme importance de leurs décisions mais aussi l'effet politique et le grand travail législatif qui découle parfois des arrêts de la Cour.

Nous – les parlements et gouvernements nationaux – devons pour notre part à tout prix garantir que l'adhésion totale à la jurisprudence soit sauvegardée. Le scepticisme qui apparaît ici et là doit être combattu à la fois par un plus grand engagement des Etats et par une meilleure organisation de la Cour.

Chacun doit prendre ses responsabilités pour faire jouer pleinement le principe de subsidiarité. Il est d'abord de la responsabilité des Etats de garantir l'application et la mise en œuvre de la Convention, et ce, de manière proactive. J'ai été sensible à cet égard à la proposition de plan national d'action par le Commissaire aux droits de l'Homme, M. Hammarberg.

L'Etat ne doit pas attendre un constat de violation pour assurer la protection intégrale au niveau national des droits et libertés garantis par la Convention.

Il peut s'inspirer des réformes d'un autre Etat ou des conséquences d'un arrêt de condamnation contre un Etat ayant un système similaire. L'Etat ne doit pas non plus adopter systématiquement de nouvelle législation pour mettre fin à une violation ou améliorer les voies de recours internes, il peut œuvrer à une modification de la jurisprudence ou de la pratique.

En matière de filtrage des requêtes, nous insistons sur l'intérêt d'une large diffusion de l'information sur les critères de recevabilité et les règles à observer pour le dépôt d'une requête. La réflexion sur ce sujet pourrait être entamée immédiatement.

La Belgique est également favorable à la mise en place à court terme d'un système de rotation entre les juges du collège actuel et à l'évaluation des effets de cette mesure sur le filtrage des requêtes répétitives ou manifestement mal fondées.

En ce qui concerne la jurisprudence, l'Etat belge souhaite mettre l'accent sur la nécessité pour la Cour de prendre des mesures lui permettant de rendre des arrêts clairs et uniformes entre les différentes sections. Une jurisprudence qui fixe sa portée dans le temps et permette de servir de guide pour les juridictions nationales et de message clair vis-à-vis des requérants potentiels.

Consciente du rôle crucial que joue, pour la viabilité du système de la Convention, l'exécution des arrêts de la Cour, une fois définitifs, la Belgique accueille favorablement l'adaptation des méthodes de travail et des règles du Comité des Ministres pour la surveillance de l'exécution. Ceci, de manière à permettre au Comité des Ministres de se concentrer, en plénière, sur les affaires nécessitant son implication collective.

En conclusion, l'Etat belge souligne l'intérêt du calendrier des réformes proposé dans le plan d'action de la Déclaration d'Interlaken que nous soutenons fortement.

Avec l'entrée en vigueur du Traité de Lisbonne ainsi que la ratification du Protocole n° 14, la base juridique pour l'adhésion de l'Union européenne à la Convention européenne des droits de l'homme est acquise.

La Belgique mettra, après la Présidence espagnole, à son tour tout en œuvre pour la bonne réussite de cette adhésion.

Bosnia and Herzegovina: Mr Bariša Čolak

Minister of Justice

First of all, allow me to express my sincere gratitude to the Government of Switzerland for organising this high-level conference, which is of great importance for the future of the European Court of Human Rights.

Also, it is a great honour for me to participate in this special event and to have the opportunity to express readiness and strong support of Bosnia and Herzegovina to the reform of the European Court of Human Rights.

We are all aware of the urgent need to reform the Court, bearing in mind its backlog of cases. However, true reform can be carried out only with joint and decisive contributions from all member states that share the same responsibility for the protection of human rights. In this context we welcome the forthcoming entry into force of Protocol No. 14 to the Convention. This undoubtedly represents an important step in the reform of the Court.

However, experience has shown that, besides Protocol No. 14, other measures are also necessary to make the Court more effective, enhance the implementation of the Convention at the national level and make the execution of judgments more efficient under the supervision of the Council of Europe's Committee of Ministers.

In the light of our support to the work and contribution of the Court to the protection of human rights and the creation of unified legal standards in member states, we would particularly like to stress the importance of uniform implementation of the Convention and coherence and consistency of the Court's case law for the reason of legal certainty.

Also, we should like to point out that Bosnia and Herzegovina remains profoundly committed attached to the right of individual application.

The current situation in many member states shows that a special emphasis still needs to be placed on the protection of rights through judicial determination of individual applications submitted to the Court. However, our mutual goal should be to enhance the protection of human rights primarily at the national level.

Therefore, we emphasise the need for the implementation of the necessary measures so that the principle of subsidiarity is fully put in place in each member state. In this regard, as a positive example, we point out the fact that the Convention is directly applicable in Bosnia and Herzegovina. In addition, the work of the Constitutional Court of Bosnia and Herzegovina, which is competent to handle complaints of alleged violations of human rights and which fully applies the case-

law of the European Court of Human Rights, undoubtedly contributes to the strengthening of the principle of subsidiarity.

Furthermore, we are also aware of the importance of efficient and timely execution of the Court's judgments at national level, particularly with regard to the implementation of general measures in order to avoid repetitive cases before the Court.

And finally, we should like to emphasise the support of Bosnia and Herzegovina for the proposed measures contained in the Interlaken Declaration, considering these measures to be essential for the necessary improvement of the existing mechanism for the protection of human rights.

Bulgaria: M^me^ Margarita Popova

Ministre de la Justice

Depuis sa création, il y a déjà cinquante ans, la Cour européenne des droits de l'homme acquiert une notoriété croissante. Ses arrêts ont un impact considérable sur les systèmes juridiques nationaux. Et, dans le même temps, elle se trouve confrontée à un afflux massif de requêtes.

Pour pouvoir faire face au nombre croissant de requêtes portées devant elle, la Cour va devoir être réformée d'urgence. Elle doit trouver dans les mécanismes et les procédures en place les ressources nécessaires pour en améliorer l'efficacité. Cela étant, les problèmes que posent les financements supplémentaires nécessaires nous obligent à faire preuve de réalisme.

Trois grandes lignes de réforme se dégagent, à mes yeux :

- L'entrée en vigueur du Protocole n° 14 facilitera le travail de la Cour, car elle lui permettra de se concentrer sur les affaires liées à des violations particulièrement graves de la Convention. Nous attachons beaucoup de prix au mécanisme de filtrage, qui réduira très fortement le nombre des affaires à traiter.
- Par ailleurs, le Traité de Lisbonne, entré en vigueur le 1^er^ décembre 2009, prévoit l'adhésion de l'Union européenne à la Convention européenne des droits de l'homme. Cette adhésion confère de nouvelles dimensions au rôle que doit jouer la Cour européenne des droits de l'homme. En effet, elle est appelée à travailler en étroite coopération avec la Cour de justice de l'Union euro-

péenne. Il faut rechercher de nouvelles possibilités en ce qui concerne l'amélioration de l'organisation et du fonctionnement des structures existantes.

- Je demeure convaincue que la réalisation de la réforme relève de la responsabilité des Etats parties à la Convention européenne des droits de l'homme. C'est donc à eux qu'incombe en premier lieu la responsabilité de garantir au niveau national les droits protégés par la Convention, comme le veut le principe de subsidiarité. Dans ce contexte, je suis moi aussi d'avis que la prévention joue un rôle essentiel et qu'il faut orienter les efforts vers une amélioration de la mise en œuvre de la Convention dans les systèmes juridiques nationaux, y compris par la formation et la qualification des magistrats et d'autres mesures internes adaptées. Il s'agirait d'effectuer les réformes nécessaires dans les législations internes et de les harmoniser entre les États membres concernés afin d'assurer la mise en œuvre effective et coordonnée de la Convention.

L'idée initiale de la CEDH était d'assigner à la puissance publique nationale la responsabilité d'appliquer la Convention. Le rôle de la Cour en tant qu'instrument pour faire respecter la Convention se limite à la surveillance qu'elle doit exercer sur le respect par les États membres des engagements qu'ils ont souscrits. En ce sens, la réforme à venir doit être comprise comme la possibilité donnée à la Cour de concentrer ses efforts sur les problèmes fondamentaux, par la réduction du nombre excessif de requêtes dont elle est saisie.

Croatia: Ms Štefica Stažnik

Government Agent before the European Court of Human Rights

I thank the Swiss authorities for this initiative that has given us the opportunity to engage in a serious debate on the future of the European Court of Human Rights and to increase our efforts to secure its central position in human rights protection in Europe. It is my honour to pledge today, together with other high officials of the state parties to the Convention, strong support for an efficient Convention system.

Croatia shares the stance that priority in the reform process remains with the effective implementation of the Convention at the national level. This is work in

progress that should continue to be improved. The steady development and implementation of domestic remedies remain key elements for the effective protection of human rights under the Convention.

However, with over 90% of applications deemed inadmissible, and with the backlog of the Court reaching alarming figures, focus should be kept on the need for the efficient administration of justice by the Court itself. The Court should be enabled to continue to interpret the Convention in contemporary circumstances, in accordance with its objectives and in line with its purpose as a major human rights instrument, with due regard to the principle of subsidiarity.

As we believe that the right to individual application is an expression of accessibility of the Convention, we are particularly glad that its fundamental importance is to be confirmed on this occasion. This right needs at the same time to be effective and adjusted to the true role of the Court as the guarantor of human rights on the European continent.

We are certain that, with the entry into force of Protocol No. 14, not only will the operation of the Court become more efficient, but the Court will also make full use of the new admissibility requirement to balance the number of incoming applications with essential focus on those that reveal particularly serious or systematic human rights violations.

We agree that at a certain point a need may arise to introduce an additional filtering mechanism inside the Court in order to ensure efficiency. However, this issue remains particularly complex. It requires further reflection where due respect should be given to some fundamental aspects of the Court system as such, among which the need to ensure judicial process and regard for particular national expertise when complex human rights situations are adjudicated.

Finally, I would like to stress the importance of the effective execution of the Court's judgments as one of the crucial elements for the success of the system as a whole. Full and rapid execution at national level remains a priority for all states. As for collective supervision, there is certainly space for further improvement, for which responsibility should stay, in accordance with its conventional role, with the Committee of Ministers.

The European system of human rights protection has always been at the forefront of the world and we fully believe that the process this Conference has launched will once again confirm Europe's ability to secure and enhance human rights protection in an exemplary manner for the benefit of more than 800 million of its inhabitants.

Cyprus: Mr Euripides Evriviades

Ambassador, Permanent Representative to the Council of Europe

I join previous speakers in expressing my delegation's deep appreciation to the Swiss presidency not only for its gracious hospitality in these mesmerising surroundings but, most importantly, for its leadership and vision to organise this conference. We are confident, Madame Minister, that under your wise and prudent guidance, our deliberations will be crowned with success.

The draft declaration is a testament of the hard work undertaken by your team in the run-up to this conference through the engagement of all stakeholders. We pay tribute to them, including Ambassador Paul Widmer who presided over our discussions in an impeccable manner and with Swiss accuracy. The text before us is a compromise. While it may not make everyone entirely happy, at least we can all be sufficiently content so that it can be adopted by consensus.

We would also like to congratulate the Russian Federation on its ratification of Protocol No. 14. Undoubtedly, this is an important step in the reform of the Court. It cannot, however, solve the Court's backlog problem on its own.

We welcome the fact that the right of individual application enshrined in Article 34 of the Convention and which is unprecedented in the field of international protection of human rights, is fully safeguarded. It must continue to be so in the post-Interlaken process. This right is the first pillar of the system. It must not be compromised in any way, shape or form. It is not the fault of the applicants if the Court is overwhelmed by cases.

Current and future admissibility criteria should not be applied in a manner which curtails the right of individual petition as this might lead to the rejection of otherwise meritorious cases. The whole human rights mechanism of the Council of Europe, should not be seeking ways to cut administrative corners at the possible expense of rendering justice.

We must also do more to ensure that our citizens do not feel the need to take "the long road to Strasbourg". The principle of subsidiarity is indeed fundamental; it is the other pillar of the system. It must be fully respected and implemented. There is shared responsibility with the Court, but it is the primary responsibility of the contracting parties to guarantee, at the domestic level, the application of the Convention.

National remedies should comply continuously with the required standards under the Convention and thereby individuals will find redress to their complaints in a manner that respects both the letter and the spirit of the Convention.

Full and rapid execution of the Court's judgments by the contracting parties including treating all similar cases, remains a crucial element in guaranteeing the credibility of the whole human rights mechanism. This presupposes an effective, completely transparent and apolitical supervision of the execution of the judgments by the Committee of Ministers. The Committee should not be interpreting these judgments in a way that would delay or hinder their execution.

Finally, the Convention system will not continue to flourish if no resources are provided at the national and supranational levels. I am cognizant of the fact that this is easier said than done especially since we are all wearing financial straightjackets these days. Nonetheless, there is no way around the fact that, besides the reform, the Court needs increased financial resources; and these cannot come from the regular budget of the Council of Europe which is stretched to the very limit. There is added value, I believe, in examining the modalities of a separate budget for the Court.

Czech Republic: Ms Daniela Kovářová

Minister of Justice

The Czech Republic has very much welcomed the initiative of the Swiss Chair to organise this conference as we are aware of the latest statistical data on its agenda. And the data are really alarming. However, the most important fact is that the situation is worsening each month and it will not be easy to turn around such a trend.

The Czech Republic has joined the proposed declaration as prediscussed. Even though we were prepared to support a plan which would go even further, we are aware of the fact that it's necessary to find a common denominator for the 47 member states. And that is not easy.

On the other hand, I can imagine that fees would be introduced. And perhaps such a measure could mean that help would reach those who really need it much faster.

Once Protocol No. 14 comes into effect, there will no longer be an opportunity for judges to hold their office for more than one tenure. As a result, quite a large amount of judges would leave the court still strong and vital and we should

ask ourselves a question whether it would not be purposeful for these judges to stay at the Court perhaps as non permanent members asked to sit on the Grand Chamber *ad hoc*. This would inter alia support the capacities of judges at the Court while maintaining the continuity and stability of adjudication.

Finally we shouldn't forget to evaluate, if possible, the effectiveness of all the measures already adopted, starting with measures introduced by Protocol No. 14. In case we fail to find an adequate solution to overloaded court by 2019 we should either completely sacrifice the existing right of each applicant to receive a reply to their complaint from Strasbourg or to limit such a right only to the most serious breaches of the Convention. What is at stake is not only the credibility of the control mechanism of the Convention as something good that we offer to 800 million citizens but also the credibility of ourselves as political representatives in a situation when we are aware that we are not able to fulfil the ideal goal.

On behalf of the Czech Republic I strongly believe that this Conference will be engraved in the history of the Convention as a milestone and it will direct the Court into dozens of years of not easy but fascinating way towards practical fulfilment of the idea of human rights.

Denmark: Mr Arnold de Fine Skibsted

Human Rights Ambassador

I should like to take this opportunity to express Denmark's deep appreciation to the Swiss chairmanship for arranging this very important event and for its tremendous work so far. We warmly welcome this opportunity to discuss the future of the European Court of Human Rights.

On this occasion I should like to emphasise that Denmark continues to be a strong supporter of the Court in its unique role as the judicial defender of human rights at the European level. Today, more than 800 million citizens have direct access to the Court.

However, it is also fair to say that by now, the Court is to some degree a victim of its own overwhelming success. Currently, around 120 000 applications are

pending before a decision body, and urgent measures are needed to enable the Court to deal with this case-level.

To that end, we warmly welcome the coming entering into force of Protocol No. 14. In our view the protocol contains a number of valuable elements which represent real progress in adapting the system to the challenges before us. We believe that the protocol provides us with useful tools and that it may be a catalyst for further evolution of the Court's working methods and procedures. That being said, we must keep in mind that the protocol itself will not reduce the volume of cases coming to the Court. Other measures and initiatives are still indispensable.

Our approach should be constructive and realistic, and we should seek to identify and take measures which will increase the capacity of the Court to process applications, reduce the number of outstanding applications and to deliver judgments. Our basic objective should therefore be to ensure that the Court is in a position to respond to applications and to continue to deliver high-quality judgments within reasonable time.

To that end, we, the States Parties, also have to assume our responsibility. The necessary political will to solve the issues of the Court and at home has to come from us.

Denmark highly appreciates the ongoing efforts made by both the Court and the Registry to increase efficiency and to sustain the increased workload. It is of paramount importance that there is a constant process of re-assessment within the Court and Registry to ensure that both bodies are making the best use of the resources made available to them. It is essential that the Court and the Registry continue their reform efforts and carefully analyse the reforms possible without amending the Convention and its Protocols.

But other options have to be explored as well. It is a fact that even if the Convention is fully and effectively implemented in all of the Contracting States, applications will continue to come to Strasbourg. Even effective implementation does not necessarily reduce the inflow of clearly inadmissible cases.

For this reason, it is essential that an additional judicial filtering mechanism is introduced. This would make it possible for the Court to devote its attention to cases concerning the most serious human rights violations. Of course, we will have to further elaborate on the composition and work methods of such a judicial filtering mechanism, but attention to the matter should be given immediately following this conference.

In addition, we support the considerations of a Statute for the Court.

In conclusion, Denmark wishes to reiterate its firm belief in the principal role of the Court. We reiterate our support for the Court in its efforts to achieve its noble objectives. It is our sincere hope that the work done here in Interlaken will lead to action, and Denmark will do its part to achieve these goals.

Estonia: Ms Aino Lepik von Wirén

Undersecretary of Legal and Consular Affairs at the Ministry of Foreign Affairs

On behalf of the Estonian delegation, I would like to thank Switzerland for organising the High Level Conference on the Future of the European Court of Human Rights. We highly appreciate the Chairmanship of Switzerland and the effort to bring together all the parties to the convention in order to come to a consensus as to what additional measures should guarantee the effectiveness of the European Court of Human Rights for the years to come.

Estonia is looking forward to the entering into force of Protocol No 14. The enforcement process should not hinder the states from taking further action and should be parallel with working out new measures, both medium-term and long-term, to make the convention system even more effective.

There are some fundamental principles on which all the states agree as a basis for future Court reform: first is maintaining the right to individual petition. In that context, Estonia would like to underline the right of citizens of all parties to the convention to submit their petitions in their mother tongue.

The second principle that is supported by all is subsidiarity. Each state can do more domestically: disseminate the case-law of the Court more widely, both to the public as well as to the domestic courts and legislators, and inform the public of how and when to apply to the Court of Human Rights in order to avoid clearly inadmissible applications. States should also guarantee that domestic remedies to the violations of the convention exist and are both effective and accessible, not only theoretical; and inform the applicants of the existence of such remedies.

In support of states' actions that are taken domestically, assistance from the Court of Human Rights as well as from the Committee of Ministers would be appreciated to help the states with screening the case-law of highest importance. In that respect Estonia welcomes the underlining of the importance of ensuring the clarity and consistency of the Court's case-law in the Declaration.

Estonia also finds that creating a supplementary filtering mechanism is of crucial importance because it could be a concrete solution to minimising the back-log of applications. It is preferable that during further debates all the different filtering mechanism alternatives would be kept on the table.

At the same time, the need for the supervision of the execution of judgments to become more efficient and transparent can not be ignored. Estonia would not exclude the necessity of a broad review of the whole mechanism of execution of judgements as a possible tool for reaching that aim.

Estonia supports the adoption of the Declaration and the Action Plan and hopes that the concrete deadlines stipulated in the Implementation part of the Action Plan help to put into practice the decisions made at this Conference.

Finland: Ms Tuija Brax

Minister of Justice

In this Conference organised by Switzerland we discuss the European Court of Human Rights and its effective functioning in the future. To find the appropriate solutions, we need open-minded discussion on different alternatives and profound assessment of their meaning and effects, and finally a determined decision to adopt the necessary measures.

The Court's work will be facilitated by the entry into force of Protocol No. 14 which includes many improvements to the present situation.

However, this is no longer sufficient.

Bearing in mind the target year of 2019 of this Conference, such longer lasting solutions should be found that would make it possible for the Court to adapt to diverse new situations, without need to resort to further major procedural reforms.

All the necessary future measures to be taken should, in any case, serve the fundamental purpose of protecting and developing human rights.

The Government of Finland highly esteems the right of individual application, also in the new modernised system of the Convention control mechanism. This right may be duly dealt with already under the present provisions of the Convention, including a restriction introduced in Protocol No. 14.

Both the States Parties and the Council of Europe should anticipate possible human rights problems before the Court is required to act. This would reduce the flow of applications so that the Court can focus on those cases where its judgment is necessary for consistent interpretative guidance, and particularly to ensure dynamic interpretation of the Convention.

The future filtering of clearly inadmissible cases should be simple and cost-effective. That requirement would be met by providing members of the Registry with certain judicial powers.

In repetitive cases, the Court's interpretation is not necessary. However, a simple indication by the Court of such nature of the case would make the national execution measures less cumbersome.

There appears to be an increased need for rapid heavy-weight precedents directly through Grand Chamber rulings, i.e., without a prior Chamber judgment. This would contribute to a re-strengthened status of the Court's case law as *res judicata*, which all Contracting States should follow.

It is of utmost importance that he Court itself takes care that its case-law is sufficiently accessible in a usable format, and to have the case law continuously updated. Another valuable tool in this respect would be an easy-to-read manual published in the national language(s).

Finally, it could be considered whether the Committee of Ministers is the body most suited to perform the detailed supervision of the legal obligation to enforce the Court's judgments and decisions, save in the most important cases.

The Government of Finland has already for long time supported the accession of the European Union to the Convention. We are pleased to see that this accession, which is of great importance, is now finally approaching.

Ensuring the effectiveness of the European Court of Human Rights is in the interest of all. We look forward to a thorough and fruitful follow-up of the Interlaken Conference.

France: M. Jean-Marie Bockel

Secrétaire d'État à la justice

Je me réjouis d'être aujourd'hui parmi vous pour évoquer la position de la France dans le cadre de la conférence ministérielle sur l'avenir de la Cour européenne des droits de l'homme.

Je souhaite tout d'abord remercier les autorités suisses pour l'initiative qu'elles ont prise en organisant cette conférence qui marquera une nouvelle étape dans l'histoire de la Cour.

Clin de l'œil de l'histoire, vous remarquerez que cette conférence d'Interlaken se rient la veille d'une date anniversaire, celle de la disparition de René Cassin, le 20 février 1976.

En mentionnant son nom, je ne veux pas seulement évoquer le rôle qui fut le sien en sa qualité de vice-président, puis de président de la Cour européenne des droits de l'homme, mais je souhaite surtout rappeler son influence fondamentale dans l'élaboration de la Convention.

J'ai plaisir à rappeler le plein engagement de la France en faveur du mécanisme unique du recours individuel. Nous pouvons être fiers d'avoir réussi à créer un dispositif permettant à tout citoyen du continent européen, depuis Brest jusqu'à Vladivostok, de pouvoir exercer un ultime droit de recours afin de faire reconnaître ses droits fondamentaux.

Remédier à l'engorgement de la Cour pour assurer sa pérennité : la question du filtrage

Le succès du recours individuel est malheureusement à l'origine de l'engorgement actuel de la Cour qui pourrait remettre en cause sa pérennité: le nombre de requête a ainsi été multiplié par 10 en 10 ans pour atteindre le nombre de 120 000 en 2009.

A cet égard, le vote récent, par les autorités russes, de la loi autorisant la ratification du Protocole n° 14 est porteur d'espoir pour le traitement des requêtes en souffrance, avec en particulier les nouvelles compétences dévolues à un juge unique et aux comités de trois juges.

Il sera essentiel, dans les mois qui viennent, d'évaluer les effets de ces nouvelles dispositions procédurales et d'en mesurer les conséquences sur le stock d'affaires. Les premiers résultats apparaissent prometteurs avec les 2 200 décisions de juge unique déjà adoptées par la Cour.

La question du filtrage des requêtes est cruciale, lorsque l'on sait que près de 90% des nouvelles saisies de la Cour sont déclarées irrecevables.

Mesurons d'abord les effets du Protocole n° 14 qui prévoit également un nouveau critère d'irrecevabilité avant d'envisager de nouvelles réformes.

S'agissant des requêtes répétitives qui participent à l'engorgement de la Cour, la France est favorable au développement des conclusions de règlements amiables et à l'adoption de déclarations unilatérales, «sous réserve qu'un important travail pédagogique soit mener pour éviter l'incompréhension des requérants.

Vous l'avez compris, la France souhaite s'engager avec vous, chers collègues, dans une déclaration politique forte pour permettre le commencement d'un processus graduel de réforme de la cour.

L'établissement d'une feuille de route nous semble à cet égard essentiel pour bâtir durablement les réformes nécessaires.

Le renforcement du lien entre les Etats et la Cour est une condition nécessaire au succès de la réforme

La réussite de ces objectifs implique un renforcement du lien entre les Etats et la Cour qui est condition nécessaire au succès de la réforme.

Cette réussite repose sur des engagements réciproques:

S'agissant des Etats

Nous devons nous assurer de donner son plein effet au principe de subsidiarité, en nous assurant au niveau national du respect des droits garantis par la Convention européenne des droits de l'homme.

Les Etats ont également le devoir d'exécuter les arrêts de la Cour et d'en tirer les conséquences pour l'avenir, afin d'éviter toute nouvelle violation similaire.

Nous avons enfin le devoir d'apporter notre soutien à la Cour, notamment en proposant nos meilleurs candidats aux postes de juges ou en rendant possible le détachement de juges nationaux. Si l'indépendance de la Cour doit être garantie, il convient de rester prudent sur la question de son autonomie: l'interdépendance entre le mécanisme de contrôle de la Convention et les autres activités du Conseil de l'Europe doit être réaffirmée.

S'agissant de la Cour

Les Etats sont en droit d'attendre de la Cour le développement d'une jurisprudence plus prévisible, sur laquelle nos juridictions nationales pourront s'appuyer afin de motiver leurs décisions.

Une Cour unique pour 800 millions de requérants potentiels a le devoir de rendre des décisions incontestables: la France veut rappeler ici son attachement au principe de sécurité juridique.

Sur la question de l'exécution des arrêts de la Cour, je ne peux que saluer la proposition invitant le Comité des Ministres à favoriser une meilleure interaction avec les autres instances du Conseil.

Vous aurez dans les années à venir, de nombreux défis à relever et notamment la question de l'adhésion de l'Union européenne à la Convention européenne des droits de l'homme ou la nouvelle dimension prise par la Charte des droits fondamentaux de l'Union européenne devenue obligatoire depuis l'entrée en vigueur du Traité de Lisbonne.

Interlaken n'est à mes yeux que le début d'une longue réflexion, qui doit s'engager sur l'avenir de la Cour.

Sachez que vous pourrez compter aujourd'hui comme demain sur le soutien de la France.

Georgia: Mr Zurab Adeishvili

Minister of Justice

Let me join the previous speakers to congratulate the organizers of the present Conference and to extend my very special gratitude to the Swiss Federal Ministry of Foreign Affairs for the excellent hospitality.

Our role today is important and the responsibilities are huge – the delegations present here shall define the frameworks of the reform and the future of the principal judicial body of the Council of Europe. European Court of Human Rights has been playing its important role in promoting common European values throughout the continent. Preservation of its efficiency without prejudice to the core principles of the Convention is urgent.

The Georgian delegation welcomes the analytical work done in preparation of the conference, in particular the work of the CDDH, the very useful contributions of the NGO coalition, and the wise guidance of the Secretary General and the Office of the High Commissioner for Human Rights. We share the spirit that the right balance between the right of individual applications and the principle of subsidiarity needs to be found.

Being mindful of the fact that national authorities have the primary obligation to provide both effective protection of human rights and the remedies for a violation, we believe that it also requires broader engagement among all stakeholders. Clarity and predictability in the Court's practice is one of the important elements here. Coherent case law will greatly contribute to and facilitate enhancement of its application, as authoritative interpretation of the Convention obligations, by national judicial or other relevant organs.

After the Court finds a state in breach of the Convention, the redress of a breach through the enforcement of the final judgment needs to be a priority. However, one should be mindful that enforcement process is an engagement of equally interested parties that helps the states to eradicate the problem. Engagement of all relevant stakeholders, both at national and international level is critical for protection of human rights and securing efficiency of the Court.

My intervention would be meaningless without mentioning the importance of filtering inadmissible cases. We welcome the entry into force of Protocol No. 14 that simplifies the admissibility procedures; though we recognise the need of more far reaching approach.

We cannot solve all problems today, but we should reconcile our positions and pave the road for the future reform. Hope this excellent ambiance around us will have positive influence.

Germany: Ms Sabine Leutheusser-Schnarrenberger

Federal Minister of Justice

The European system for the protection of human rights is unique throughout the world. Anyone with a claim that his or her human rights have been violated may file a complaint with the European Court of Human Rights, which will make a binding decision on the matter.

But this accomplishment is in danger. We can still avert that danger. This is why we have gathered here in Interlaken. It is a great pleasure for me to be able to participate in this conference. After all, I have a very personal interest in the future of the European Court of Human Rights. During my time in the Parliamentary Assembly of the Council of Europe, I dedicated a great deal of time to human rights issues, and am well aware of the importance of promoting and defending human rights.

How can we now ensure that the Court will continue to be able to focus on its work as we go forward?

I am convinced that we need reforms at three levels:

Firstly, at the level of the states. We – the states – can take the lead in stemming the flow of complaints! We must truly implement the Court's judgments and ensure effective legal remedies in the case of potential violations of the Convention. A national human rights complaint to a human rights or constitutional court would be especially suited to keeping human rights cases away from the Court in Strasbourg. For this reason, I call upon you to take our conference here in Interlaken as an occasion to seriously consider introducing a human rights complaint into your legal orders.

Secondly, the Court needs to take its fate into its own hands. It must explore all possibilities provided by the Convention and its additional protocols to streamline proceedings and to rapidly reject inadmissible complaints and petty matters. I have noted with great interest that only recently, the Court rejected a complaint in a German case as an abuse of the right to submit complaints due to its petty character.

Thirdly, we states must also offer a hand to help the Court. I am convinced that we need to improve structures at the European level as well. For this reason, Germany has proposed the establishment of another filtering mechanism within the Court, which would ease the burden posed by inadmissible applications. We believe that a new category of additional judges should be created for that purpose.

Undertaking reforms at these three levels will allow us to secure the future of the European system of human rights protection. Let us take advantage of the opportunity presented to us here in Interlaken!

Greece: Mr Fokion Georgakopoulos

Legal Advisor of the State

The Hellenic Government wishes to underline their great appreciation for the most important role of the Court in the establishment of the role of law and the protection of human rights within the States Parties of the Council of Europe.

But the Court is called to pay a heavy tribute for its success: a continuously rising caseload due to the enormous increase of individual applications.

That burden of work might jeopardise the effectiveness of the Court and endanger its importance as a guarantor not only of the passive protection, but also of the further development of the rights provided by the Convention.

The Hellenic Government is deeply concerned with this situation and strongly supports the urgent examination and implementation of those measures which are appropriate to meet the problem.

It is clear that this concern is inspired by our strong commitment to the Protection of Human Rights and the importance of the role of the Court as a fundamental institution dedicated to their protection.

It is beyond any doubt that the fulfilment of the task of the Court is closely related to the individual application, which until now has be proven an invaluable instrument for the accomplishment of that purpose. But it is also true that the individual application should be an *ultimum remedium*. Prevention and protection of Human Rights should be based on the principle of subsidiarity which entails that the Convention, and the Rights therein, as interpreted by the Court, have to be applied and protected, in the first place, by the domestic Courts.

Therefore it is necessary that all internal legal orders provide for effective remedies not only under Article 6 but also under Article 13 of the Convention.

Secondly, it is necessary to forge strong bonds of mutual respect and understanding between the European Court of Human Rights and the domestic Courts. The relations between the national and the European judge are not rela-

tions of conflict or antagonism but, rather, relations of cooperation, because both concur to a common task: the care for the protection of human rights.

For the improvement of this co-operation, the Court should be encouraged to develop further standards of clarity and consistency of its case-law. The judgments in the Kudła and the Eskelinen affairs are excellent examples, permitting the conclusion of general, and succinct principles easily applicable not only by the defendant but from all States Parties.

Furthermore the reinforcement of the individual application, with the attribution to the Court of the competence to examine preliminary questions, should be, in our opinion , thoroughly examined. This competence could bring domestic courts and the ECHR closer, and would relieve the Court from the burden of establishing on its own the facts and the domestic law of a case.

Finally, regarding the improvement of the filtering proceedings, we are of the opinion that a close co-operation mechanism should be established among the Court, the Committee of Ministers and the States Parties, for the purpose of fixing the commonly accepted data of the admissibility of the individual applications, which will be further communicated by the States Parties. On the same question, rotation of the judges could be welcomed while the institution of a separate body of judges might prove a further procedural burden.

Closing we would like to thank from heart the Swiss Confederation for the excellent organisation of this conference and the warmth of their hospitality.

Hungary: Mr Gábor Papp

State Secretary for Public Law at the Ministry of Justice

I am thankful to the Swiss Government for organising this conference and encouraging us to think about the future of the European Court of Human Rights.

Hungary attaches great importance to the preservation of the right of individual petition and the unique system of human rights protection provided for by the European Convention on Human Rights. This was our position in the course of the elaboration of Protocol No. 14, too, which is finally about to enter into force. We welcome its ratification by all Contracting Parties and hope that it can

at last fulfil its intended role in making the functioning of the European Court of Human Rights more efficient. Protocol No. 14 can hopefully triple the Court's capacity to deal with clearly inadmissible cases, in single judge formations instead of committees of three judges, and double its capacity to handle manifestly well-founded, repetitive cases, in committees of three instead of chambers of seven judges, which together consist the heaviest workload of the Court. We hope that the effects of Protocol No. 14 will soon be seen.

Meanwhile Hungary supports the efforts of strengthening further the Convention system, and especially the reinforcement of the principle of subsidiarity, the strengthening of the Court's administrative capacities and of the awareness of national authorities of the Convention standards, including by the possibility of seconding national judges. We support the idea of reinforcing the Contracting Parties' obligation to take into account judgments delivered in respect of other Contracting Parties in applying the Convention at national level and implementing it in their respective domestic legal systems.

On the other hand, the principle of subsidiarity should be more clearly reflected in the Court's jurisprudence, too. We consider that the Court still has some margin of interpretation in the application of the rules of admissibility that could be used to reduce the Court's work-load without any further amendment to the Convention.

In the light of the foregoing, Hungary supports the efforts aimed at ensuring more effective enjoyment of the rights set out in the Convention and its protocols and we welcome the involvement of the NGOs in this process.

Iceland: Ms Thórunn J. Hafstein

Acting Permanent Secretary, Ministry of Justice and Human Rights

A review of the rules under which the Court operates is both necessary and overdue. The current caseload of the Court effectively undermines the rights of individuals to lodge applications, as the Court cannot, within an acceptable time limit, address cases which concern fundamental human rights and have the potential of establishing important precedents.

Hopefully, Protocol No. 14 to the Convention will to some extent mitigate the problems caused by the increased number of applications but more will be needed. Iceland therefore supports proposals which are designed to reorganise the work of the Court in order to preclude reception by the Court of cases which should properly be resolved in the member states.

Iceland supports the importance attached to the subsidiarity principle, whereby the primary responsibility for securing human rights lies with the states themselves, and not the European Court of Human Rights. At this point it is of decisive importance for the future of the European human rights system to focus on the Court itself and its internal organisation in the quest for solutions which will enable the Court to come to grips with its caseload.

In this context, Iceland would like to reiterate its support for the introduction of a filtering mechanism within the Court. It is essential to establish a system whereby cases can be selected where a resolution by the Court would be of consequential significance, such as cases which concern important interpretations of a provision of the Convention, or where cases need to be resolved which involve very serious violations of the Convention. This would also make it possible to address the problem of the vast number of repetitive cases, where member states provide no domestic remedies for violations. Repetitive cases of this kind and cases relating to delays in the national legal process could then be brought to a conclusion at this filtering stage.

It is important to begin immediate preparations for the conclusion of a new protocol to the European Convention on Human Rights. In addition to rules on a filtering mechanism, the protocol would need to establish in a clear manner rules on the powers of the Court to apply the pilot judgment procedure. The pilot judgment procedure could become an effective means of addressing the increasing number of repetitive cases, in combination with the new filtering mechanism. At the same time, the Committee of Minsters would need to be provided with greater authority in the text of the Convention to follow up on cases subjected to the pilot judgment procedure.

Finally, Iceland is of the opinion that it is necessary to increase the flexibility of the Court and the scope afforded to the Court to respond to changed circumstances by establishing a special statute for the Court. In such a statute it would be possible to widen significantly the scope afforded to the Court itself to change its internal organisation as regards procedure.

In conclusion, I would like to thank the Swiss chairmanship for its organisation of this Conference to discuss the future of the European Court of Human Rights in a changed environment.

Ireland: Mr Dick Roche

Minister for European Affairs

I wish to pay tribute to the Swiss authorities for their leadership in taking the initiative to organise this Conference. Looking around the room today the high esteem in which the European Court of Human Rights is held by Ministers from around Europe is very evident. Our presence here is a strong political signal of recognition of the fundamental position the Court occupies in the European legal sphere and of the need to ensure it flourishes in the future.

I would also like to take this opportunity to welcome the fact that Protocol No. 14 will enter into force in June this year, which has been made possible by the ratification of this instrument by the Russian Federation. This will enable the implementation of a number of much needed reforms for the Court. The anticipated accession by the EU to the European Convention on Human Rights as provided for in the Lisbon Treaty and permitted by Protocol No. 14 will be an important legal and political event. It will further solidify the protection for human rights throughout Europe.

Since its beginnings in 1949, one of the finest achievements of the Council of Europe, and a significant contributing factor to the achievement of democratic stability in Europe has been the European Convention on Human Rights and its system of protection. Within Council of Europe States, people have been able to turn with confidence to the Court for protection and vindication of the rights and freedoms enumerated in the Convention. Securing the effectiveness of the Court is a key concern for Ireland.

It is often said that the Court is a victim of its own success. We are presented here with the opportunity to ensure that this saying becomes an historical rather than a current description of the situation of the Court.

We endorse the Declaration and Action Plan which will be adopted today.

The declaration and the action plan go hand in hand and together represent a "road map" for the future development of the Convention system. While this Conference should provide a strong impetus to reform of the entire Convention system it is not, of course, an end in itself. Continuous and meaningful work will be required in the coming months and years to guarantee the continued viability of the Court. We hope that formal status will be given to the Declaration and Action Plan by a decision of the Committee of Ministers in May.

We are all beneficiaries of the human rights culture nurtured by the Convention and the Court. As such we have a responsibility to ensure that there is no

further deterioration in the current crisis faced by the Court with its overwhelming backlog.

The system of human rights protection created by the Convention resembles an arc, running from implementation at national level, to effective working of the Court, through to prompt and effective execution of judgments and consequent national measures. Every element needs to operate effectively. Solutions to the Court's problems must be multi-faceted and engage every stage of the system.

Pre-eminent must be the principle of subsidiarity, and better implementation of the Convention at the national level. The huge number of applications to the Court arise in very large part from the weakness of domestic protection systems. The single most meaningful achievement would be to ensure that appropriate legal structures for the protection of human rights exist and operate effectively in every member state. When that comes about it is inevitable that applications to Strasbourg will decrease. We should not forget that as High Contracting Parties we have already committed to guarantee the fundamental rights and freedoms contained in the Convention to all those within our jurisdiction.

Recognition of the crucial role of national implementation is nothing new. The Declaration of the European Ministerial Conference on Human Rights in Rome in 2000 recalled that, in the first place, it is for member states to ensure that human rights are respected, in full implementation of international commitments. The sad reality is that the call for better national performance is as necessary today as it was almost ten years ago.

It is simple, the Court and the Convention system cannot survive on good intentions and good will. Where a clear and persistent systemic problem has been identified by the Court at national level, member states must ensure that appropriate measures are taken to remedy the situation. We ministers must collectively ensure that that the message of the need for better implementation is heard and applied across each of our member states.

Many measures at the national level can be tackled straight away. We must remember that there are a number of Recommendations by the Committee of Ministers in place to assist us in this endeavour. As High Contracting Parties we should take it on ourselves to ensure that practices are developed to accord with the various recommendations.

The Court too has an important role to play. We commend it for its work so far in seeking to adapt as best it can to the situation it faces. But the growing deluge of applications means that fundamental changes have to be considered seriously. Our Declaration today points to rigorous and uniform application of admissibility criteria and to possible filtering mechanisms among practical ways forward. Work should be undertaken soon to put in place mechanisms which will allow speedy resolution of repetitive cases and to deal with the backlog.

We consider it most important that the Court should preserve and enhance its role as the important creator and arbiter of European human rights jurisprudence. To maintain that pre-eminence, it is clear that a method must be found which allows due time and attention to be given to important and fundamental cases, while protecting the right of individual petition.

The obligation on states to fully execute the judgments of the Court can be seen as complementary to better implementation of the Convention at the national level. Effective and prompt execution of a judgment provides an opportunity for a High Contracting Party to take action to prevent future violations and to avoid repetitive cases. National human rights institutions, such as Human Rights Commissions and Ombudsman's Offices, have an important role to play in developing awareness among policy-makers and the public.

We are pleased to note, and support, the emphasis in the Action Plan on the urgent need for the Committee of Ministers to develop and strengthen its role and to review its working methods. It is essential and appropriate to carefully evaluate the current process and to ensure that the best possible system is in place. The Committee of Ministers should seek to ensure that this important work is given the necessary level of priority and that the peer-review nature of the execution process is protected.

We are pleased that there will be a timetable for future work. I hope that this will not only be respected but if possible accelerated. Much reflection by distinguished personalities and groups has already been devoted to the better operation of the Court. We must now build on that work and make positive action our keyword.

I would like to conclude by expressing Ireland's full support for the draft declaration and action plan. We are conscious that the situation urgently requires assistance. The action plan seeks to give guidance on the way forward from today and we look forward to working with partners to address the situation. Clearly, this will be an on going process but we must ensure that we remain results oriented throughout and do not lose sight of our overall objective which is to secure the rights and freedoms set down in the Convention and ensure that the system of protection remains an effective one. The solution to the difficulties facing the Court is in our hands and it is incumbent upon us to address those difficulties to ensure that the Council of Europe, and the Court, remain the keystone of European human rights protection.

Italy: M. Alfredo Mantica

Sous-secrétaire d'Etat au ministère des Affaires étrangères

Au nom du ministre des Affaires étrangères Franco Frattini et en mon nom je souhaite remercier chaleureusement le Gouvernement de la Confédération suisse pour avoir voulu, et de façon exemplaire, organiser la présente conférence.

Le Conseil de l'Europe traverse en ce moment une période de crise, mais la défense des droits de l'homme reste à la base des valeurs de notre civilisation. Par conséquent, nous devons relever le défi, en insistant sur la valeur ajoutée du Conseil de l'Europe dans l'architecture européenne et sur les synergies entre le Conseil et les autres organismes internationaux poursuivant les mêmes objectifs de protection des droits humains (comme par exemple, l'Union européenne, l'OSCE, l'UNESCO, etc.) ainsi que, par conséquent, sur l'union holistique résultant de telles synergies. Dans cette perspective, nous soutiendrons les efforts du Secrétaire Général pour une réforme du Conseil de l'Europe qui mette l'Organisation au pas avec son temps et en renforce l'efficacité et la flexibilité.

Mais le système de garanties des droits de l'homme repose en dernière instance sur l'application de la Convention de Rome et sur le fonctionnement efficace de la Cour européenne des droits de l'homme.

Par conséquent, il faut intervenir rapidement afin que la Cour puisse émettre ses prononcés dans de brefs délais et que ses décisions soient caractérisées par la plus grande qualité et cohérence. Nous sommes d'avis que, pour atteindre un tel résultat, il ne faut point miser sur une augmentation de ressources, mais plutôt encourager la Cour à axer ses propres efforts sur la recherche de bonnes pratiques visant à atteindre le juste équilibre entre coûts et bénéficies.

Le projet de déclaration et le plan d'action qui sont aujourd'hui en discussion vont dans la juste direction et auront notre soutien, cependant nous considérons qu'il faut insister sur certains points fondamentaux.

En premier lieu, je voudrais réaffirmer le rôle subsidiaire de la Cour eu égard aux juridictions nationales. La Cour ne peut pas revêtir un rôle de quatrième degré de juridiction, surtout quand il s'agit de se prononcer en matière de satisfaction équitable. En revanche, il revient à la Cour d'élaborer les grandes lignes relatives à la protection et à l'évolution des droits et des libertés fondamentales. Dans ce contexte, il faut rappeler le principe forgé par la jurisprudence européenne, du respect de la « marge d'appréciation nationale » : les questions qui touchent de près les sentiments et les traditions nationales doivent être réglementées au niveau national. Puis, une préférence doit être accordée à ces affaires en série qui dénoncent des problèmes structurels, et dans ce contexte l'aspect

technico-politique de l'exécution de la part du Comité des Ministres est fondamental.

L'autorité de la Cour repose en grande partie sur la cohérence de sa jurisprudence et sur l'évolution naturelle de sa jurisprudence. Par conséquent, nous sommes contraires à l'hypothèse de la création d'une nouvelle catégorie séparée de juges, à laquelle seraient confiés l'examen de la recevabilité ou les prononcés pour les affaires répétitives. Une Cour qui serait divisée en juges appartenant à différentes catégories, ainsi qu'en comités et sections augmenterait le risque d'incohérence des prononcés. Même l'hypothétique réduction du nombre des juges par section augmenterait ce risque.

En ce qui concerne le problème représenté par l'énorme pourcentage des requêtes irrecevables ou mal fondées, nous sommes favorables au filtrage au travers de deux mécanismes : l'application de frais de procédure pour les requêtes mal fondées et ramener à de plus justes proportions les sommes accordées au titre de satisfaction équitable.

Nous souhaitons également que le nouveau critère d'irrecevabilité – prévu par le Protocole n° 14 – du rejet des affaires moins importantes soit interprété et appliqué de manière rigoureuse.

Certaines des mesures évoquées dans le projet de déclaration politique et du plan d'action ne requièrent pas de modifications de la Convention de Rome, et pourront par conséquent entrer en vigueur dans les plus brefs délais. Pour le reste, il faudra que le Comité des Ministres organise d'ici à la fin de l'année des propositions spécifiques d'amendements de la Convention.

De son côté l'Italie, qui est parmi les Pays fondateurs et parmi les cinq grands contributeurs au budget du Conseil de l'Europe, continuera comme toujours de fournir son soutien à la Cour européenne des droits de l'homme, dont l'Europe a besoin aujourd'hui, comme hier, pour garantir ce bien indispensable défini par la Cour elle-même comme l'ordre public européen.

Latvia: Mr Māris Riekstiņš

Minister of Foreign Affairs

Latvia notes with deep satisfaction that Protocol No. 14 to the European Convention for the Protection of Fundamental Rights and Freedoms (hereinafter – the Convention) will soon enter into force. Latvia remains convinced that Protocol No. 14 to the Convention will become an important tool allowing the European Court of Human Rights (hereinafter – the Court) to better meet the present day realities and deal with cases more efficiently. At the same time, Latvia fully shares the view that measures foreseen by Protocol 14 will no longer be sufficient to resolve the current problem of enormous backlog of pending applications and therefore further reform measures are necessary. At the same time Latvia believes that the discussion concerning such future reform measures should take due account of the effects of Protocol No. 14. In this regard, Latvia notes that the first effects of Protocol No. 14 will not be known until 2011. Moreover, discussions concerning future reform of the Convention system should go hand-in-hand with the discussion about the on-going Council of Europe reform process and its budgetary implications.

Regardless of the efforts made by states and the Council of Europe in seeking solutions to the existing challenges, it is up to the Court itself to review its working methods. First and foremost, the Court should achieve a uniform and rigorous application of the basic requirements for an application and admissibility criteria. The Court should not have lower requirements to its applicants than national courts do to their.

Further, Latvia notes that the single judge formation and extended powers of committees of three judges introduced by Protocol No. 14 have been the response to the invitation to introduce more efficient filtering mechanisms within the Court to deal with clearly inadmissible applications and with well-founded applications subject to the well-established case-law of the Court. Therefore, we can commence discussions concerning possible new filtering mechanisms within the Court only after efficiency of the already introduced mechanisms has been assessed. In any event, Latvia remains firmly committed to the principle that judicial functions should stay in the hands of the judges.

Although seeing some benefit in seconding national judges and, where appropriate, other high-level independent lawyers, to the Registry of the Court, Latvia considers that this proposal needs to be carefully discussed amongst the States Parties as well as with the Court in order to identify the tasks that such judges

and/or lawyers may perform without entering the conflict of interests or interfering with the Court's judicial independence.

Latvia fully shares the view that more efforts should be made to ensure that comprehensive and objective information is provided to potential applicants on the Convention and the Court's case-law, in particular on the application procedures and admissibility criteria. At the same time, Latvia has doubts as to the added value of the Council of Europe information offices in performing this task, given that such offices would not have the authority to represent the Court, while at the same time significant budgetary means would be required. Latvia believes that other solutions should be sought, such as introduction of the *Handbook on Admissibility* as suggested by Lord Wolf in his *Review of the Working Methods of the European Court of Human Rights*. The latter proposal was expressly endorsed by participants of the seminar *The European Court of Human Rights: Agenda for the 21st Century* held in Warsaw in June 2006.

Latvia believes that the present day reality requires a general reform of the supervision of execution of judgments, not only to ensure that cases requiring urgent individual measures or structural problems are addressed, but also to ensure effective and timely supervision of execution of every judgment delivered by the Court. Presently, the Committee of Ministers of the Council of Europe is faced with an enormous backlog of cases; the process of execution of judgments in relatively simple cases not requiring individual or general measures taking not less than five years. With the entry into force of Protocol No. 14 such backlog will only increase. Latvia believes that a solution must be found, whereby the Committee of Ministers of the Council of Europe in its full composition of 47 deals only with cases requiring urgent measures or touching upon structural problems, while other cases should be dealt with in sub-committees consisting of few states.

Latvia notes that with the accession of the European Union to the Convention – which has become possible following the entry into force of the Treaty of Lisbon – the Court will have a new power to examine applications submitted against an international entity. This new expanded power of the Court and its possible impact on the Court's workload should be taken into account during the discussion on the future reform of the Convention system.

Latvia is of the view that the present day reality faced by the Court and the Council of Europe in general requires innovative approach that may necessitate introduction of measures not thought of before.

Finally, Latvia believes it is indispensable that discussions on the future reform measures are conducted in the open manner.

Liechtenstein: Ms Aurelia Frick

Minister of Foreign Affairs, Justice and Cultural Affairs

It is with great pleasure that I have accepted the invitation of Switzerland to attend this important conference in Interlaken. Thank you for the warm hospitality and excellent organisation. I believe the mountains of the Bernese Oberland are a worthy setting for addressing questions of the utmost importance to the future of the European Court of Human Rights.

Liechtenstein shares the view that it is urgently necessary to advance the reform of the Court. We therefore very much welcome that Switzerland has declared reform of the Court to be one of the main priorities of its chairmanship. We are pleased that the work in this regard has now reached a significant milestone here in Interlaken.

Already a brief look at the current statistics of the Court makes clear how great the challenges are. In January 2010 alone, nearly 4 500 new complaints were submitted to the Court in Strasbourg. The number of currently pending complaints has thus risen to 121 250 as of the beginning of February 2010. We must confront this situation now if we want to continue to ensure enforcement of the rights enshrined in the European Convention on Human Rights.

With regard to the reform of the Court, we have witnessed long discussions over the past months and years. Today's conference represents a new starting point for a successful reform. It appears clear to me that much work still awaits us over the coming months and years to more precisely elaborate and implement the reform proposals under consideration. Nevertheless, the course for further steps that we can set here in Interlaken will be of great importance to the short-term and longer-term future of the Court.

Regarding the content of the Political Declaration: Liechtenstein would have been open to agreement on more far-reaching reform steps here in Interlaken. This same is true of more precise commitments in several parts of the Declaration. I am thinking, for instance, of the part relating to "Implementation of the Convention at the National Level" or the provisions concerning establishment of a new filtering mechanism. At the same time, however, we respect that member states have different views on these issues. In particular, we recognise the importance of adopting the Declaration by consensus, in view of the further steps to be taken.

I would be remiss not to mention the gratifying prospect of Protocol No. 14 soon entering into force. Entry into force will certainly contribute to an improvement of the Court's situation. At the same time, however, we should not forget

that the measures included in this protocol will not suffice to solve all the Court's problems. Further reform steps will be indispensable.

With respect to the Court, I would like to suggest considering a further audit of the Court over the course of the upcoming discussions on the various reform proposals. This would help identify and utilise potentials for enhancing the efficiency of its working methods.

In summary, I would like to express the hope that we will succeed in applying the momentum generated by the "Interlaken Process" as directly as possible to the follow-up work to the Political Declaration in Strasbourg. Liechtenstein is willing to engage itself on behalf of implementation of the provisions contained in the Declaration as rapidly as possible. As in the past, we will continue to make our contribution to preserving the effectiveness of the control mechanism of the European Convention on Human Rights.

Lithuania: Mr Remigijus Šimašius

Minister of Justice

It is a great pleasure for me to be able to address such an impressive international gathering of prominent personalities. Let me emphasise that my Government welcomes the idea of this major conference held in order to articulate a new commitment, a reaffirmed legitimacy and a clarified mandate for the Court of Human Rights. It is also in favour of the swift motion towards reforms, which are the aim of this gathering.

The draft declaration of the conference covers a wide range of aspects where the European human rights protection machinery could be improved. We welcome the logical and reasoned articulation of the various issues mentioned in the draft declaration. It is particularly important that all actors in the field fulfil their commitments. Therefore we fully share the views expressed by the President of the Court that high number of applications before the court indicates that the subsidiarity rule does not work properly and measures should be taken to ensure better interaction between the domestic and the European level.

It is our belief that it is primarily for the national level to remedy any possible violations and ensure appropriate protection of human rights. We are of the

opinion that the issues raised by repetitive applications should be addressed at the national level. However, the subsidiarity rule should also be reinforced by accepting a possibility for national courts to address the Court with requests for advisory opinions and/or preliminary rulings, especially where it can assist with the resolution of systemic problems. Moreover, in our view the Court should concentrate its activities on the "constitutional type" issues and cases. We therefore welcome the provisions concerning "pilot" judgments.

Besides, in order to ensure general awareness and full comprehension of the Convention standards, judgments of the European Court of Human Rights should be clear, precise, unambiguous and understandable to all parties, not only the one whose violation is found in that particular case. Such clarity is particularly necessary given the differences among the Contracting States and the aspiration of the European Convention on Human Rights to preserve this diversity and to grant adequate margin of appreciation to the Contracting States while ensuring full respect for the Convention rights and freedoms.

Let me illustrate my point with a practical example. The Court has recently rules that the compulsory presence of the Crucifix in classrooms restricts the right of parents to educate their children in conformity with their convictions and the right of schoolchildren to believe or not believe. Would that conclusion be equally valid in a country which has different legislation regarding the relations between the church and the state? Would it be valid if the Crucifix has a form where the cross and the crucifixion is not displayed but merely understood to be the explanation for the sorrow of God (as in the case of traditional Lithuanian Rūpintojėlis)? What if the presence of the Crucifix is not compulsory but the Crucifix is nevertheless displayed in some classrooms? What if it is displayed in another public place which schoolchildren and their parents attend? A street? The roof of a church? Somebody may know the correct answers to these simple questions but they are not at all obvious from the relevant judgment of the Court.

In determining the breadth of the margin of appreciation left to the states the Court should continue its practice of engaging into the comparative law analysis and also looking for the guidance at the subject-matter and the level of acceptance by the community of states of other international law instruments.

It is not an easy task to reconcile the prevailing interpretation of the human rights standards in the European community of states with the need to ensure the dynamic interpretation of the Convention required in order to reflect the changes in the society. However, the Court's findings would be more credible and more easily accepted in the legal systems of the Contracting States if the judgments of the Court contained more elaborate lines of arguments and better reflection of the existing legal regulation at the domestic level. This is particularly important in the cases dealing with the matters of constitutional importance and those requiring a change of culture and tradition.

As I said at the beginning of my intervention, all actors in the field should fulfil their commitments to ensure the continued success of the European Convention and the Court of Human Rights. As the Contracting States should aim at ensuring full compliance with the Convention standards and the Court should aim at giving due regard to the achievements of the States in this field, we are convinced that the Declaration we are about to adopt here in Interlaken gives adequate and valuable directions for all of us. The challenge is to implement the action plan and to achieve the required progress, which, we believe, is possible.

On behalf of my Government I would like to express gratitude to the Government of Switzerland for organising this event.

Luxembourg: M. François Biltgen

Ministre de la Justice

Mes sincères remerciements vont de prime abord au Gouvernement suisse pour avoir eu la clairvoyance et le courage politique d'organiser cette conférence dont le succès n'était pas assuré au départ. Je rend hommage au Président de la Cour Jean-Paul Costa pour avoir pris il y a un an l'initiative d'un appel à l'organisation d'une grande conférence politique pour réaffirmer à nouveau notre engagement à maintenir l'acquis de notre système de garantie des droits et libertés pour nos citoyens et pour apporter une réponse concrète aux exigences d'adaptation à la réalité d'aujourd'hui.

Je salue l'opportunité d'un débat objectif, fût-il contradictoire, nous ainsi donné sur les raisons profondes du problème d'engorgement de notre modèle européen de protection des droits de l'homme. Un modèle, pour lequel beaucoup nous envient, et duquel nous pouvons être légitimement fiers, car il reste à ce jour unique dans le monde entier. Hélas, notre système est en crise et, après tant d'années perdues, il est absolument vital de fournir aujourd'hui les bonnes réponses et des remèdes durables. La problématique est connue. Depuis des années, elle est discutée et analysée sous tous les angles de vue. Je rends hommage aux travaux du Comité directeur pour les droits de l'homme et du Groupe des Sages que les Chefs d'Etat et de Gouvernement avaient instauré dès 2005, conscients déjà à l'époque que l'on ne pouvait plus fermer les yeux sur une

situation de plus en plus intenable. Je me félicite que le Protocole 14, principale innovation institutionnelle des dix dernières années, puisse enfin, six années après sa signature, dégager, sous peu, pleinement son potentiel de rationalisation.

Je me réjouis que certaines des propositions initiées par le Groupe des Sages et nombre de suggestions développées par le Comité directeur pour les droits de l'homme, reçoivent aujourd'hui un début de concrétisation.

Notre système conventionnel fonctionne en couple et donc avec une responsabilité partagée des deux partenaires :

- les Etats parties à la Convention garants d'une justice nationale efficace, – condition absolument nécessaire pour préserver la subsidiarité du système voulu par ses concepteurs –, et leur émanation commune, le Comité des Ministres, en charge d'une surveillance de l'exécution des arrêts d'une part ;
- une Cour à même d'assumer pleinement son rôle qui est de donner aux Etats membres des lignes directrices claires par le biais de décisions précises et dûment motivées constituant une jurisprudence cohérente. Ceci dans une interprétation dynamique reflétant l'évolution sociétale.

Je pense sincèrement que chacun des deux partenaires peut encore faire mieux et certainement nous, Etats membres qui peinons quelquefois à donner pleine suite aux déclarations, résolutions et recommandations que nous avons adressées, par Comité des Ministres interposé, à nous-mêmes ! Je constate cependant avec satisfaction que certaines des idées contenues dans ces textes sont aujourd'hui confirmées à nouveau dans le plan d'action.

Une des questions fondamentales à laquelle – me semble-t-il – nous ne répondons qu'implicitement est celle de savoir pourquoi la Cour doit faire face à cette avalanche de requêtes en fin de compte non fondées. Notre réponse politique enveloppée dans le langage technocratique de l'accès et du filtrage ne me paraît pas exagérément audacieuse. Certes, notre déclaration et son plan d'action contiennent des « potentialités de réponses ». Je pense plus particulièrement à la possibilité de conférer un rôle de diffusion d'informations sur la Convention et la jurisprudence de la Cour aux bureaux d'information du Conseil de l'Europe ou encore celle de créer de nouveaux mécanismes de filtrage. Il faut aussi veiller à exécuter pleinement les arrêts, ce que mon Gouvernement s'est attelé à faire.

Mon pays demeure fondamentalement attaché au droit de recours individuel. Mais la porte n'est pas fermée pour aller plus loin, dans le plein respect de ce droit, et adopter des mesures plus ciblées pour rendre les modalités d'exercice de ce droit, dès le stade de la requête, davantage en phase avec les conditions de recevabilité du système.

Le tableau nuancé que je viens de brosser ne peut en aucun cas masquer le grand acquis du plan d'action d'Interlaken qui est d'abord d'exister, ensuite

d'avoir l'aval politique et dès lors d'engager nos Etats membres à un niveau décisionnel crédible.

Interlaken est un nouveau départ. C'est une grande première étape après tant d'années de blocage. La méthodologie retenue pour mettre en œuvre le processus et le calendrier fixé pour mesurer le progrès balisent un chemin vertueux. Prenons garde à ne pas nous en écarter. Sans exagération aucune, je crois pouvoir dire que nous lançons aujourd'hui ce qui pourrait bien être qualifié, un jour, avec le recul, de processus salvateur d'Interlaken.

Malta: Mr Carmelo Mifsud Bonnici

Minister of Justice and Home Affairs

The timing of the conference is particularly significant. For 27 of our member states, the conference comes in the wake of the entry into force of the Lisbon Treaty, which paves the way for the European Union's accession to the European Convention on Human Rights. This will inevitably have a positive impact on the system as a whole, as it will reaffirm and strengthen our commitment to the values that have transformed our continent in the last six decades.

The Court has played a fundamental role in this transformation. We are here to ensure that it will continue to do so by building upon those values which have given Europe its identity. The Court's history, especially the past decade, proves that it is a living organism that connects with our citizens in a very concrete, direct and personal way. We had accepted the Court's jurisdiction since 1969 but it is since 1987 that Maltese citizens have had the right of individual petition to the Court. In the course of years several Maltese have availed themselves of this right successfully. In doing so they have contributed to the further enhancement and strengthening of our democratic fabric. They have helped us venture into new legislative pastures in order to secure improvement in the procedures to safeguard those fundamental human rights based on our common Christian heritage around which our society is built.

The legal steps taken after 1987 have ensured that the judgments of our domestic courts have relied consistently on, and have received guidance and

inspiration from, the judgements delivered in Strasbourg. The judgements of the European Court are in reality one the sources of our domestic law.

In addition, through its European Convention Act of 1987, my government introduced a landmark measure that has had an important bearing on facilitating the enforcement of this Court's judgments. That Act provides for a far simpler legislative mechanism which allows us to implement faster judgments of the European Court of Human Rights delivered against Malta. I do not know if any other country has a similar provision.

We are aware, and it is a matter of concern for us, that as a direct result of its very success throughout the continent, the Court has had to face a number of serious crisis. Statistics speak eloquently. My government believes that the declaration, which we shall adopt at Interlaken, offers a good basis for an adequate response. We have before us a plan which, without going into specifics, lays out concrete objectives and commits us to specific target dates. It is a multifaceted plan that acknowledges that, for reform to be successful, it needs to be embraced by all the relevant actors. However it must be stated that we might need to resort to even far more drastic and radical measures which will truly allow a more expedited process. It is of concern to us that the end result could end up being counter productive in two directions with the domestic courts receiving the wrong kind of message from this court on the reasonable length of judicial proceedings and secondly that the perception is generated among our citizens that this Court is not sufficiently sensitive to the unique distinguishing cultural characteristics which foster national identities and that diversity within unity which is the hallmark of democracy.

From this perspective it is evident that the role of member states has been clearly acknowledged and given the central position it deserves. We believe that better implementation by member states of what is today accepted as jus commune contributes towards a decrease of the case load. Measures taken at the domestic level are, in our opinion, crucial in order to reduce the number of inadmissible applications to acceptable levels. We attach great value to the principle of subsidiarity. We are pleased to see that the declaration spells this out loudly. We have to keep in mind that realities change but not always at the same pace in all places at the same time. New systems and processes need to be flexible enough to respond to new circumstances.

The Court, for its part, needs to engage in a process of reflection to arrive at proposals for a more efficient use of its resources. It is essential that we maintain clarity and consistency in case law. This is important both to reduce the number of inadmissible cases and also to safeguard the Court's authority.

We look forward to examining in more detail proposals for reform in the process of electing Judges. We have to ensure that member states nominate their most qualified candidates. My government has long been a strong proponent of

the principle that competence should remain the dominant and overriding criterion in this regard.

Going back to the timing of this conference – the Secretary General, with the full backing of the Committee of Ministers, has launched a reform process. This offers a great opportunity. As the Secretary General has said, the organisation needs to focus on areas where it can give added value and have the greatest impact. To do this we need to seriously re-examine the decision-making process. Member states need to have a real sense of ownership of all the decisions that the organisation takes and a strong and a commitment to them. This is the best way to ensure that each one of us upholds and honours its commitments. This is of utmost importance as the Court's case law often refers to texts adopted by the Committee of Ministers.

Finally, whilst I wish once again to express my government's commitment and full support to the process of reform being launched here at Interlaken I believe it will prove useful to review, and discuss afresh, which are the guiding values, which are the ethical principles, that should continue to inspire and underlie the interpretation of the Convention and its relevant protocols. I am sure it will turn out to be a landmark for our organisation.

Moldova: Mr Alexandru Tănase

Minister of Justice

I am convinced that our discussions will strengthen the European Court reform process towards long-term effectiveness of the European Convention on Human Rights system.

The ECHR has emerged as one of the most powerful checks on national authorities. But lax justice is driving growing numbers of individuals to pin all their hopes on the Court.

Due to the increase in awareness of European citizens of their rights under the Convention, the Court became a victim of its own success.

European citizens, including Moldovans, are increasingly taking their governments to court in Strasbourg, in their endless quest for efficient justice.

This is why Moldova supports the necessity of reforming the European Court of Human Rights, which would ensure and strengthen the effective protection of human rights.

The application of Protocol No. 14 to the Convention opens new opportunities for the Court. In this context, we wish to congratulate the Russian Federation authorities for the recent ratification of the Protocol No. 14 to the Convention.

It is our belief that it is important to establish a roadmap of the ECHR reform, and to identify the circumstances that have generated the current situation.

I shall be brief by pointing out one of the main aspects that in our view can change the current situation of the ECHR.

In our opinion, the system should be improved in what concerns the Committee cases. These cases account for around 95% of the Court's total case-load and require an enormous amount of the Court's time and resources.

In practice nobody, except for the initial case-lawyer, checks the case-file. Even in the committees of three judges where the national judge is present, the case-file is never verified. It should be noted that there are committees of three judges where the national judge is not present. Accordingly, the judges' decision is totally based on the facts and complaints as prepared by the Registry.

It is for this reason that it is necessary to reform the system and to base it on reality and not on hypocrisy. If the Registry is trusted with the preparation of the facts and complaints, it should be trusted with the adoption of the solution.

In the current setting, the judges merely waste their time, by rubber-stamping committee case notes, prepared by others without any real possibility to verify the content of those notes.

Not only it is a matter of language but also a matter of case-load because we are speaking about thousands of committee cases disposed of monthly and it would be impossible for a judge to read through, so many case-files even in the event that he or she speaks the language of the file.

Accordingly, the judges will not be involved in this process and the responsibility concerning the committee cases shall be entirely delegated to the Court's Registry.

Finally, I wish to emphasise that Moldova fully supports the Declaration that will be submitted for adoption at this Conference, as a commitment that paves the way for a long-delayed ECHR reform. We strongly believe that this document, intended to help the Court speed up the processing of cases, states efforts to improve the protection of human rights and to help out the overburdened Strasbourg Court.

We also want to send a strong signal of the commitment of Moldovan democratic government to Europe and to its common values of freedom, democracy and human rights.

Monaco: M. Philippe Narmino

Directeur des Services judiciaires, président du Conseil d'Etat

La Principauté de Monaco tient à s'associer aux félicitations et remerciements exprimés par les délégations qui l'ont précédée à l'endroit de la Présidence suisse du Comité des Ministres du Conseil de l'Europe et des organisateurs de la Conférence.

Même si elle a été retardée, l'entrée en vigueur très prochaine du Protocole n° 14 constitue un indéniable progrès qui doit être salué. La Cour, au bord de l'asphyxie, avait besoin de cette bouffée d'oxygène qui améliorera son fonctionnement.

Mais chacun doit être conscient que la réforme introduite par le protocole, si elle était nécessaire, n'est cependant pas suffisante. Il faudra à la Cour, d'abord endiguer le flot des requêtes individuelles qui lui parviennent chaque jour, ensuite évacuer les affaires en instance dans les délais compatibles avec le respect des droits et libertés qu'elle a pour mission de garantir et protéger.

La Principauté de Monaco est consciente qu'il lui appartient, comme à tous les Etats Parties à la Convention européenne des droits de l'Homme (CEDH), de tout mettre en œuvre au plan interne pour assurer à ses citoyens, ses administrés et ses justiciables la reconnaissance des droits et libertés qui leurs sont reconnus par la Convention.

Cette démarche vise en premier lieu à faire en sorte, dans toute la mesure du possible, qu'il ne soit pas porté atteinte à ces droits par la puissance publique.

Sur le plan judiciaire en second lieu, les tribunaux s'attachent à remplir la mission de protection des droits de l'homme qui leur incombe. Formés aux mécanismes de la Convention et conscients du rôle qu'il leur appartient de jouer, les juges monégasques sont attentifs au principe de subsidiarité qui fait d'eux les premiers juges européens.

Pour ce faire, une adaptation de la législation est parfois nécessaire et l'Etat poursuit son effort d'adaptation de son système juridique, en s'apprêtant par exemple à adopter une procédure de réexamen des affaires pénales définitives, après constat d'une violation de la Convention.

Ainsi peut-il être espéré une diminution du nombre des requêtes auprès de la Cour.

Pour ce qui est des affaires « en souffrance » – et ce terme, du moins en français, est révélateur du sort fait aux justiciables –, le Protocole n° 14 apporte quelques réponses. Nous savons déjà qu'elles seront insuffisantes et que d'autres pistes doivent très vite être explorées. Parmi celles-ci, la mise en place d'une pro-

cédure de filtrage permettant d'éliminer dans de brefs délais les requêtes manifestement irrecevables.

Si le principe d'un filtrage doit être approuvé, ses modalités de mise en œuvre devraient, selon la délégation de Monaco, respecter certaines idées-force.

Ainsi, les décisions concernant la recevabilité des requêtes ne sauraient ressortir à la compétence exclusive des greffiers ou fonctionnaires de la Cour.

Depuis sa création, en effet, la Cour européenne des droits de l'homme connaît une évolution qui va dans le sens d'une judiciarisation toujours croissante et ce progrès pourrait être interrompu si des fonctions juridictionnelles devaient être confiées à des fonctionnaires, quelle que soit leur qualité. Si ceux-ci peuvent et doivent jouer un rôle déterminant dans la préparation de la décision, il semble indispensable de maintenir au moins le contrôle final d'un juge avant de prononcer une irrecevabilité.

Il s'agit ni plus ni moins en effet que de garantir en toute circonstance à l'individu son droit d'accès à un juge au vrai sens du terme.

Par ailleurs, la délégation de Monaco n'est pas favorable à la proposition consistant à créer une nouvelle catégorie de juges au sein de la Cour, dont on comprend qu'elle serait cantonnée au filtrage des requêtes tandis qu'une autre catégorie de juges se chargerait d'examiner les affaires au fond.

Une telle solution aurait pour effet d'instaurer une sorte de hiérarchie au sein de la Cour, une instance « noble » à côté d'une autre qui le serait moins, alors que chacun des juges appelé à siéger à la Cour européenne des droits de l'homme a vocation, comme ses collègues, à garantir d'égale façon le respect des droits et libertés conventionnellement protégés.

Mais le plan d'action que la Conférence se propose d'adopter est riche de bien d'autres propositions d'amélioration. Avec les autres Etats membres, la Principauté de Monaco prendra sa part à la réflexion commune qui, nous le souhaitons, devra permettre à la Cour de sortir de l'enlisement dans lequel elle se débat et, un demi-siècle après sa création, de connaître une nouvelle jeunesse.

Montenegro: Mr Miraš Radović

Minister of Justice

It is my pleasure to have the opportunity to address this esteemed conference, on behalf of Montenegro, which as the youngest member of the oldest pan-European organisation, in principle supports all the activities directed towards preserving and strengthening of the convention system of protection of human rights and freedoms, as basis of the rule of law, genuine democracy and joint European identity. The challenge of future vision of the European Court for human rights opens a number of dilemmas within International legal field, and responses onto such dilemmas, as a result of comprehensive, responsible and professional thinking shall also require the strong political support by the High Contractual Parties in the implementation of the Conference conclusions, as pledge of the future European legal order, which for over 50 years has been built by its vivid and creative interpretation of the European Convention, by the Court.

Montenegro strongly believes in the affirmation of of the subsidiarity principle in protecting of convention rights, and in accordance to it, the provision of protecting of human rights and freedoms on the national level through the system of effective legal remedies, is fundamentally important. In such a sense a widely implemented prevention system is extremely important and full implementation of individual and general measures, under the supervision of the Council of Europe's Committee of Ministers, especially in repetitive cases, which point to the existence of systemic problems in member countries shall be strong encouragement to preserving of the convention system sustainability.

The European Court of Human Rights, as a crown of legal civilisations, which experiences the law as "skills of benevolent and righteous", is the most important supervision mechanism, hence it must enjoy unambiguous support in further strengthening of its effectiveness, but also institutional independence. Montenegro encourages the introduction of adequate methods for case-screening aimed at solving the backlog problem in order to make available to the Court the necessary resources for competent decision-making, especially in cases of serious violations of human freedoms and rights.

I should like to express my esteem towards the efforts in organising the Conference by Switzerland, as a host Country, likewise gratitude and congratulations for successful presiding.

Montenegro strongly believes that co-operation and partnership are certain guarantees for the affirmation of joint European values, and the conference in Interlaken can actively bear witness to it.

Netherlands: Mr Robert K. Visser

Director General for Legislation, International Affairs and Migration at the Ministry of Justice

I should like to express my gratitude to the Swiss Government for this opportunity to discuss the future of the European Court of Human Rights at the highest level.

The contribution of the Court to the development of Europe and its human rights protection has been immense over the past decades.

One of the consequences of this success is that the Court also serves as a beacon of hope for so many applicants. Even though the Court has increased its efficiency and its production continuously over the last decades, the current figures regarding the backlog of cases, the number of inadmissible applications and the operating budget of the Court are dramatic. The member states have set up the Convention mechanism for a good reason. If we want to safeguard the future functioning of the Court, we need to intervene without any further delay.

Some have suggested that the Court itself is to blame for the problems it encounters. We share the viewpoint that the Court should not be seen to act as a so-called "fourth instance", but it would in my view be ludicrous to point the finger at the Court. Neither can we blame the applicants for trying all legal avenues – including the one to Strasbourg – to seek reparation for an alleged wrong. In the end the responsibility for the functioning of the Court lies with us, the states. We have created the Court. We have created the Convention mechanism. We also need to do the regular maintenance that enables them to perform in the future.

I share the analysis of the main reasons for the current workload of the Court.

Firstly, the fact that approximately 94% of all complaints turns out to be inadmissible or manifestly ill-founded. At the same time the Netherlands remains a strong supporter of the right of individual petition. The only feasible solution is

to further strengthen the filtering mechanism of the Court. As a short-term, but effective solution in this regard the Netherlands has proposed a rotating pool of judges devoted solely to the task of filtering. This should be initiated without further delay. Another reform that will have a positive effect is the introduction of a modest court fee for applicants, which would be refunded if the application is declared admissible.

The second main challenge is the issue of repetitive cases, which make up approximately half of the complaints declared admissible. Here a twofold solution seems necessary: strengthening the pilot procedure, as well as improving the implementation of Court judgments by Member States and the supervision thereof by the Committee of Ministers.

Let me conclude by stressing the need to carry out the necessary reforms of the Convention mechanism without any delay. I am glad the draft Interlaken declaration gives a specific mandate to the CDDH to formulate concrete reform proposals within a set time limit, taking also into account the paper of the Secretary General. With regard to these proposals, it would furthermore be quite unrealistic to think that the reform of the Court will have no budgetary implications. I hope that we can all agree, once we have a concrete reform package, on the need to adapt the Court's budget accordingly.

Ladies and gentlemen, let us remember that we have a unique human rights mechanism. To celebrate the achievements of the Court, it was granted the "Four Freedoms Award" by the Roosevelt Institute, which it will receive later this year in The Netherlands. The best way to honour the Court, however, would be a concrete and ambitious Interlaken declaration.

Norway: Ms Astri Aas-Hansen

Secretary of State at the Ministry of Justice

First, I should like to thank the Swiss organisers for all the effort they have put into this conference, for giving us a chance to experience the beauty of the Swiss Alps and for their hospitality.

The European Court of Human Rights plays a decisive role in improving human rights protection in Europe. However, it is not able to handle the ever-

increasing case load within a reasonable time. We must take resolute action now to prevent the Court from collapsing. We welcome the entry into force of Protocol No. 14 as an important step forward. However, we all agree that additional measures are indispensable and urgently needed. The Interlaken Declaration that we will adopt today will lay the basis for the reform work to be undertaken over the next years.

Norway fully agrees with the aims set out in the first part of the Declaration. Above all, we must enable the Court to adjudicate cases within a reasonable time, particularly with regard to serious violations of human rights. Otherwise we are undermining the right of individual petition.

The Action Plan contains a number of very important measures. Norway attaches particular importance to the clear mandate given to the Committee of Ministers to develop proposals for the establishment of a new filtering mechanism, and for the handling of repetitive cases. Furthermore, we are pleased that the Declaration calls upon the Committee of Ministers to consider new procedural rules and practices to reduce the flood of clearly inadmissible applications. An important measure to be discussed in this respect is the possibility of introducing Court fees. This question is also closely linked to the need to provide information to potential applicants on the admissibility criteria, which is another important measure in the Declaration.

On other issues, Norway would have preferred a more ambitious declaration. In particular, we regret that the reference to the need to provide the Court with the necessary resources has been left out of the Declaration. If we want the Court to survive and deal with applications within a reasonable time, we must provide it with additional resources, as least in the short and medium term, until effective measures have been taken to stem the flood of cases to the Court. Unless we are willing to provide the Court and the Registry with the resources required to deal with applications within a reasonable time, the Convention's control system will have to be fundamentally changed.

When the Action Plan has been adopted, we expect all member states, individually and collectively, the Court and the other institutions of the Council of Europe to make a concerted effort to implement the measures in the Plan swiftly and effectively, as provided for in the Declaration.

In particular, we, the member states, must roll up our sleeves and make a real effort to prevent and remedy human rights violations at home, giving priority to structural problems that have been identified in Court judgments. National human rights structures, NGOs and other parts of civil society should play an important role in the implementation of measures at the national level. Member states needing assistance can also seek support from the Human Rights Trust Fund.

At the level of the Council of Europe, we urge the Committee of Ministers to adopt the necessary measures in order to implement the Action plan as soon as possible. The Court's situation is critical, and we cannot allow ourselves to wait any longer to implement these urgently needed measures. We cannot afford to let the Court collapse.

Poland: Mr Andrzej Kremer

Undersecretary of State at the Ministry of Foreign Affairs

Allow me to express my thanks to the Swiss authorities for their organisation of the Conference on the Future of the European Court of Human Rights. The initiative is most timely, particularly in light of the challenges facing the Convention mechanism today.

The system created by the European Convention on Human Rights is unique. Any individual who believes that his or her rights may have been violated is able to file a complaint against any member state of the Council of Europe. The preservation of the right of individual complaint should remain the foundation for any future reform of the Convention mechanism. Poland has on numerous occasions underlined its objections to the idea of introducing any new rules or practices that impose on potential applicants the obligation of payment of court fees, compulsory representation by a lawyer or compulsory use of the Court's official languages.

It is clear that the current mechanism was not set up to deal with the tens of thousands of applications submitted to the Court every year. It needs to be reformed if it is to preserve its credibility. Numerous solutions to stem the flow of manifestly inadmissible complaints are outlined in Protocol No. 14. Further steps are needed, but it is also necessary to assess the impact of the new procedures so that our efforts may be streamlined in the most effective way.

Poland is strongly committed to finding durable solutions for the future of European human rights protection. We are pleased that the ideas proposed during the preparations for the conference have been reflected in the final document.

For the Convention system to work properly, it is important to reduce the number of manifestly inadmissible applications. This implies first and foremost that potential applicants have sufficient information about the full scope of their rights, and the protection guaranteed by the Convention. The appropriate conclusions, both for states and the Council, could be drawn from the positive experience of the Warsaw Pilot Project, which involved the Information Office of the Council of Europe in providing information about the admissibility criteria to potential applicants.

The principle of subsidiarity implies that it is its member states who actually guarantee the Convention, and therefore national authorities and national courts should be the primary arena for examining violations and for taking effective remedies before a complaint is sent to the Court in Strasbourg. One of the key elements of the debate on the future of the Convention system should therefore be the improvement of domestic remedies, whether they be of a specific nature or a general domestic remedy. A general domestic remedy is understood as a national mechanism ensuring that a person with an arguable claim that their rights, as guaranteed by the Convention, have been violated may firstly seek redress within their national judicial system. This might include an establishment of national human rights courts or human rights chambers at the supreme courts. Such courts might prove particularly important for states where constitutional tribunals do not have full jurisdiction to examine individual complaints prior to their examination by the Strasbourg Court. The establishment of a general domestic remedy may help with striking a balance between the preservation and improvement of the Court's exceptional role in human rights jurisdiction, and the need for states to increasingly acquire ownership of the Convention, in light of Article 13.

Another issue of particular importance is the proper and prompt execution of the Court's judgments, in particular those revealing structural problems, which may contribute to the reduction of the number of repetitive cases. It is important that the Court gives priority to such cases, including through the use of the "pilot judgment" procedure. However, it has correctly been noted in the Declaration that it is still necessary for the Court to develop clear and predictable standards for the "pilot judgment" procedure. It is also indispensable at the national level to guarantee the co-operation of all authorities involved in the execution process. In this context it is worth mentioning that Poland has created a special inter-ministerial committee, which analyses the reasons of the violations found by the Court, and makes concrete recommendations to the Government.

The quality of the Court's work will be of even higher importance after the entry into force of Protocol No. 14 and its new procedures, in particular the possibility for a single judge to declare inadmissible or strike out of the Court's list of cases an individual application. This quality depends on the knowledge and

experience of both the judges and the registry. It is therefore important not only to improve the transparency and quality of the selection procedure of the judges, but also to guarantee that the lawyers employed by the Registry should have sufficient knowledge of their own respective legal systems and the appropriate experience in their national judiciary.

An issue that merits particular attention in the context of long-term reform is that of the Statute of the Court. Whilst the modalities about the content of the Statute and the possibility of its amendment are still to be elaborated, what is important is that it will also introduce more transparency in organisational issues regulating the work of the Court.

The entry into force of Protocol No. 14 on the one hand, and the Lisbon Treaty on the other, opens a new chapter in the relationship between the European Union and the European Court of Human Rights. The process of the accession of the European Union will constitute one of the biggest challenges in the years to come. The accession should be prepared meticulously both by the Council of Europe and by the European Union.

Any reforms are only as effective as their implementation. The adoption of this declaration has confirmed the member states' determination to reform the Convention system. The Polish authorities are therefore strongly convinced that this conference should be followed by prompt and concrete action.

With this in mind I am announcing that Poland is in June 2010 organising a fourth Warsaw seminar on certain aspects raised in the declaration – specifically the Statute of the Court and the general domestic remedy. The results of this discussion, just as the results of the previous seminar on the pilot judgment procedure, will serve as food for thought for further progress within the Council of Europe.

Portugal: M. Alberto Martins

Ministre de la Justice

La Convention européenne des droits de l'homme représente un jalon unique dans la défense, la garantie et la promotion effective des droits de l'homme dans l'Europe et dans le monde.

Source d'inspiration pour d'autres systèmes, la Convention repose sur trois piliers fondamentaux – le droit de requête individuelle, la subsidiarité du système conventionnel et la force contraignante des décisions rendues par la Cour européenne des droits de l'homme. Or, le renforcement de la Convention et la réforme de ses procédures sont requis pour que son effectivité perdure à long terme et pour qu'elle continue à être la dernière ressource de ceux qui y cherchent la défense contre la violation des droits de l'homme.

Le droit de requête individuelle, moteur de démarrage de tout le système, s'est néanmoins traduit en une expression quantitative qui l'a élevé à des valeurs inconciliables avec la capacité de réponse prompte et effective de la Cour.

Le droit de requête individuelle, qui dans son essence doit être préservé, ne doit pas être incompatible avec la nécessité de filtrer les requêtes manifestement mal fondées qui, grâce à son grand nombre, produisent des bouleversements et des inefficacités du système.

Assurer le droit de requête individuelle suppose aussi, ou comprend, le compromis des États de donner pleine effectivité au principe de la subsidiarité, en accordant au préalable aux instances nationales l'appréciation des alléguées violations des droits, tout en réservant à la Cour le devoir de décider, avec célérité, les questions de mérite et, en particulier, les questions qui émergent de graves violations des droits de l'homme.

Le Portugal accorde au principe de la subsidiarité une valeur fondamentale pour une application et une exécution effectives de la Convention au niveau national. Le gouvernement portugais travaille, à présent, dans le sens de créer une Commission nationale des droits de l'homme, organe gouvernemental ayant des fonctions de coordination du travail interministériel.

Aussi bien, au niveau des bonnes pratiques, et depuis plus de deux ans, tous les arrêts de la Cour européenne concernant des affaires portugaises sont systématiquement traduits en portugais et mis à la disposition en ligne, dans un portail de Internet propre, contribuant à une meilleure divulgation et accessibilité de la jurisprudence de la Cour Européenne. De même, le système de protection de la Convention et la jurisprudence de la Cour font aujourd'hui partie du programme de formation de nos magistrats.

Ainsi, nous nous réjouissons de l'initiative de la présidence suisse du Comité des Ministres du Conseil de l'Europe de convoquer et d'organiser cette Conférence Ministérielle, au moment où le système de la Convention s'ouvre à de nouveaux défis, en vertu de la prochaine entrée en vigueur du Protocole n° 14 et de la récente entrée en vigueur du Traité de Lisbonne.

Le Portugal réaffirme son profond attachement aux valeurs reconnues par la Convention européenne et proclame son ferme propos de contribuer avec son effort, sa coopération et sa collaboration à l'application des conclusions de cette conférence. C'est notre propos de renforcer, à court, à moyen et à long terme, le

système de protection des droits de l'homme érigé par la Convention européenne.

Romania: Mr Bogdan Aurescu

Secretary of State at the Ministry of Foreign Affairs

On behalf of Romania, I have the pleasure to express my gratitude to the Swiss Chairmanship for organising this timely conference and for the excellent management of the entire process.

The setting up of the European Court of Human Rights has became, in time, one of the most outstanding European achievements. The Court has acted, during the last 50 years with dedication, imagination and open spirit, bringing a unique contribution to the protection of the core values of the Council of Europe, in particular the development and safeguard of Human Rights. This Conference represents the perfect opportunity for expressing our unanimous support for the Court, a chorus to which Romania adds its voice.

Interlaken is an important link in the reform process of the system of the Court. We thank the Presidency for the efforts deployed in shaping the Declaration, aimed at expressing not only the guiding principles for the future activity of the Court, but also the confirmation of the common vision we need, with regard to the reform process. It is our belief that this vision represents the most important element of Interlaken; it will allow us to deepen and give substance to the reform initiated six years ago, when Protocol No. 14 to the Convention was adopted. I am particularly pleased to be here, as I signed Protocol No. 14, in 2004, on behalf of Romania.

The basis for the further reflection process is today's reconfirmation of our political commitment to the European Convention of Human Rights and identifying ways to strengthen the protection mechanism enshrined in this instrument.

Against this background, we have to look at different means for making the system of the European Convention more effective, through short and, where needed, long-term measures. In doing so, we have to start by recognising our responsibilities towards the European citizens, shared by all States Parties and

the Court itself on the basis of the cornerstone principle of subsidiarity, whose strengthening we are calling to.

"The Court is a source of hope for many", as the Commissioner for Human Rights has recently pointed out; and we must do our utmost to safeguard our citizens' fundamental right to individual application, another basic principle supported by us today.

In this respect, there is a need to find solutions in order to deal with the pressing issues the Court is confronted with, in particular the inadmissible applications, which represent the vast majority of the current backlog. In this regard, different possible paths are highlighted in the Declaration, including providing proper information to the potential applicants and a faster filtration. During our further works, we should also not lose from sight that no resemblance exists between inadmissible and repetitive applications, and therefore, no similar approaches should be suggested with a view to tackling them.

At this stage, when the entry into force of Protocol No. 14 is so close, let me, Mr Chairman, also recall the positive evolutions that have already taken place with a view to reinforcing the Convention system and the Court, a very significant step being Protocol No. 14 itself, which is supposed to bring more efficiency to the Court's activity.

Also, important progress has taken place at the level of the Court, introducing, for example, the procedure for pilot judgments and developing the concepts of friendly settlements and, where needed, unilateral declarations, ideas which will become, in our view, important tools in dealing with the current backlog. Romania supports these measures, in particular.

Then, at the level of execution of the Court's judgments, which we consider to be an essential issue, many useful decisions rendering the process more efficient have already been taken. We should further strengthen them in the future.

I hope that the conclusions of today's Conference will represent the basis for a fortified protection of human rights in Europe. In order to achieve that, we are ready to actively contribute to the further reflection process for reinforcing our Court and to implement measures which will be decided, after a thorough assessment of their potential efficiency.

Russian Federation: Mr Alexander Konovalov

Minister of Justice

The Russian Federation considers the European Court of Human Rights to be a very important instrument that helps to improve Russia's judicial system in order to bring it up to the standards of European justice. This can be proved not only by the fact that Russia has ratified Protocol No. 14 to the European Convention on Human Rights but also by Russia's:

- working out of the draft laws on compensations for the victims of injustice and for those who suffered from the counter-terrorist operations;
- reforms of the judicial, enforcement (bailiff) and penitentiary systems;
- analysis of the European Court's decisions within the framework of large-scale monitoring of the legislation and law enforcement in Russia carried out by the Ministry of Justice of the Russian Federation.

The Russian Federation is not inclined to politicised rhetoric in relation to the Court, though realising that it is very difficult for the judges to pass between Scylla and Charybdis – meaning the objective enforcement of law and its own case-law and the necessity to study the historical and social context of particular applications. Anyway, we believe that major Court developments remain exclusively within the domain of law. A whole range of important procedural issues shall be regulated by a document of the Council of Europe (for example in the form of the Statute of the Court) that shall be an integral part of the Convention.

Among most important procedural issues that need to be better regulated I would cite the following:

- consistency in applying the criteria for the admissibility of claims and in rendering justice in general;
- consistency in applying and interpreting of the essential provisions of the Convention;
- establishing clear and predictable standards for the procedure of adoption of the pilot judgments;
- establishing clear-cut criteria for the referral of the claims to the Grand Chamber of the European Court;
- enhancement of the role of the Grand Chamber of the European Court in providing for the consistency of the Court's case-law;
- establishing a transparent mechanism for considering the clone cases, especially at the stage of qualifying them as such – in order to avoid the emergence of a section of unprofessionally qualified and virtually unverified decisions;
- optimising the procedural time limits applied by the Court.

As *sui generis* objectives the following shall be pointed out:

- forming stable, transparent and predictable case-law;
- reducing the number of groundless applications by means of procedural rules;
- securing a strictly subsidiary role for the European Court in relation to the national jurisdictions. This approach envisages that the Court is respectful to the peculiarities of the public and legal mentality of particular member countries – with the general priority of the Convention provisions.

The Court and the national jurisdictions shall treat each other with maximum trust and shall do all they can in order to justify that trust.

San Marino: M. Guido Bellatti Ceccoli

Ambassadeur, représentant permanent auprès du Conseil de l'Europe

Au nom de M^me^ Antonella Mularoni, ministre des Affaires étrangères et politiques de la République de Saint-Marin, je voudrais tout d'abord remercier les autorités suisses pour avoir organisé cette conférence et de nous avoir accueillis chaleureusement dans cette ville d'Interlaken, pour traiter une matière d'importance fondamentale pour le futur de l'Europe.

Les droits de l'homme sont au cœur de nos préoccupations et de notre action, et nous savons tous que sans un système efficace de protection ces droits ne seraient que des mots vidés de sens. Pour cela je crois que l'entrée en vigueur du Protocole n° 14 est une étape fondamentale dans notre parcours. Une étape importante, mais nous savons tous que nous devons aller au-delà du Protocole n° 14, pour faire face aux défis liés au bon fonctionnement du mécanisme de protection.

Laissez moi souligner, dans ce cadre, l'opportunité et la validité politique de la Déclaration et du Plan d'Action, qui constituent le fruit d'un travail collectif de réflexion et d'analyse.

Mes autorités sont convaincues que nous pourrons obtenir des résultats tangibles en tenant compte, d'une manière globale, des résultats de nos débats, sans oublier la nécessité, pour l'avenir, d'adapter notre action à la progression dynamique liée au fonctionnement de la Cour européenne.

En d'autres termes, nous devrons faire en sorte que le Plan d'action soit mis en œuvre par un engagement commun, considérant notre responsabilité collective vis-à-vis du fonctionnement du système, et en adaptant nos démarches futures aux développements de la situation.

Il ne m'est pas possible aujourd'hui de rentrer dans les détails des questions traitées, mais je voudrais souligner l'importance des principes énoncés dans la Déclaration et le Plan d'Action, donc la nécessité de réaffirmer les bases essentielles du système, en indiquant la route à suivre avec sagesse et sens de responsabilité.

En conclusion, je voudrais confirmer l'engagement plein et inconditionnel de mon pays à participer à ce processus en déployant tout les efforts nécessaires pour l'accomplissement d'une tache prioritaire et incontournable, à savoir la protection effective des droits de l'homme reconnus à chaque individu par la Convention de sauvegarde des droits de l'homme et des libertés fondamentales.

Serbia: Mr Svetozar Čiplić

Minister for Human and Minority Rights

First of all, please allow me to express our appreciation and gratitude to the Swiss presidency for all its result-oriented efforts in the run up to the Interlaken Conference.

The Republic of Serbia warmly welcomes the forthcoming entry into force of Protocol No. 14. It shall by all means improve the system of protection of human rights before the European Court of Human Rights and be a great step forward.

With regard to the reform of the Court, Serbia in principle supports all the activities orientated towards promoting and strengthening the system of protection of human rights grounded on democracy, the rule of law, common European values, but also on the respect for specific features of the member states of the Council of Europe.

Serbia strongly supports the strict application of the principle of subsidiarity in the protection of the rights guaranteed under the Convention. Also, Serbia advocates the division of responsibilities among the member states and the European Court of Human Rights. On one side, it means that the states shall have

a prerogative obligation to ensure respect for and protection of human rights at the national level, compliance of the legislation and practice with the standards contained in the Convention and the protocols thereto, and to fully execute the judgments rendered by the Court. On the other hand, the Court should give effect to the principle *de minimis non curat praetor*, apply admissibility criteria rigorously and secure the consistent and coherent application and interpretation of the substantive provisions of the Convention. In this way, not only will the confidence of the states in the Court be strengthened, but the reputation of the Court as "the consciousness of Europe" as well.

Serbia reaffirms the right of individual petition as a cornerstone in the system established by the European Convention on Human Rights, but at the same time Serbia is in favour of raising the threshold for the submission of individual applications to the Court, because the Court should not be transformed into a "small claims Court." On the other hand, Serbia supports more efficient processing of cases classified as "well-established case-law", although it stresses the importance of establishing of firm criteria to be applied for the classification of cases to "well-established case-law".

Also, Serbia is in favour of greater use of the pilot judgment and friendly settlement procedure, and greater use of unilateral declarations by a state recognising that the ECHR has been violated. These mechanisms already exist and Serbia often resorts to the conclusion of friendly settlements and securing of unilateral declarations.

Serbia supports the practice of seconding national judges to the Court's Registry. This will improve the national judiciary's understanding of the Strasbourg system and the connection between the national systems and the Court, as well as the understanding of the national judicial systems by the Court.

To conclude, the Republic of Serbia fully supports the reform of the Court. However, in the circumstances of the restrictive budgetary policy, it is difficult to achieve all the measures predicted through the increase of allocations for those purposes.

Slovak Republic: Ms Viera Petríková

Deputy Prime Minister and Minister of Justice

Allow me to thank the organisers for focusing on the topical issue of the reform of the European Court of Human Rights, which lies at the centre of the mechanism of human rights protection introduced by the Convention for the Protection of Human Rights and Fundamental Freedoms; and for providing us, ministers, the opportunity to present our views on this subject. Several expert meetings dedicated to enhancement of the latter mechanism have taken place, including the one organised under the Slovak Chairmanship of the Committee of Ministers in Bratislava, 2008. Nevertheless, it is obvious that political impetus, as well as commitment, are needed to initiate further concrete action leading to the next milestone in the life of the Convention. In this connection, the Slovak Republic welcomes the ratification of Protocol No. 14 to the Convention by the Russian Federation.

At the same time, I consider the involvement of civil society in these efforts essential, too. That is also why I am pleased to limit my contribution just to few words to allow the representatives of NGOs more time to express their views on the subject where they certainly can contribute with their experience and difficulties encountered when offering their help to the alleged victims of human rights violations.

Today, the main goal of our meeting is to endorse the Declaration including the Action plan intended to facilitate particularly the reform of the Court. Let me express my appreciation to the Swiss Chairmanship for the way they managed the preparation for this conference as well as listening and taking on board our comments on the draft Declaration. It gives us the solid basis for further measures to be implemented. The Declaration, a roadmap for future of the Convention system, enshrines the goals shared by the Slovak Republic, particularly preserving the right of individual petition and shared responsibility of both intergovernmental and national systems.

I will briefly touch upon the two specific measures, which are foreseen by the Action plan.

From our point of view, the dissemination of relevant information is one of the key elements here as greater knowledge of the case-law by applicants can make their expectations more realistic, contribute to the submission of more precisely formulated complaints, and help to decrease the backlog of the Court, too.

On the other side, another measure that might lead to the improvement of the current situation is represented by the idea of giving judges certain powers to

address the identified shortcomings and rectify them using less formal and thus less time-consuming procedures.

Let me conclude by what goes without saying: that it is of the utmost importance to concentrate all of our available, even limited, personal and budgetary means in order to support the unique system of the Convention interpreted by the case-law of the European Court of Human Rights already during a period of 50 years, which represents the core values of the Council of Europe and its member states and from which our citizens can still directly benefit.

Slovenia: Mr Aleš Zalar

Minister of Justice

First I should like to thank Switzerland for organising this important event. I am glad that effective functioning of the European Court of Human Rights is a priority for Switzerland as current Chair of the Committee of Ministers, as it was also for Slovenia as previous Chair. We welcome the draft declaration before us; however, allow me to share with you some recommendations and ideas for strengthening it:

First and in accordance also with opinions delivered by the Consultative Council of European Judges, we believe that it is necessary at the Council of Europe level to consider conceptual changes that would define in greater detail the procedure of selecting Judges of the Court, thereby strengthening the Court's independence and impartiality, particularly by introducing a specialized independent body at Council of Europe level (a quasi judicial council) that would produce independent opinions with regard to candidates for judges proposed by the member states and rank such candidates considering their working experience, qualification as well as capacity to adjudicate and use law by respecting human dignity. Such a procedure would not encroach upon the current relevant candidacy procedures in the member states or the decision-making of the Parliamentary Assembly of the Council of Europe. It is premature to provide a fixed opinion on the composition of such a body, however, we support the position that it should not be big in number (maybe only 9 to 11 members); members could be jointly appointed by the President of the European Court of Human

Rights and Parliamentary Assembly; they would be proposed by the member states from among their members of national judicial councils, the highest courts (also retired judges) and recognised legal experts; and at least one half of the members should be active or retired judges.*

Secondly, with regard to strengthening the administrative independence of the Court, we stress the need for a systemic provision of financial independence of the Court, perhaps by introducing a separate Court budget (separate, that is, from the general Council of Europe budget). This would simultaneously mean strengthening the independence of the Court in general.†

Third, we support the idea for expanding the forms of collaboration with the Court, raised by the Steering Committee for Human Rights, in considering the introduction of a system whereby national courts may apply to the Court for advisory opinions on legal questions relating to the interpretation of the Convention and its protocols.‡

Fourth, with regard to the rationalisation of Court's working methods and reduction of costs, we propose an amendment to the Rules of Court (Nos. 32 and 38) and Practice Directions issued by the Court President in the part pertaining to applications and procedures and introduction of e-business between parties and the Court. So that upon lodging an application with annexes parties must ensure a sufficient number of copies for the Court, the counterparty and the third party. The introduction of e-business between the Court, Agents before the Court and lawyers would mean that parties could lodge their applications in an electronic form. If an application is filed electronically, the Court shall serve documents to parties by sending them to the e-mail addresses notified when the application was lodged.§

Lastly, with respect to repetitive complaints and in accordance with general conclusions of the Bled Round Table discussions of September 2009 (where we had a round table during our Chairmanship on ways of protection of the right to a trial within a reasonable time – countries' experiences and on short-term reform of the European Court of Human Rights), the Republic of Slovenia

* Additional wording for Section E, point 8, letter a would in this respect be as follows: "… European levels through intervention of the independent authority like Judicial Council or High Council of Justice with substantial judicial representation, full satisfaction…."

† Section E, point 8, letter b would in this respect be amended as follows: "… administrative and financial autonomy within the Council of Europe. Introduction of a separate Budget of the Court is worth considering."

‡ This issue could be covered in Section B as 4bis.

§ Section E, point 10 introduce the following wording: "…and working methods especially in amending the Rules of the Court and Practice Directions in the part pertaining to applications and procedures and introduction of e-business between parties and the Court and making maximum use …". Such wording could also be proposed in additional letter.

believes that one way of addressing repetitive complaints in Section D could be by introducing procedures enabling class or collective action applications.*

All the aforementioned ideas could contribute to strengthening the application of the European Convention on Human Rights and increase effective protection of human rights and fundamental freedoms of applicants to the European Court of Human Rights.

Spain: Ms Purificación Morandeira Carreira

Vice-Minister of Justice

Let my first words be of gratitude to the Swiss Authorities, for hosting this important meeting, and to the Council of Europe and the European Court of Human Rights for gathering all of us here, with the crucial aim of analysing the future of the Court.

First of all, representing the Presidency of the Council of the European Union I should like to read the following statement on behalf of the European Union.

- Recalling the Madrid ministerial decision, and the pressing need to reform the European Court of Human Rights given its substantial backlog of pending cases, the European Union is grateful to the Government of Switzerland for organising the high-level conference at Interlaken on the future of the Court. The conference provides an important opportunity for States Parties to the European Convention on Human Rights to express again their strong support for the Court and to provide an impetus for effective measures to improve the implementation of the Convention at all levels.
- The EU has acted in close co-operation with all member states in order to achieve a positive and result-oriented final document at this Conference. We thank all those who tabled contributions for the conference.
- The EU reaffirms its strong commitment and that of its member states to the right of individual application to the Court, as contained in Article 34 of the Convention, and to the principle of subsidiarity, which must remain essential pillars of the system. By signing and ratifying the Convention, the States Par-

* Introduced as a separate letter d, point 7, section D.

ties have undertaken to apply its provisions. The EU underlines the need to adopt the required measures at national level to provide effective domestic remedies. The process of execution of judgments and its supervision, in conformity with article 46, needs to be made more effective and efficient.

- Reforms imply a shared responsibility for the member states and the Court. In this context, the Court must fully co-operate in the reform process.
- The EU hopes that the conference will launch a process that will result in the adoption of measures that will enhance the effectiveness of the Court in the context of the Council of Europe reform process. This should take into account the implications of the accession of the EU to the European Convention on Human Rights to which the EU is fully committed.
- The EU welcomes the forthcoming entry into force of Protocol No. 14 following its ratification by the Russian Federation. Protocol No. 14 will constitute an important step in the reform of the Court.
- The EU looks forward to co-operating fully with all member states in this process.

– The candidate countries: Croatia and "the former Yugoslav Republic of Macedonia";
– the countries of the stabilisation and association process and potential candidates: Albania, Bosnia and Herzegovina, Montenegro and Serbia;
– and also Armenia, Azerbaijan, Georgia, Ukraine, Moldova and Monaco align themselves with this declaration.

And now let me go on as a representative of the Spanish Government.

The entry into force of the Lisbon Treaty represents an institutional challenge for the EU member states.

It not only provides the legal basis to initiate negotiations in view of the accession of the European Union to the Rome Convention, but also establishes an obligation for the EU to finalise the negotiations with the accession to the treaty.

Further to this, the Stockholm Programme indicates that a "rapid" accession to the Convention should be made and invites "the Commission to submit a proposal on the accession of the EU to the European Convention on Human Rights as a matter of urgency". The importance of the accession has been stressed in relation to the fact that it "will reinforce the obligation of the Union, including its institutions, to ensure that in all its areas of activity, fundamental rights are actively promoted".

Among the challenges which lie before the Spanish Presidency of the Council, the question of the accession of the EU to the Convention on Human Rights ranks among the highest priorities.

At a recent seminar on the accession of the EU to the Rome Convention, organised by the Presidency together with the Fundamental Rights Agency in Madrid on 2 and 3 February, a number of participants stressed the need for finding solutions

to the most important issues at stake, in order to maintain the political objective of a rapid accession.

The two main bases of the system are, on the one hand, the preservation of the right of individual application and, on the other hand, the principle of subsidiarity, ensuring that rights and freedoms are secured at a national level.

The efforts made in order to ensure the continuity of the Court must be carefully respectful with the right of individual application. Nevertheless, this should not imply that access to the European Court becomes more favourable than access to national courts.

One of the best remedies to solve the Court's problems would be, without any doubt, the existence of effective national systems of protection, together with an adequate dissemination of the Court's case law at a national level.

In Spain, proceedings before the Constitutional Court and the implementation of the European Court's case law by our national courts have proved to be positive for the better application of the Convention standards. That is why I would like to underline the importance of the national level when facing any reform of the system.

We must indeed evaluate the results of the reforms introduced by Protocol No. 14 that will be now fully applicable. However, in order to develop the control mechanism in a positive way, reforms should not focus exclusively on enhancing the filter mechanisms or the discretion of the Court to accept new cases. The continuity of the system in the medium term might require the provision of further resources, and we should not close the door to consider that in the future.

I should end now by stressing that we are now facing a major opportunity for Europe and for the system of protection of human rights in this continent. For that reason, in the years ahead of us, we must not forget that this exercise was born of the political will of the State parties to maintain and support a unique jurisdictional system in the world and we are here to renew this political will.

Sweden: Mr Carl Henrik Ehrenkrona

Ambassador, Director General for Legal Affairs at the Ministry for Foreign Affairs

Unfortunately, neither the Minister for Foreign Affairs, Mr Carl Bildt, nor the Minister for Justice, Ms Beatrice Ask, could attend this conference. They both very much regret this. I would like to convey their sincere thanks to our Swiss hosts for organising this highly important conference.

Sweden is a strong supporter of the legal order created by the European Convention on Human Rights and the European Court of Human Rights. It has been a party to the Convention since 1952. In the 1980s, when the first judgments against Sweden, finding a violation of the Convention, were handed down, the development of the Court's jurisprudence was controversial in large circles in Sweden. However, as a State Party, Sweden has been a loyal player in the game. Let me recall that when chairing the Committee of Ministers in 2008, Sweden organised a colloquy in Stockholm dealing with implementation of the Convention at national level and how this could be done in the most efficient way. We also initiated the process that led to the adoption, during the Spanish Chairmanship, of Protocol No. 14*bis* and the Madrid Agreement on the provisional application of certain provisions of Protocol No. 14.

There is no doubt that during its 60 years of existence the European Convention on Human Rights has played a very significant role for the protection of human rights in Europe. It has also served as a source of inspiration for other international human rights instruments and human rights bodies. Through the unique system of individual application and binding judgments, the Court has continuously developed and enhanced the protection of human rights for persons within the jurisdictions of the States Parties. We have a duty to ensure that the Court will be able to continue to perform this vital task in years to come and that the necessary resources are put at its disposal.

Sweden believes that the declaration to be adopted today will lay a solid foundation for further necessary reforms. We support the declaration. We agree that the right of individual petition should remain a cornerstone of the Convention system. At the same time, the Court should be able to focus on its essential role of taking decisions on questions of fundamental significance and dealing with applications that raise issues of grave human rights violations. And it should have a fair chance to do so within a reasonable time.

The role of the Court is a subsidiary one. The Convention system cannot function effectively unless we assume our responsibility to fully implement and

apply the Convention at national level. First and foremost, the responsibility for guaranteeing that an individual's human rights are respected lies with the national parliaments and governments, and the national authorities and courts. Establishing effective domestic remedies and executing the Court's judgments by speedily introducing the necessary legal amendments are measures that assist in relieving the burden of the Court. By taking such measures it is possible to avoid so-called repetitive applications being brought to Strasbourg.

The Court has often said that it is not a fourth-instance court. This means, among other things, that it should exercise restraint in reconsidering questions of fact and national law that have been considered and decided by national courts. It is remarkable that in spite of its enormous caseload, the Court has succeeded in upholding the quality of its judgments and decisions. It is essential that the Court's case-law continue to be clear and consistent. If the present trend of an ever-increasing caseload persists, there is a serious risk that the quality and coherence of the Court's case-law will suffer. This must be avoided.

Clearly inadmissible applications make up a large part of the Court's caseload. We are convinced that finding a solution to this problem is of utmost importance for the proper functioning of the Court. Measures such as rejecting complaints that are clearly abusive and applying the principle *de minimis non curat praetor* should be welcomed. We welcome the entry into force of Protocol No. 14. The amendments to the Convention introduced by the protocol will increase the efficiency of the system. We believe, however, that Protocol No. 14 will not be sufficient in the long term. Sweden is therefore in favour of considering the establishment of a new filtering mechanism within the Court. At the same time, it is important to provide objective information to potential applicants on the requirements and limits of the Convention system. This could hopefully lead to a decrease in the number of clearly inadmissible applications.

Sweden would also like to give priority to improving and reinforcing supervision by the Committee of Ministers of the execution of the Court's judgments.

I should like to conclude my statement here today by expressing my government's great satisfaction with the prospect that the accession of the European Union to the Convention is likely to become a reality in a not-too-distant future. For the European Union and its member states this is an important step towards achieving a common European human rights standard.

"The former Yugoslav Republic of Macedonia": Mr Mihajlo Manevski

Minister of Justice

At the outset allow me to express my gratitude to the Government of Switzerland for organising the high-level conference in Interlaken on the future of the European Court of Human Rights. I am particularly pleased to be here and to present you the views of the Government of the Republic of Macedonia on this important issue.

There is no doubt that the activities related to the reform of the Court and the further enhancement and strengthening of the European human rights protection are one of the main priorities and challenges that faces our Organisation. As we are all very well aware, the European system for the protection of the human rights and fundamental freedoms is a unique model in many aspects and proved to be a source of inspiration for other regional human rights courts.

The credibility that the European Court of Human Rights has accumulated over time has obliged us to invest more efforts to address the pressing needs and challenges it faces and to preserve its important role in the European legal construction.

The Republic of Macedonia highly appreciates the activities that have been undertaken so far by the previous Chairmanships of the Committee of Ministers in upgrading the system for the effective protection of human rights and in improving the functioning of the European Court of Human Rights. The Interlaken Conference will provide a strong impetus for the future engagements in the reform process. The documents prepared to be adopted at this Conference – the Interlaken Declaration and the Action Plan specify concrete measures that need to be undertaken at several levels – at national level, at Committee of Ministers' level and by the Court in order to achieve the desired improvements and adaptations that will, in the first place, mostly benefit the European citizens.

We must be especially pleased with the fact that in the past decade the awareness of European citizens of their rights under the Convention has substantially increased. On the other side, this has resulted in a rapid increase in applications pending before the Court, making it a victim of its own success.

My strong belief is that urgent measures are needed to address the present situation. The huge backlog of cases and the outdated filtering system puts the Court in a very problematic situation, blocking its capability for unhindered functioning and putting in danger one of the main principles in its work – the need for timely justice (justice delayed is justice denied). Some changes in the

established procedures must be undertaken urgently in order to get out from those problems. Therefore, the improvement of the filtering mechanisms, the mechanisms for dealing with the repetitive cases, better dissemination of the Court's case-law, etc, are only few of the measures that should be developed and implemented in the near future. Of course, the responsibility first lies with the member states. The principle of subsidiarity remains the cornerstone of the system. The measures taken at national level should provide effective domestic remedies and should strengthen the national legal order and bring it more in compliance with the Convention and the case-law of the Court.

What has we done so far in this regard at national level? The Republic of Macedonia is faced with the problem of extreme length of civil procedures before domestic courts. During previous years numerous measures have been undertaken to improve the situation. The new domestic legal remedy for the protection of the right to a trial within a reasonable time became operational, and between April 2008 and 31 December 2009 the Supreme Court of the Republic of Macedonia decided over 310 applications, implementing the European Court's assessment criteria and its case-law. Special attention was paid to the training of the Supreme Court's judges working on cases concerning reasonable length of proceedings.

The reforms in the judiciary in the Republic of Macedonia have shown results. The number of new court cases has decreased by 24% and the number of unresolved cases has decreased by 25%. Graduates from the Academy for Training of Judges and Prosecutors, practising judges and prosecutors themselves, and officials of law-enforcement agencies are receiving continuous human rights training. The first evaluation of the performance of the duties of all judges in the Republic of Macedonia, done by the Judicial Council, has been completed.

We must also make sure that the conduct of the reforms of the European Court of Human Rights must not call into question, in any sense, the right of individual petition and must not contribute to any kind of limitation or obstruction of the free exercise of this crucial right.

The close co-operation between the institutions of the Council of Europe in terms of a better execution of the judgments of the Court is also one of the essential issues that must be addressed not only on this conference, but in the period to follow. In this regard we would like to stress the utmost importance of the role that the European Court of Human Rights should play in the field of a more consistent monitoring/supervision of the execution of its own judgments. The Advisory opinions of the Court should serve as an important legal tool that will help the Committee of Ministers in deciding whether the essence of the Court's judgment has been properly implemented by the states.

I would like to mention another important issue, namely, the EU's accession to the European Convention on Human Rights, which we all believe will com-

plete the foundations of common European legal area of fundamental rights. During the Macedonian Chairmanship this issue will be followed closely.

I warmly welcome the news from Moscow on the ratification of Protocol No. 14, which makes our joint effort easier and enables us to move forward with the reforms. In this context, let me state that in support of the Court's reform, the Republic of Macedonia has ratified Protocol No. 14 and has signed Protocol No. 14*bis*. This last instrument, which contains two procedural measures taken from the earlier Protocol No. 14 to increase the Court's case-processing capacity, is in its final stage of ratification.

The Ministerial Declaration to be adopted at this conference will serve as a strong political manifest of our common political will and the strong dedication of our courtiers to make the core mechanism of our Organisation function better.

In this regard, let me stress again that ensuring the long-term effectiveness of the European Convention on Human Rights and the reform of the Court will be one of the top priorities of our Chairmanship that we hope will ensure the continuity of the activities in this field.

Turkey: Mr Cevdet Yilmaz

State Minister

We join other delegations in thanking the Swiss Government for this initiative, which brings together the Contracting Parties to the European Convention on Human Rights to discuss the future of the European Court of Human Rights.

What brings us together at Interlaken is the recent developments threatening the future of the Convention system. The problem is not merely the backlog of 120 000 applications pending before the Court. Going well beyond this simplistic diagnosis, the problem is coupled with serious structural shortcomings. Our presence here today acknowledges this fact.

The mere existence of a European Court, where more than 800 million European citizens are entitled to take their complaints, which, they believe, had not been resolved through domestic remedies, is a success in itself. This success, however, brings along high expectations. On top of these expectations comes a

Court, which functions effectively and can dispose of applications within a reasonable time, and a Court, which ensures legal security through a consistent case-law.

The Interlaken Conference is an important step towards meeting European citizens' expectations of the Convention system. The responsibility of the ownership of this protection mechanism requires that our governments be able to display the same common political will which they had shared at the time of the creation of the Convention system.

As a Contracting Party, Turkey sought to play its part in the preparatory process for the conference. Our contribution included, *inter alia*, proposals to introduce a system of fees for applications and the use of the official languages of the Council of Europe in applications with a view to strengthening the application of the admissibility criteria. We highlighted the need to call the Court to apply uniformly and rigorously the admissibility criteria as well as the criteria ruling its jurisdiction, in particular the principles of *ratione temporis* and *ratione loci*. We repeatedly emphasised that, as a standard-setting institution, the Court should make awarding just satisfaction an exceptional measure, and that the amounts of just satisfaction should not act as an incentive to applicants. We keep our views and proposals on the table in the post-Interlaken process.

Turkey sees the Interlaken Conference as a propitious opportunity for the creation of a common European vision for the future of the Convention system. This vision should be built on the objective of making the Convention guarantees practical and effective. What we need to achieve this goal is a European Court which, in strict compliance with its subsidiary nature, receives fewer applications and delivers higher-quality judgments, and the case-law of which provides authoritative guidance to national courts and ensures legal security.

This Conference is indeed the start of a long-term reform process in which Turkey will be ready to do its part as a Contracting Party to the European Convention on Human Rights.

Yesterday, several heads of delegation stressed the importance of national action to reduce the number of applications before the Court. My Government also shares this view and we are determined to continue the democratic reform process which, we hope, will help reduce the number of applications coming from Turkey.

We understand from our contacts with the Court that the preliminary evaluation of the impact of Protocol No. 14 will be made possible within six to nine months following its entry into force on 1 June 2010. In the light of this welcome development, we shall be happy to host, during the Turkish Chairmanship of the Committee of Ministers, a follow-up conference in Turkey in the spring of 2011.

Ukraine: Mr Yevhen Perelygin

Ambassador, Permanent Representative to the Council of Europe

Let me first express deep appreciation to the Swiss authorities for the initiation and excellent organisation of this event, which is extremely important for the further development of European democracy.

Here are some considerations on the topic.

The key role of the right of individual petition as lying at the heart of the Convention system is not subject to any doubt. We share the view that it is necessary to explore the ways for improving the efficiency of the Court.

Such efforts may not, however, give rise to any issue of narrowing an applicant's right of access to the Court.

What can be explored in this context instead is kind of a "discipline-fostering" mechanism to make both the applicant and the Court (with its Registry staff) abide by the formal requirements.

Certainly, of significance in this regard can also be the role of the states themselves. A contributory step in this direction could possibly be the inclusion of questions on Convention proceedings in the examination qualifying a lawyer to practise law.

It would also be reasonable to make an "inventory" of typical grounds of inadmissibility, to prepare their catalogue translated into national languages.

In our opinion, a key issue for the further reform of the Court is the strengthening of the principle of subsidiarity.

To this end, it would be appropriate to focus on the following two objectives.

The first one is to create domestic mechanisms protecting against repetitive violations. I should like to observe that, in Ukraine, the procedures to react to violations found by the Court are governed by a special law.

Furthermore, an efficient tool to resolve systemic problems is the "pilot judgment" procedure.

Still, the effectiveness of this tool depends on precision and clarity of the criteria for application of the pilot judgment procedure, the identification of reasons behind the violations and the indication of measures to be taken by the state to prevent similar violations in the future.

Such criteria can also be used symmetrically by the Committee of Ministers to supervise the implementation of a pilot judgment.

The aforementioned suggests that the pilot judgment procedure requires conventional regulation as an institute. The same, by the way, also applies to the institute of unilateral declaration.

Another factor contributing to the strengthening of the principle of subsidiarity is the implementation of the Convention at the national level and, in the first place, by the judiciary.

In the legislation of Ukraine, the Court's case-law has been accepted as a source of law.

Worthy of notice also is the idea of introducing the procedure for the Court to give its advisory opinions on requests from domestic courts. The authority to file such requests can possibly be the Supreme Court of the State concerned.

Finally, I once again express our deep gratitude to the organisers of the Conference for this opportunity to present our vision of the prospects of reforming the Court.

United Kingdom: Lady Patricia Scotland

Attorney General

Many delegations have stressed the need for both states and the Court to respect subsidiarity. I agree.

States, of course, have the primary responsibility for securing the Convention rights. We must all ensure that we implement the Convention in full, and we must empower our courts to grant effective remedies for any breach.

When states discharge this duty, however, the Court has a corresponding obligation of its own. It must never let itself become a court of fourth instance. The Court must exercise restraint where the domestic courts have fully and properly applied the Convention. It is only then that the Court will be able to focus its efforts where it will have the greatest impact, and best fulfil its role as the ultimate guarantor of human rights in Europe.

Hopeless applications to the Court serve no one's interest. We must therefore encourage those who would apply to the Court, and those who advise them, also to show restraint. Recourse to Strasbourg should be the last resort. We need to find ways to reduce the 90% of applications that are clearly inadmissible: filtering them is one response on which we will work, but it is not the only issue we will have to explore if we are to find a lasting solution.

Many speakers have spoken about the importance of developing the dialogue between the Strasbourg Court and national courts. Put simply, the Strasbourg Court must command the respect of national courts.

To achieve this:

- the judges we nominate to the Strasbourg Court must be the very best;
- the judgments of the Court must be clear and well reasoned;
- and the Court needs to follow a consistent line of precedent. Effective national implementation of the Convention and legal certainty both depend on it.

The Declaration that we are adopting today sets out an Action Plan containing timelines for reforms. We will all need to stay as engaged as we are today to make reform a reality. The United Kingdom is wholeheartedly committed to the reform process, and will play its full part in taking it forward, especially during its forthcoming chairmanship of the Committee of Ministers.

We must be clear about the objective of this reform process. We will have achieved our aim when the Court's backlog has been cleared, and when there is equilibrium between the rates at which applications are received and disposed of by the Court. We should clearly measure the impact of all reforms against this objective. Furthermore, any reform we make to strengthen the Court or address its backlog must not compromise the Court's independence, and must of course be affordable.

The reforms we are discussing today are part of the broader reform process underway in the Council of Europe. The organisation should emerge from this process stronger, more focussed, and better able to use the resources at its disposal to have the greatest possible impact in its core areas of human rights, democracy and the rule of law.

In this context, the United Kingdom strongly welcomes the entry into force at last of Protocol No. 14 to the Convention. This will be a positive step towards strengthening the Court and enabling it to deal more effectively with its caseload. However, important though Protocol No. 14 is, it will not be sufficient to resolve the challenges facing the Court. It is therefore vital that we continue to develop a far-reaching and effective reform programme.

Even before Protocol No. 14 comes into force, however, I am pleased to see that the Court is making more extensive use of the existing admissibility criteria to reject cases that raise only minor issues. I welcome in particular the recent admissibility decision in the case of *Bock v. Germany*, in which the Court disposed of such a case as an abuse of the right of individual application.

Looking further at the Court's existing procedures, there is also scope for the introduction of a genuinely expedited process in particular cases in which speed is of the essence. For example, in cases where there are very large numbers of applications relating to the same issue, or where Rule 39 measures are in place,

it would be very helpful if the Court could reach a decision more quickly in order to increase certainty for both applicants and states.

Protocol No. 14 also provides for the accession of the European Union to the Convention. This is a step that the United Kingdom supports, as it will be important to close the gap in the protection of human rights before the Court where actions are attributable to the European Union instead of the existing member states. We look forward to working out in negotiations in Strasbourg the practical implications of the European Union's accession, and hope strongly that we can avoid all unnecessary complication. It will be important in particular to distinguish clearly between the rights and obligations that are part of accession to the Convention itself, and those which only arise through full membership of the Council of Europe. Furthermore, we will need to ensure that accession has the least possible negative impact on the effective functioning and resources of the Court.

The Declaration that we are adopting today calls upon the States Parties to commit themselves to ensuring review of the implementation of the previous recommendations adopted by the Committee of Ministers. The United Kingdom accepts this commitment, and will proceed to undertake this review at the national level, looking for assistance to our national human rights institutions. We call upon other member states to do likewise in a spirit of honest reflection and self-examination.

The Declaration also calls for a review of the mechanism for the supervision of the execution of judgments. Important work has been done by the Committee of Ministers to ensure the effective implementation of judgments, and we welcome the clear commitment to increasing the efficiency of that process. However, we remain aware of the scale of the challenge: over 6 000 cases are currently before the Committee of Ministers for scrutiny, and we are concerned to ensure that the approach to implementation remains effective and sustainable. In order to ensure that the mechanism for supervising the implementation of judgments is as robust and efficient as possible, we would encourage a full review in the longer term of the system of execution of Court judgments and its supervision by the Committee of Ministers.

The Convention system and the Court, and of course the right of individual petition, are too precious to lose. We can and we must make them work. The action plan we are adopting today gives us a way to do this, and I know we can succeed.

Other guests

M. Jean-Marie Heydt

Président, Conférence des organisations internationales non gouvernementales du Conseil de l'Europe

Permettez-moi de vous dire l'importance toute particulière que la société civile, largement représentée au sein de la Conférence des organisations internationales non gouvernementales du Conseil de l'Europe, attache à l'invitation qui lui a été faite par la Présidence suisse du Comité des Ministres.

Dès la fin de l'année 2009, la voix de la société civile organisée, formant, aux côtés du Comité des Ministres, de l'Assemblée parlementaire et du Congrès des pouvoirs locaux et régionaux, le quatrième pilier du Conseil de l'Europe, avait été sollicitée par la Représentation permanente de la Confédération helvétique pour réfléchir, confronter et apporter sa contribution au débat crucial pour l'avenir de la Cour européenne des droits de l'homme et donc de la démocratie en Europe, ce débat qui nous réunit aujourd'hui à Interlaken.

Soyez remerciés de la marque de confiance que vous témoignez ainsi envers la Conférence des OING et plus généralement envers la société civile. Soyez chaleureusement remerciés de votre invitation.

Toutes les OING ne sont pas, bien sûr, des spécialistes du droit et moins encore de la procédure, mais toutes les OING dotées du statut participatif auprès du Conseil de l'Europe ont un souci commun, profondément ancré en leur sein : celui de la défense des libertés fondamentales et des droits de l'Homme, sans lesquels, nous le savons tous, la liberté n'existerait pas ! Nous avons, au cours de nos réunions préparatoires à la conférence d'Interlaken, partagé les mêmes constats, les mêmes expériences, les mêmes observations de terrain, là où, au quotidien, œuvrent nos OING.

Toutes nos organisations, sans exception, nous rappellent que la Cour européenne des droits de l'homme est avant tout, pour les citoyens européens, un formidable outil porteur d'espoir, et bien souvent pour bon nombre de requérants, l'ultime espoir. Et parce que cette Cour est tellement porteuse d'espoir, elle en arrive à générer parfois, malgré elle, bien des désillusions, des déceptions et des

angoisses quand elle ne peut plus répondre à toutes les attentes. Et les raisons de cette situation sont multiples :

- requêtes irrecevables en raison d'une procédure parfois incompréhensible pour l'humble justiciable ;
- délais bien trop longs pour être compris par les requérants ;
- exécution très tardive des décisions ;
- ou, pire encore, absence d'exécution des décisions !

Et pourtant, il faut le redire haut et fort, le citoyen européen croit dans les vertus de cette Cour qui n'a cessé, depuis sa création, de faire avancer les droits de l'Homme en étendant son influence petit à petit dans les 47 Etats membres du Conseil de l'Europe, particulièrement aujourd'hui dans toutes ces nouvelles démocraties où se développe, plus qu'ailleurs peut-être, ce besoin d'expression de la société civile, à travers les centaines de milliers d'ONG qui se créent un peu partout.

La Conférence des OING reconnaît cependant que cet espoir porté dans la Cour et qui lui en procure le succès que nous connaissons, ne saurait l'empêcher de garder une dimension humaine pour rester à la portée de chaque individu. A quoi servirait en effet une justice, hautement performante pour l'application des textes et qui, par le poids de ses rouages, en viendrait à se scléroser ?

Elle finirait par devenir intrinsèquement incompatible avec les valeurs mêmes qui en font le corps, ces valeurs pour lesquelles nous nous engageons, c'est-à-dire les valeurs des droits de l'Homme !

La Conférence des OING, et donc l'ensemble des citoyens européens, connaît l'état d'engorgement de la Cour. Il n'est pas question de lui faire courir le risque de la mener au rang des livres d'histoire ou des contes de fées (sans la baguette magique !)

La Conférence des OING, et bien évidemment l'ensemble de la société civile, souhaite néanmoins formuler un certain nombre de demandes concrètes, afin que perdure l'espoir qu'elle place dans l'avenir de la Cour :

- Il appartient à l'ensemble des Etats membres de tout mettre en œuvre pour que les obligations prises au nom des conventions internationales soient intégralement respectées, à commencer par la transposition scrupuleuse, dans leur législation nationale, des engagements auxquels ils ont souscrit en ratifiant la Convention européenne des droits de l'homme. Sans doute verrions-nous déjà se réduire considérablement le nombre de recours ;
- Un accompagnement éclairé des requérants, et reconnu par les instances, contribuerait certainement à une meilleure information, à une approche en amont et un travail préventif plus efficace. Sans doute verrions-nous, là aussi, se réduire considérablement le nombre des recours.

A cet égard, vous me permettrez de vous faire part de notre surprise et de notre déception de relever que la Conférence des OING ne trouve pas sa place

dans le projet de Déclaration finale de cette conférence, alors que nous sommes prêts à participer véritablement à l'assistance, au conseil, voire à la représentation juridique de ceux qui, individuellement ou en groupe, entendent introduire une requête devant la Cour. La Conférence des OING, en tant que voix de la société civile organisée, en avait même pris l'engagement !

- Cet engagement se manifeste à travers le rôle que joue la Conférence des OING du Conseil de l'Europe quand, grâce à son vaste réseau d'organisations membres, elle travaille à l'amélioration de la promotion et de la protection des droits de l'Homme pour en empêcher les violations en amont et pour participer au contrôle de l'exécution des arrêts de la Cour en aval. La Conférence des OING joue donc déjà un rôle actif et concret et entend continuer à jouer ce rôle ;
- Notre travail commun, dans cette réflexion ayant mené à Interlaken, nous conduit à soutenir l'idée d'instituer un système permettant à l'ensemble des juridictions nationales de saisir directement la Cour européenne des droits de l'homme pour avis consultatif sur des questions juridiques et notamment d'interprétation de la Convention européenne des droits de l'homme. Là encore, le travail préalable, développé en amont, pourrait être un facteur de réduction du nombre des requêtes.

Ces dernières sont aujourd'hui extraordinairement nombreuses et il serait suicidaire de ne pas se joindre à l'indispensable combat pour une réforme qui permette de garder la confiance dans l'institution. Mais attention : pas à n'importe quel prix !

De l'ensemble des propositions mûrement étudiées par les uns et les autres, et portées à ce jour à notre connaissance, j'ai mandat de vous faire savoir que si la Conférence des OING se félicite de l'importance réaffirmée du droit de recours individuel, elle est toutefois opposée à trois propositions qui constituent une limite inacceptable à l'accès des requérants à cette haute juridiction, et par voie de conséquence seraient une source intolérable de discriminations :

- Nous ne pouvons pas admettre la proposition d'imposer aux requérants la charge des frais de procédure, fût-ce au nom de l'équilibre budgétaire de la Cour ;
- Nous ne pouvons pas non plus admettre le principe de l'exigence de la représentation obligatoire des requérants par un avocat, dès le début de la procédure, sans possibilité de recourir à une assistance judiciaire gratuite ;
- Nous ne pouvons pas plus, enfin, accepter l'obligation du choix de l'une des deux langues officielles du Conseil de l'Europe à tous les stades de la procédure.

Ces trois réserves constituent pour la Conférence des OING, plus que des réserves, des limites inacceptables à un accès égal et non discriminatoire de tout citoyen à la Cour européenne des droits de l'homme !

Tout aussi discriminatoire risquerait de devenir l'accès à la Cour si l'on devait empêcher le citoyen d'exercer individuellement son recours.

La Conférence des OING se permet d'insister tout particulièrement sur cette impérative nécessité, face aux exigences d'égal accès à la justice, quelqu'en soit le degré de saisine. Les remèdes à l'engorgement de la Cour ne peuvent être obtenus au détriment de la possibilité de tout recours individuel au risque d'éloigner, par un écran artificiel, le justiciable et son juge de cette institution.

La Conférence des OING reste toutefois inquiète, avec d'autres qui le diront sans doute bien mieux que moi ici, car la nécessaire réforme de la Cour ne se fera pas sans un renforcement considérable des moyens matériels et financiers : cela relève d'une nécessité aussi vitale qu'urgente !

Or, et c'est là que se situe notre particulière inquiétude, ces moyens financiers ne peuvent en aucun cas être constitués au détriment des autres activités du Conseil de l'Europe. La responsabilité du devenir de la Cour est entre les mains des Etats membres du Conseil de l'Europe. Les 47 Etats membres ont signé et ratifié une Convention garante des valeurs des droits de l'homme. Les 47 Etats membres ont le devoir d'intervenir dans le respect de leurs engagements, et en particulier dans le cadre de leurs contributions respectives, pour le développement harmonieux de la Cour, sans porter préjudice aux extraordinaires activités développées par ailleurs au sein du Conseil de l'Europe.

Oui, nous reconnaissons cette chance de pouvoir disposer, depuis les lendemains de la guerre, d'un instrument juridique inestimable qui voit se fédérer 47 Etats autour de la défense des valeurs fondamentales de chaque citoyen ; un instrument unique en lien direct avec la Convention européenne des droits de l'Homme, le tout déployé dans un espace géographique où la société civile peut compter sur des droits qui lui sont accordés, non par des mots gravés dans des tables, mais par des mots qui sont autant de valeurs concrétisées dans la vie quotidienne.

Voilà ce qui nous préoccupe, Madame la présidente, Mesdames et Messieurs les Ministres !

Aurons-nous la faculté, aurez-vous l'audace, de donner ici et maintenant le signal fort qu'attendent les Européens et leur dire que dorénavant tous nos Etats s'engagent pour que soient mis réellement en œuvre les garanties effectives des droits de l'homme grâce à une Cour qui réponde efficacement à leurs attentes et à leurs espoirs, fussent-ils les derniers ?

Parce que nous avons tous, ici, ministres, représentants, magistrats, délégués, hauts fonctionnaires, tous, y compris les OING, les mêmes objectifs, la même volonté, les mêmes attentes, à savoir garantir un avenir de qualité pour la Cour européenne des droits de l'Homme, protectrice, au quotidien, des droits de chacun et de sa liberté.

Voilà pourquoi, en vous remerciant de l'honneur que vous m'avez fait de me donner la parole, en vous remerciant aussi de votre aimable attention, je vous assure, au nom de la Conférence des OING du Conseil de l'Europe, que nous ne faillirons pas à nos engagements pris lorsque le statut participatif nous a été octroyé. La Conférence des OING apportera toute sa contribution à la recherche des moyens nécessaires à la mise en œuvre du Plan d'action de la Conférence d'Interlaken, vous pouvez compter sur nous !

Mr Des Hogan

Deputy CEO, European Group of National Human Rights Institutions; Irish Human Rights Commission

I speak on behalf of the European Group of National Human Rights Institutions ("NHRIs") and wish to thank the Government of Switzerland for permitting the Group to address this ministerial conference.

NHRIs are key institutions established and mandated by domestic law as independent statutory bodies – such as national commissions and ombudspersons – and charged with promoting and protecting human rights. We are recognised by the United Nations, the Council of Europe and other regional bodies. Within Europe, we represent 34 national institutions from across Council of Europe member states and are accredited against the standards in the 1993 UN "Paris Principles".

NHRIs are fundamentally different from both states and NGOs, and as such we represent a "third dimension". NHRIs work to prevent violations at the domestic level, encouraging domestic remedies and monitoring implementation of European Court judgments. Our areas of work range from legislative and policy review, follow-up of international obligations, monitoring, research, education and awareness-raising, to investigation and litigation functions. NHRIs thus play a key role in identifying and seeking to address structural and systemic deficiencies in their own countries and of the European system as a whole, thus contributing to national implementation of the Convention.

It is important to acknowledge the great success enjoyed by the European Court to date. It is also key to say that any reform of the Court should be guided

by the need to reduce the number of violations of the Convention by states at source, while ensuring the right of individual application remains the cornerstone of reforms.

The European Group welcomes the recognition of the role of NHRIs in the Interlaken Declaration and separately the reference to consultation with civil society on effective means to implement the Action Plan. This should ensure greater transparency and participation and allow relevant stakeholders to undertake their roles in contributing to the success of our common endeavours.

Mandated as we are by domestic law, NHRIs stand ready to work with member states and the organs of the Council of Europe in all relevant stages, from the identification of the effectiveness of domestic remedies, the identification of pilot judgments, to the monitoring of execution of European Court judgments and the elaboration of domestic reform measures to address identified gaps in law or practice and thus ensure conformity with the Convention's provisions.

Finally I should like to congratulate the Government of Switzerland on convening and advancing this process. The European Group of National Human Rights Institutions looks forward to playing its part in taking forward this important work.

Conclusions

Conclusions of the Swiss Chairmanship of the Committee of Ministers of the Council of Europe and adoption of the Interlaken Declaration
Conclusions par la Présidence suisse du Comité des Ministres du Conseil de l'Europe et adoption de la Déclaration d'Interlaken

Conclusions: M^me^ Eveline Widmer-Schlumpf

Conseillère fédérale, cheffe du département fédéral de Justice et Police

Nous avons eu des discussions très intéressantes et fructueuses.

Avant d'évoquer des points précis de la réforme, je vais, si vous le permettez, formuler quelques remarques générales.

- La conférence d'Interlaken n'arrive pas trop tard, mais à point nommé. Il est en effet devenu urgent d'agir. Toutes les délégations l'ont d'ailleurs reconnu sans équivoque dans leurs interventions.
- De nombreux orateurs ont rappelé tout ce que nous devons à la Cour. Depuis plus d'un demi-siècle, elle contribue en effet à renforcer de façon significative l'Etat de droit et la démocratie en Europe. Il importe de protéger ces acquis. L'adhésion de l'Union européenne à la Convention, qui a été saluée par différentes délégations, constituera également un pas dans la bonne direction.
- Il convient aussi de noter que nous avons déjà progressé sur la voie d'une réforme durable de la Cour. L'entrée en vigueur prochaine du Protocole n° 14 a été saluée de manière unanime. Il a cependant aussi été souligné que d'autres mesures doivent être prises d'urgence.
- Quatrième point : Toutes les interventions témoignent clairement de la volonté politique de s'engager résolument sur la voie de la réforme. Cet engagement nous rend confiants.

- A cet égard, il est encourageant de constater que le plan d'action que nous allons adopter a été décrit comme un fondement solide pour la suite de la réforme.

Permettez-moi à présent de relever quelques thèmes concrets qui ont été au centre des débats :

- Le renforcement du principe de subsidiarité joue un rôle central pour trouver des solutions à nos problèmes. Il a été unanimement reconnu que les Etats parties sont tenus de respecter au niveau national les exigences découlant de la Convention. Je le répète une fois encore : une meilleure information et une meilleure diffusion de la Convention et de la jurisprudence de la Cour contribuent elles aussi au renforcement du principe de subsidiarité. Les intervenants ont également souligné le rôle important de la société civile, en particulier des ONG et des institutions nationales de protection des droits de l'homme.

  Le problème des affaires répétitives a été plusieurs fois évoqué. A ce propos, je vous renvoie aux importantes observations de M. Hammarberg ; le Commissaire a souligné la nécessité de créer en Europe une véritable culture nationale des droits de l'homme et s'est déclaré prêt à contribuer au règlement des problèmes structurels dans les Etats membres.

  Au sujet du principe de subsidiarité, plusieurs délégations ont indiqué que la Cour n'a pas à statuer sur tout. Notamment dans la mesure où le principe de subsidiarité est bien appliqué dans les Etats parties, la Cour pourrait réduire sa fonction de contrôle. Des délégations ont ajouté que la Cour devrait s'imposer une certaine réserve en ce qui concerne certaines questions revêtant une grande importance au niveau national.
- Le filtrage a aussi figuré en bonne place dans différentes contributions. Certes, les avis divergent sur les caractéristiques du mécanisme de filtrage et le moment auquel il devrait intervenir. Mais la nécessité d'instaurer un filtrage et de discuter d'urgence de ses modalités fait l'objet d'un large consensus.
- De nombreux intervenants ont aussi souligné l'importance de la clarté et de la cohérence de la jurisprudence de la Cour ; en effet, l'autorité de la Cour en dépend, et la jurisprudence doit servir de référence pour l'application de la Convention au niveau national. Ont également été évoquées les possibilités qu'offre la procédure des arrêts pilotes. La Cour a été encouragée à exploiter davantage toutes ces possibilités. Cette procédure serait d'ailleurs encore plus efficace si le Comité des Ministres s'occupait en priorité de l'exécution des arrêts qui relèvent de problèmes structurels au niveau national.
- L'expérience que nous avons faite avec le Protocole n° 14 montre qu'il faut beaucoup de temps pour amender les dispositions de la Convention concernant l'organisation de la Cour et les adapter à l'évolution des besoins. C'est pourquoi plusieurs délégations ont préconisé de doter la Cour d'un Statut.

- L'importance du droit de recours individuel en tant qu'ultime moyen de faire respecter les libertés et les droits fondamentaux inscrits dans la Convention a été soulignée à maintes reprises. Le maintien de ce droit n'empêche cependant pas de discuter des modalités selon lesquelles la Cour peut être saisie. Quelles que soient ces modalités, elles ne doivent pas conduire au rejet de requêtes bien fondées. Cela est évidemment particulièrement important pour les requêtes dénonçant des violations graves des droits de l'homme.

Permettez-moi de conclure.

Ainsi que je l'ai déjà souligné au début de mon intervention, la conférence d'Interlaken a mis en évidence la volonté politique, forte et partagée, de faire avancer la réforme de la Cour. Plusieurs intervenants l'ont souligné, nous devons profiter de cette dynamique pour nous engager sans tarder dans la suite du processus. Il appartient à présent au Comité des Ministres de faire en sorte que la réforme progresse rapidement ; il devrait bientôt prendre les décisions qui s'imposent et confier des mandats aux instances compétentes.

Adoption de la Déclaration et clôture de la conférence : M^me^ Micheline Calmy-Rey

Conseillère fédérale, cheffe du département fédéral des Affaires étrangères, présidente en exercice du Comité des Ministres du Conseil de l'Europe

Nous passons maintenant à l'adoption de la Déclaration d'Interlaken qui contient une partie solennelle, un Plan d'Action et une troisième partie concernant la mise en œuvre. Le projet final vous a été distribué en anglais et en français. Je constate qu'il recueille l'assentiment de toutes les délégations. Est-ce qu'une délégation souhaite encore faire une remarque à propos du texte ? – Tel n'est pas le cas. En conséquence, je propose d'adopter la Déclaration d'Interlaken par acclamation.

[Acclamation]

Je vous remercie vivement de votre expression de soutien à la Déclaration d'Interlaken. C'est un signal très encourageant pour l'avenir de la Cour.

Avant de clore cette Conférence, permettez-moi de vous donner quelques indications concernant la poursuite du processus que nous envisageons jusqu'à la fin de notre Présidence.

A Interlaken, nous avons réussi à donner un nouveau souffle à la réforme du système. Mais il faut désormais que les travaux se poursuivent au niveau du Comité des Ministres qui est l'organe compétent pour en organiser la mise en œuvre.

Idéalement, le Comité des Ministres devrait entériner la Déclaration d'Interlaken lors de sa séance du 11 mai 2010 qui marquera la fin de la Présidence suisse. Nous allons faire tout ce qui est en notre pouvoir pour que les Ministres puissent adopter une telle décision en donnant aux organes pertinents du Conseil de l'Europe, les premiers mandats pour la mise en œuvre du Plan d'Action. Nous sommes conscients du fait qu'il nous reste peu de temps jusqu'en mai et que l'élaboration d'une décision procédurale avec des mandats est un objectif ambitieux. Dans ce contexte, nous avons pris bonne note que la question du filtrage constitue pour plusieurs délégations une question à examiner avec une certaine priorité et nous essayerons d'en tenir compte. Pour la préparation d'une décision du Comité des Ministres et la formulation de mandats, nous allons nous mettre ensemble avec le Secrétaire Général du Conseil de l'Europe et nous comptons sur l'appui de ses services.

Ensuite, il appartiendra aux futures présidences de reprendre le flambeau. A ce propos, nous avons déjà pu entendre des signaux très encourageants de la part de la Turquie. Nous sommes dès lors confiants que le processus de réforme sera activement soutenu à l'avenir.

Comme vous pouvez le constater, il nous reste encore beaucoup de travail à faire. Mais maintenant, le moment est venu de se détendre. C'est donc avec un grand plaisir que je vous invite à un buffet qui sera servi dans le salon du Théâtre ("Theatersaal") qui est situé en face la salle plénière. Il suffit de suivre les panneaux intitulés "lunch".

Je vous informe, enfin, que la Présidence suisse tiendra une conférence de presse à 14h avec la participation des hauts représentants des institutions du Conseil de l'Europe.

Je ne voudrai pas terminer cette conférence sans remercier chaleureusement les membres du Secrétariat du Conseil de l'Europe ainsi que de la Cour qui nous ont tant assisté dans la préparation et le déroulement de cette conférence. Leur soutien nous était extrêmement précieux et a fortement contribué au succès de cette conférence. J'adresse également mes remerciements aux interprètes qui se sont acquittés de leur tâche difficile avec brio.

Pour conclure, je vous souhaite une excellente fin de semaine dans cette belle région. J'espère que vous en profiterez pour faire du ski ou une belle randonnée dans les Alpes bernoises. Ensuite, je vous souhaite un bon retour dans vos capi-

tales respectives et j'espère vous revoir tous le 11 mai 2010 à Strasbourg pour la séance finale du Comité des Ministres sous Présidence suisse.

Interlaken Declaration

19 February 2010

The High Level Conference meeting at Interlaken on 18 and 19 February 2010 at the initiative of the Swiss Chairmanship of the Committee of Ministers of the Council of Europe ("the Conference"):

Expressing the strong commitment of the States Parties to the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and the European Court of Human Rights ("the Court");

Recognising the extraordinary contribution of the Court to the protection of human rights in Europe;

Recalling the interdependence between the supervisory mechanism of the Convention and the other activities of the Council of Europe in the field of human rights, the rule of law and democracy;

Welcoming the entry into force of Protocol No. 14 to the Convention on 1 June 2010;

Noting with satisfaction the entry into force of the Treaty of Lisbon, which provides for the accession of the European Union to the Convention;

Stressing the subsidiary nature of the supervisory mechanism established by the Convention and notably the fundamental role which national authorities, i.e. governments, courts and parliaments, must play in guaranteeing and protecting human rights at the national level;

Noting with deep concern that the number of applications brought before the Court and the deficit between applications introduced and applications disposed of continues to grow;

Considering that this situation causes damage to the effectiveness and credibility of the Convention and its supervisory mechanism and represents a threat to the quality and the consistency of the case-law and the authority of the Court;

Convinced that over and above the improvements already carried out or envisaged additional measures are indispensable and urgently required in order to:

i. achieve a balance between the number of judgments and decisions delivered by the Court and the number of incoming applications;
ii. enable the Court to reduce the backlog of cases and to adjudicate new cases within a reasonable time, particularly those concerning serious violations of human rights;
iii. ensure the full and rapid execution of judgments of the Court and the effectiveness of its supervision by the Committee of Ministers;

Considering that the present Declaration seeks to establish a roadmap for the reform process towards long-term effectiveness of the Convention system;

The Conference

1. Reaffirms the commitment of the States Parties to the Convention to the right of individual petition;
2. Reiterates the obligation of the States Parties to ensure that the rights and freedoms set forth in the Convention are fully secured at the national level and calls for a strengthening of the principle of subsidiarity;
3. Stresses that this principle implies a shared responsibility between the States Parties and the Court;
4. Stresses the importance of ensuring the clarity and consistency of the Court's case-law and calls, in particular, for a uniform and rigorous application of the criteria concerning admissibility and the Court's jurisdiction;
5. Invites the Court to make maximum use of the procedural tools and the resources at its disposal;
6. Stresses the need for effective measures to reduce the number of clearly inadmissible applications, the need for effective filtering of these applications and the need to find solutions for dealing with repetitive applications;
7. Stresses that full, effective and rapid execution of the final judgments of the Court is indispensable;
8. Reaffirms the need for maintaining the independence of the judges and preserving the impartiality and quality of the Court;
9. Calls for enhancing the efficiency of the system to supervise the execution of the Court's judgments;
10. Stresses the need to simplify the procedure for amending Convention provisions of an organisational nature;
11. Adopts the following Action Plan as an instrument to provide political guidance for the process towards long-term effectiveness of the Convention system.

Action Plan

A. Right of individual petition

1. The Conference reaffirms the fundamental importance of the right of individual petition as a cornerstone of the Convention system which guarantees that alleged violations that have not been effectively dealt with by national authorities can be brought before the Court.
2. With regard to the high number of inadmissible applications, the Conference invites the Committee of Ministers to consider measures that would enable the Court to concentrate on its essential role of guarantor of human rights and to adjudicate well-founded cases with the necessary speed, in particular those alleging serious violations of human rights.
3. With regard to access to the Court, the Conference calls upon the Committee of Ministers to consider any additional measure which might contribute to a sound administration of justice and to examine in particular under what conditions new procedural rules or practices could be envisaged, without deterring well-founded applications.

B. Implementation of the Convention at the national level

4. The Conference recalls that it is first and foremost the responsibility of the States Parties to guarantee the application and implementation of the Convention and consequently calls upon the States Parties to commit themselves to:

a. continuing to increase, where appropriate in co-operation with national human rights institutions or other relevant bodies, the awareness of national authorities of the Convention standards and to ensure their application;
b. fully executing the Court's judgments, ensuring that the necessary measures are taken to prevent further similar violations;
c. taking into account the Court's developing case-law, also with a view to considering the conclusions to be drawn from a judgment finding a violation of the Convention by another State, where the same problem of principle exists within their own legal system;
d. ensuring, if necessary by introducing new legal remedies, whether they be of a specific nature or a general domestic remedy, that any person with an arguable claim that their rights and freedoms as set forth in the Convention have been violated has available to them an effective remedy before a national authority providing adequate redress where appropriate;
e. considering the possibility of seconding national judges and, where appropriate, other high-level independent lawyers, to the Registry of the Court;
f. ensuring review of the implementation of the recommendations adopted by the Committee of Ministers to help States Parties to fulfil their obligations.

5. The Conference stresses the need to enhance and improve the targeting and co-ordination of other existing mechanisms, activities and programmes of the Council of Europe, including recourse by the Secretary General to Article 52 of the Convention.

C. Filtering

6. The Conference:

a. calls upon States Parties and the Court to ensure that comprehensive and objective information is provided to potential applicants on the Convention and the Court's case-law, in particular on the application procedures and admissibility criteria. To this end, the role of the Council of Europe information offices could be examined by the Committee of Ministers;

b. stresses the interest for a thorough analysis of the Court's practice relating to applications declared inadmissible;

c. recommends, with regard to filtering mechanisms,

i. to the Court to put in place, in the short term, a mechanism within the existing bench likely to ensure effective filtering;

ii. to the Committee of Ministers to examine the setting up of a filtering mechanism within the Court going beyond the single judge procedure and the procedure provided for in i.

D. Repetitive applications

7. The Conference:

a. calls upon States Parties to:

i. facilitate, where appropriate, within the guarantees provided for by the Court and, as necessary, with the support of the Court, the adoption of friendly settlements and unilateral declarations;

ii. co-operate with the Committee of Ministers, after a final pilot judgment, in order to adopt and implement general measures capable of remedying effectively the structural problems at the origin of repetitive cases;

b. stresses the need for the Court to develop clear and predictable standards for the "pilot judgment" procedure as regards selection of applications, the procedure to be followed and the treatment of adjourned cases, and to evaluate the effects of applying such and similar procedures;

c. calls upon the Committee of Ministers to:

i. consider whether repetitive cases could be handled by judges responsible for filtering (see above Section C);

ii. bring about a co-operative approach including all relevant parts of the Council of Europe in order to present possible options to a State Party required to remedy a structural problem revealed by a judgment.

E. The Court

8. Stressing the importance of maintaining the independence of the judges and of preserving the impartiality and quality of the Court, the Conference calls upon States Parties and the Council of Europe to:

a. ensure, if necessary by improving the transparency and quality of the selection procedure at both national and European levels, full satisfaction of the Convention's criteria for office as a judge of the Court, including knowledge of public international law and of the national legal systems as well as proficiency in at least one official language. In addition, the Court's composition should comprise the necessary practical legal experience;

b. grant to the Court, in the interest of its efficient functioning, the necessary level of administrative autonomy within the Council of Europe.

9. The Conference, acknowledging the responsibility shared between the States Parties and the Court, invites the Court to:

a. avoid reconsidering questions of fact or national law that have been considered and decided by national authorities, in line with its case-law according to which it is not a fourth instance court;

b. apply uniformly and rigorously the criteria concerning admissibility and jurisdiction and take fully into account its subsidiary role in the interpretation and application of the Convention;

c. give full effect to the new admissibility criterion provided for in Protocol No. 14 and to consider other possibilities of applying the principle *de minimis non curat praetor*.

10. With a view to increasing its efficiency, the Conference invites the Court to continue improving its internal structure and working methods and making maximum use of the procedural tools and the resources at its disposal. In this context, it encourages the Court in particular to:

a. make use of the possibility to request the Committee of Ministers to reduce to five members the number of judges of the Chambers, as provided by Protocol No. 14;

b. pursue its policy of identifying priorities for dealing with cases and continue to identify in its judgments any structural problem capable of generating a significant number of repetitive applications.

F. Supervision of the execution of judgments

11. The Conference stresses the urgent need for the Committee of Ministers to:

a. develop the means which will render its supervision of the execution of the Court's judgments more effective and transparent. In this regard, it invites the Committee of Ministers to strengthen this supervision by giving increased priority and visibility not only to cases requiring urgent individual measures,

but also to cases disclosing major structural problems, attaching particular importance to the need to establish effective domestic remedies;

b. review its working methods and its rules to ensure that they are better adapted to present-day realities and more effective for dealing with the variety of questions that arise.

G. Simplified procedure for amending the Convention

12. The Conference calls upon the Committee of Ministers to examine the possibility of introducing by means of an amending Protocol a simplified procedure for any future amendment of certain provisions of the Convention relating to organisational issues. This simplified procedure may be introduced through, for example:

a. a Statute for the Court;

b. a new provision in the Convention similar to that found in Article 41.d of the Statute of the Council of Europe.

Implementation

In order to implement the Action Plan, the Conference:

1. calls upon the States Parties, the Committee of Ministers, the Court and the Secretary General to give full effect to the Action Plan;
2. calls in particular upon the Committee of Ministers and the States Parties to consult with civil society on effective means to implement the Action Plan;
3. calls upon the States Parties to inform the Committee of Ministers, before the end of 2011, of the measures taken to implement the relevant parts of this Declaration;
4. invites the Committee of Ministers to follow-up and implement by June 2011, where appropriate in co-operation with the Court and giving the necessary terms of reference to the competent bodies, the measures set out in this Declaration that do not require amendment of the Convention;
5. invites the Committee of Ministers to issue terms of reference to the competent bodies with a view to preparing, by June 2012, specific proposals for measures requiring amendment of the Convention; these terms of reference should include proposals for a filtering mechanism within the Court and the study of measures making it possible to simplify the amendment of the Convention;
6. invites the Committee of Ministers to evaluate, during the years 2012 to 2015, to what extent the implementation of Protocol No. 14 and of the Interlaken Action Plan has improved the situation of the Court. On the basis of this evaluation, the Committee of Ministers should decide, before the end of 2015, on whether there is a need for further action. Before the end of 2019, the Committee of Ministers should decide on whether the measures adopted have

proven to be sufficient to assure sustainable functioning of the control mechanism of the Convention or whether more profound changes are necessary;

7. asks the Swiss Chairmanship to transmit the present Declaration and the Proceedings of the Interlaken Conference to the Committee of Ministers;
8. invites the future Chairmanships of the Committee of Ministers to follow-up on the implementation of the present Declaration.

Déclaration d'Interlaken

19 février 2010

La Conférence de haut niveau, réunie à Interlaken, les 18 et 19 février 2010, à l'initiative de la Présidence suisse du Comité des Ministres du Conseil de l'Europe (« la Conférence ») :

Exprimant le ferme attachement des Etats parties à la Convention de sauvegarde des droits de l'homme et des libertés fondamentales (« la Convention ») et à la Cour européenne des droits de l'homme (« la Cour ») ;

Reconnaissant la contribution extraordinaire de la Cour à la protection des droits de l'homme en Europe ;

Rappelant l'interdépendance entre le mécanisme de contrôle de la Convention et les autres activités du Conseil de l'Europe dans les domaines des droits de l'homme, de l'Etat de droit et de la démocratie ;

Saluant l'entrée en vigueur du Protocole n° 14 à la Convention, le 1er juin 2010 ;

Notant avec satisfaction l'entrée en vigueur du Traité de Lisbonne qui prévoit l'adhésion de l'Union européenne à la Convention ;

Soulignant la nature subsidiaire du mécanisme de contrôle institué par la Convention et notamment le rôle fondamental que les autorités nationales, à savoir les gouvernements, les tribunaux et les parlements, doivent jouer dans la garantie et la protection des droits de l'homme au niveau national ;

Notant avec une profonde préoccupation que le nombre de requêtes individuelles introduites devant la Cour et l'écart entre les requêtes introduites et les requêtes traitées ne cessent d'augmenter ;

Considérant que cette situation nuit gravement à l'efficacité et à la crédibilité de la Convention et de son mécanisme de contrôle et qu'elle menace la qualité et la cohérence de la jurisprudence ainsi que l'autorité de la Cour ;

Convaincue qu'au-delà des améliorations déjà réalisées ou envisagées, des mesures additionnelles sont indispensables et urgentes pour :

i. parvenir à un équilibre entre les arrêts et décisions rendus par la Cour et les requêtes introduites ;
ii. permettre à la Cour de réduire l'arriéré d'affaires et de statuer sur les nouvelles affaires, en particulier quant il s'agit de violations graves des droits de l'homme, dans des délais raisonnables;
iii. assurer l'exécution pleine et rapide des arrêts de la Cour ainsi que l'efficacité de la surveillance de l'exécution par le Comité des Ministres ;

Considérant que la présente Déclaration cherche à établir une feuille de route pour le processus de réforme vers une efficacité à long terme du système de la Convention ;

La Conférence

1. Réaffirme l'attachement des Etats parties à la Convention au droit de recours individuel ;
2. Réitère l'obligation des Etats parties d'assurer la protection intégrale au niveau national des droits et libertés garantis par la Convention et appelle à un renforcement du principe de subsidiarité ;
3. Souligne que ce principe implique une responsabilité partagée entre les Etats parties et la Cour ;
4. Souligne l'importance d'assurer la clarté et la cohérence de la jurisprudence de la Cour et appelle, en particulier, à une application uniforme et rigoureuse des critères concernant la recevabilité et la compétence de la Cour ;
5. Invite la Cour à faire le plus grand usage possible des outils procéduraux et des ressources à sa disposition ;
6. Souligne la nécessité d'adopter des mesures susceptibles de réduire le nombre de requêtes manifestement irrecevables, la nécessité d'un filtrage efficace de ces requêtes ainsi que la nécessité de trouver des solutions pour le traitement des requêtes répétitives ;
7. Souligne le caractère indispensable de l'exécution pleine, effective et rapide des arrêts définitifs de la Cour ;
8. Réaffirme la nécessité de maintenir l'indépendance des juges et de préserver l'impartialité et la qualité de la Cour ;
9. Appelle à améliorer l'efficacité du système de surveillance de l'exécution des arrêts de la Cour ;

10. Souligne la nécessité de simplifier la procédure visant à amender des dispositions de la Convention qui sont d'ordre organisationnel ;
11. Adopte le Plan d'Action ci-dessous en tant qu'instrument d'orientation politique pour le processus vers une efficacité à long terme du système de la Convention.

Plan d'Action

A. Droit de recours individuel

1. La Conférence réaffirme l'importance fondamentale du droit de recours individuel en tant que pierre angulaire du système conventionnel garantissant que toute violation alléguée, qui n'a pas été traitée de façon effective par les autorités nationales, puisse être portée devant la Cour.
2. Eu égard au nombre élevé de requêtes irrecevables, la Conférence invite le Comité des Ministres à envisager quelles mesures pourraient être introduites pour permettre à la Cour de se concentrer sur son rôle essentiel de garante des droits de l'homme et de traiter avec la célérité requise les affaires bien fondées et en particulier les allégations de violations graves des droits de l'homme.
3. En matière d'accès à la Cour, la Conférence demande au Comité des Ministres d'examiner toute mesure supplémentaire de nature à contribuer à une bonne administration de la justice et, en particulier, les conditions dans lesquelles l'introduction de nouvelles règles ou pratiques d'ordre procédural pourraient être envisagée, sans toutefois dissuader l'introduction des requêtes bien fondées.

B. Mise en œuvre de la Convention au niveau national

4. La Conférence rappelle la responsabilité première des Etats parties de garantir l'application et la mise en œuvre de la Convention, et, en conséquence, appelle les Etats parties à s'engager à :

a. continuer à renforcer, le cas échéant en coopération avec leurs institutions nationales des droits de l'homme ou d'autres organes, la sensibilisation des autorités nationales aux standards de la Convention et d'assurer l'application de ceux-ci ;
b. exécuter pleinement les arrêts de la Cour, en assurant que les mesures nécessaires seront prises pour prévenir de futures violations similaires ;
c. tenir compte des développements de la jurisprudence de la Cour, notamment en vue de considérer les conséquences qui s'imposent suite à un arrêt concluant à une violation de la Convention par un autre Etat partie lorsque leur ordre juridique soulève le même problème de principe ;
d. garantir, au besoin par l'introduction de nouvelles voies de recours, qu'elles soient de nature spécifique ou qu'il s'agisse d'un recours interne général, que toute personne qui allègue de manière défendable que ses droits et libertés re-

connus dans la Convention ont été violés bénéficie d'un recours effectif devant une instance nationale et, le cas échéant, d'une réparation appropriée ;

e. considérer la possibilité de détacher des juges nationaux et, le cas échéant, d'autres juristes indépendants de haut niveau au Greffe de la Cour ;

f. veiller au suivi de la mise en œuvre des recommandations du Comité des Ministres adoptées pour aider les Etats parties à respecter leurs obligations.

5. La Conférence souligne la nécessité de renforcer et d'améliorer le ciblage et la coordination d'autres mécanismes, activités et programmes existants du Conseil de l'Europe, y compris le recours par le Secrétaire Général à l'article 52 de la Convention.

C. Filtrage

6. La Conférence :

a. appelle les Etats parties et la Cour à assurer la mise à disposition des requérants potentiels d'informations objectives et complètes relatives à la Convention et à la jurisprudence de la Cour, en particulier sur la procédure de dépôt de requêtes et les critères de recevabilité. A cette fin, le Comité des Ministres pourrait examiner le rôle des bureaux d'information du Conseil de l'Europe ;

b. souligne l'intérêt d'une analyse détaillée de la pratique de la Cour relative aux requêtes déclarées irrecevables ;

c. recommande, en ce qui concerne les mécanismes de filtrage,

i. à la Cour de mettre en place, à court terme, un mécanisme au sein du collège actuel susceptible d'assurer un filtrage efficace ;

ii. au Comité des Ministres d'examiner la mise en place d'un mécanisme de filtrage au sein de la Cour, allant au-delà de la procédure du juge unique et de la procédure prévue sous i).

D. Requêtes répétitives

7. La Conférence :

a. appelle les Etats parties à :

i. favoriser, lorsque cela est approprié, dans le cadre des garanties fournies par la Cour et, au besoin, avec l'aide de celle-ci, la conclusion de règlements amiables et l'adoption de déclarations unilatérales ;

ii. coopérer avec le Comité des Ministres, après un arrêt pilote définitif, afin de procéder à l'adoption et à la mise en œuvre effective des mesures générales, aptes à remédier efficacement aux problèmes structurels à l'origine des affaires répétitives ;

b. souligne la nécessité pour la Cour de mettre en place des standards clairs et prévisibles pour la procédure dite d'« arrêts pilotes » concernant la sélection des requêtes, la procédure à suivre et le traitement des affaires suspendues, et

d'évaluer les effets de l'application de cette procédure et des procédures similaires ;

c. appelle le Comité des Ministres à :

i. examiner la possibilité de confier les affaires répétitives à des juges responsables du filtrage (cf. ci-dessus C) ;

ii. établir une approche coopérative incluant l'ensemble des parties prenantes du Conseil de l'Europe, en vue de présenter des options possibles à un Etat partie auquel un arrêt de la Cour demanderait de remédier à un problème structurel révélé par un arrêt.

E. La Cour

8. Soulignant l'importance de maintenir l'indépendance des juges et de préserver l'impartialité et la qualité de la Cour, la Conférence appelle les Etats parties et le Conseil de l'Europe à :

a. assurer, au besoin en améliorant la transparence et la qualité des procédures de sélection aux niveaux national et européen, que les critères de la Convention relatifs aux conditions d'exercice de la fonction de juge à la Cour, notamment des compétences en droit public international et concernant les systèmes légaux nationaux ainsi que de bonnes connaissances au moins d'une langue officielle, soient pleinement respectés. De plus, la composition de la Cour devrait permettre à celle-ci de disposer de l'expérience juridique pratique nécessaire ;

b. garantir à la Cour, dans l'intérêt d'un fonctionnement efficace, le niveau nécessaire d'autonomie administrative au sein du Conseil de l'Europe.

9. La Conférence, prenant acte du partage des responsabilités entre les Etats parties et la Cour, invite la Cour à :

a. éviter de réexaminer des questions de fait ou du droit interne qui ont été examinées et décidées par les autorités nationales, en accord avec sa jurisprudence selon laquelle elle n'est pas un tribunal de quatrième instance ;

b. appliquer de façon uniforme et rigoureuse les critères concernant la recevabilité et sa compétence et à tenir pleinement compte de son rôle subsidiaire dans l'interprétation et l'application de la Convention ;

c. donner plein effet au nouveau critère de recevabilité qui figure dans le Protocole n° 14 et à considérer d'autres possibilités d'appliquer le principe *de minimis non curat praetor*.

10. En vue d'augmenter son efficacité, la Conférence invite la Cour à continuer d'améliorer sa structure interne et ses méthodes de travail et à faire, autant que possible, usage des outils procéduraux et des ressources à sa disposition. Dans ce contexte, elle encourage la Cour, notamment à :

a. faire usage de la possibilité de demander au Comité des Ministres de réduire à cinq le nombre de juges des Chambres, prévue par le Protocole n° 14 ;

b. poursuivre sa politique d'identification des priorités pour le traitement des affaires et à continuer d'identifier dans ses arrêts tout problème structurel susceptible de générer un nombre significatif de requêtes répétitives.

F. Surveillance de l'exécution des arrêts

11. La Conférence souligne qu'il est urgent que le Comité des Ministres :

a. développe les moyens permettant de rendre sa surveillance de l'exécution des arrêts de la Cour plus efficace et transparente. Elle l'invite, à cet égard, à renforcer cette surveillance en donnant une priorité et une visibilité accrues non seulement aux affaires nécessitant des mesures individuelles urgentes, mais aussi aux affaires révélant d'importants problèmes structurels, en accordant une attention particulière à la nécessité de garantir des recours internes effectifs ;

b. réexamine ses méthodes de travail et ses règles afin de les rendre mieux adaptées aux réalités actuelles et plus efficaces face à la diversité des questions à traiter.

G. Procédure simplifiée d'amendement de la Convention

12. La Conférence appelle le Comité des Ministres à examiner la possibilité de mettre en place, par le biais d'un Protocole d'amendement, une procédure simplifiée pour tout amendement futur de certaines dispositions de la Convention qui sont d'ordre organisationnel. La procédure simplifiée pourrait notamment être réalisée par le biais :

a. d'un Statut pour la Cour ;

b. d'une nouvelle disposition dans la Convention, similaire à celle figurant à l'article 41 lit. d du Statut du Conseil de l'Europe.

Mise en œuvre

Afin de mettre en œuvre ce Plan d'Action, la Conférence :

1. appelle les Etats parties, le Comité des Ministres, la Cour et le Secrétaire général à donner plein effet au Plan d'Action ;
2. appelle en particulier le Comité des Ministres et les Etats parties à impliquer la société civile dans la recherche de moyens effectifs pour mettre en œuvre le Plan d'Action ;
3. appelle les Etats parties à informer le Comité des Ministres, avant la fin 2011, des mesures prises pour mettre en œuvre les parties pertinentes de la présente Déclaration ;
4. invite le Comité des Ministres, le cas échéant en coopération avec la Cour et en donnant les mandats nécessaires aux organes compétents, à poursuivre et mettre en œuvre, d'ici juin 2011, les mesures contenues dans la présente Déclaration qui ne nécessitent pas d'amendements à la Convention ;

5. invite le Comité des Ministres à donner mandat aux organes compétents de préparer, d'ici juin 2012, des propositions spécifiques de mesures nécessitant des amendements à la Convention, ces mandats devant comprendre des propositions pour un mécanisme de filtrage au sein de la Cour et l'étude de mesures aptes à simplifier les amendements de la Convention ;
6. invite le Comité des Ministres à évaluer, durant les années 2012 à 2015, dans quelle mesure la mise en œuvre du Protocole n° 14 et du Plan d'Action aura amélioré la situation de la Cour. Sur la base de cette évaluation, le Comité des Ministres est appelé à se prononcer, avant la fin de 2015, sur la nécessité d'entreprendre d'autres actions. Avant la fin de 2019, le Comité des Ministres est appelé à décider si les mesures adoptées se sont révélées suffisantes pour assurer un fonctionnement durable du mécanisme de contrôle de la Convention ou si des changements plus fondamentaux s'avèrent nécessaires ;
7. demande à la Présidence suisse de remettre la présente Déclaration et les Actes de la Conférence d'Interlaken au Comité des Ministres ;
8. invite les Présidences futures du Comité des Ministres à suivre la mise en œuvre de la présente Déclaration.

Appendix/Annexe

Participants

National delegations/délégations nationales

Albania/Albanie

Head of delegation/chef de délégation:
Ms Brikena Kasmi
Deputy Minister of Justice

Ms Margarita Gega
Ambassador, Permanent Representative to the Council of Europe

Mr Mehmet Elezaj
Ambassador

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Government Agent before the European Court of Human Rights

Andorra/Andorre

Head of delegation/chef de délégation:
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General Director of the Ministry of Foreign Affairs and Institutional Relations

Armenia/Arménie

Head of delegation/chef de délégation:
Mr Gevorg Danielyan
Minister of Justice

Mr Emil Babayan
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Mr Zohrab Mnatsakanian
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Mr Gevorg Kostanyan
Assistant to the President of the Republic of Armenia

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Acting Director of Legal Department, Ministry of Foreign Affairs

Mr Stepan Kartashyan
Deputy Permanent Representative to the Council of Europe

Austria/Autriche

Head of delegation/chef de délégation:
Ms Claudia Bandion-Ortner
Federal Minister of Justice

Mr Thomas Hajnoczi
Ambassador, Permanent Representative to the Council of Europe

Mr Helmut Tichy
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Ms Angela Julcher
Director of Department of International Affairs and General Administrative Affairs

Ms Barbara Goeth-Flemmich
Head of Office, International Penal Law, Ministry of Justice

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Deputy Government Agent before the European Court of Human Rights

Azerbaijan/Azerbaïdjan

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Minister of Justice

Mr Ramiz Rzayev
Chairman of the Supreme Court

Mr Murad Najafbayli
Ambassador designate of Azerbaijan to Switzerland

Mr Azar Jafarov
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Mr Adil Abilov
Assistant to the Minister of Justice

Mr Chingiz Asgarov
Government Agent

Belgium/Belgique

Head of delegation/chef de délégation:
M. Stefaan de Clerck
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M^me^ Paule Somers
directrice-adjointe au Cabinet Justice

M^me^ Marie-Dominique De Jaegere
conseillère juridique

M. Marc Tysebaert
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M^me^ Isabelle Niedlispacher
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Bosnia and Herzegovina/Bosnie-Herzégovine

Head of delegation/chef de délégation:
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Mr Miroslav Porobija
Security Officer

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Head of delegation/chef de délégation:
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Croatia/Croatie

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Mr Kostas Paraskeva
Ad hoc Advisor

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Human Rights Ambassador

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Ms Mai Hion
Counsellor

Finland/Finlande

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Deputy Director-General

France

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secrétaire d'État à la justice

M. Paul Dahan
ambassadeur, représentant permanent auprès du Conseil de l'Europe

M^me^ Michèle Dubrocard
magistrat, ministère de la Justice

M. Emmanuel Dupic
conseiller

M^me^ Anne-Françoise Tissier
ministère des Affaires étrangères

M. Arnaud Collin
officier de sécurité

Georgia/Géorgie

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Minister of Justice

Ms Tina Burjaliani
First Deputy Minister of Justice

Mr Zurab Tchiaberashvili
Ambassador, Permanent Representative to the Council of Europe

Germany/Allemagne

Head of delegation/chef de délégation:
Ms Sabine Leutheusser-Schnarrenberger
Minister of Justice

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Mr Joachim Holzenberger
Counsellor and Deputy to the Permanent Representative to the Council of Europe

Mr Benjamin Brake
Personal Assistant to the Minister of Justice

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Ms Nicola Wenzel
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Hungary/Hongrie

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Ms Judit József
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Mr Peter White
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Mr John Freir
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Ms Mary Connery
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Ms Siobhán Coyne
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Head of delegation/chef de délégation:
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Mr Nicola Lettieri
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Minister Counsellor at the Cabinet of the Undersecretary of State

Mr Mario Remus
Counsellor of the Ministry of Foreign Affairs

Mr Pietro Martello
Counsellor at the Ministry of Justice

Latvia/Lettonie

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Ms Aiga Liepina
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Ms Ilze Milta
Assistant to the Foreign Minister

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Head of delegation/chef de délégation:
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Minister of Justice

Mr Gediminas Serksnys
Ambassador, Permanent Representative to the Council of Europe

Ms Solveiga Cirtautienė
Chief Adviser to the President

Mr Vytautas Pleckaitis
Ambassador of the Republic of Lithuania to the Swiss Confederation

Luxembourg

Head of delegation/chef de délégation:
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ministre de la Justice

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présidente de la Cour supérieure de justice

M. Ronald Mayer
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M^me^ Brigitte Konz
vice-présidente du Tribunal d'arrondissement de Luxembourg

M^me^ Lydie Err
membre de la Chambre des Députés (Parlement)

M. Laurent Thyes
attaché de Gouvernement

Malta/Malte

Head of delegation/chef de délégation:
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