

Paris, 12/09/2019

## **Conference of the Supreme Courts of the Council of Europe Paris, 12-13 September 2019**

### **Laurent Fabius, President of the Council**

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The First President of the Cour de Cassation and the Public Prosecutor, who have so graciously welcomed us,  
The Vice President of the Conseil d'État,  
The Secretary General of the Council of Europe,  
The President of the European Court of Human Rights,  
Dear Presidents, colleagues and friends,

Exactly 170 years ago, the great Victor Hugo, who sought out the best means of establishing peace, proclaimed, in words that went down in history:

*“A day will come when you, France, you, Russia, you, Italy, you, England, you, Germany, all of you, nations of the continent, without losing your distinctive qualities and your glorious individuality, will be blended into a superior unity, and shall constitute a European fraternity.”*

In the brutal world in which we live today, we may wonder about the ways in which this “European fraternity” is manifest, yet it is this fraternity, this imperative given by Victor Hugo, that we, as judges of the constitutional and supreme courts of the Member States of the Council of Europe, need to keep in mind. We have a shared mission to protect the Rule of Law, a foundation of the identity of wider Europe.

Our meeting takes place at a time of increasing awareness of our essential role in the protection of this Rule of Law, namely because, including within Europe, this

fundamental notion is being abused by certain attacks against constitutional justice, against the independence of judges, and against freedoms, especially those of the press, refugees, minorities, or political opposition.

We obviously cannot accept our shared democratic and legal principles being abused in such a manner. We are responsible for the Rule of Law, meaning that, like Saint-Exupéry's Little Prince being responsible for his rose, we must take care of it every day.

Speaking frankly, when we face governments that try to control judges, the only appropriate response is to resolutely fight against these serious infringements on the independence of justice and freedoms, and to stand firm against them. History is the final judge of our efforts to counter these assaults that I deem as merciless.

The solidarity of judges in defending the Rule of Law is even more necessary now that we have shared challenges to overcome together in the areas of technology, coexistence, and the environment, for which, in consideration of current and future generations, the respect of the law is essential.

As you are aware, an excellent reminder of this was given: the French Constitutional Council is not the court responsible for the application of the European Convention in the national legal order, but we have formed what I believe to be an excellent close relationship with the European Court of Human Rights. This closeness was confirmed by the decision to be one of the highest national courts able to communicate with the ECHR according to Protocol No. 16. Our national decisions are made today with full awareness of foreign laws and case law of regional human rights courts. And we are committed to the "dialogue of the courts", whether or not this dialogue is a spoken one. In our case, for these two days, we will speak regularly with you, the other constitutional courts and supreme courts of the Council of Europe.

The dialogue and the cooperation in this context are not only a symbol of solidarity between us. As I am certain that the working groups that will bring us together will show, our exchanges should help us to share recent advances in our jurisdictions, facing new frontiers in our living law.

In this respect, in this proposal that I present to you, please take note of two decisions which could provide you some food for thought. One, recently delivered by the Constitutional Council in December 2018, is a global first concerning a controversial subject, a so-called anti-fake news law for election periods. We decided that it was the legislator's responsibility to reconcile the principle of

truthfulness in elections with the freedom of expression and communication. If we esteemed the submitted provisions as conforming to the French Constitution, we required, via several reservations of interpretation, that blocking the broadcast of false information on public online media, carried out by the judge hearing applications for interim measures, can only take place if the inaccurate or misleading character of the information broadcast is clear, in such a way as to risk altering the truthfulness of the election.

A second decision, in May 2019, on a completely different subject, led us to acknowledge a new constitutional requirement. This requires the legislator to provide for statutes of limitation on public prosecution in criminal matters that do not present clear inadequacies in terms of the type and the seriousness of the offence. Through this case law, we of course do not call into question the non-applicability of a statute of limitations to crimes against humanity, but we consider that the legislator cannot remove all statutes of limitation, without infringing on the effect of the passage of time on the exercise of the defendant's rights, mainly concerning preserving the integrity of evidence.

Ladies and gentlemen,

I began with the words of Victor Hugo. I would like to conclude with the words of René Cassin, who was successively a lawyer, a renowned legal scholar, Vice President of the Conseil d'État, a member of the Constitutional Council, then President of the ECHR, and recipient of the Nobel Peace Prize. René Cassin had many skills and many titles, but when asked about what he thought was essential, he gave a simple answer, an example for all of us: *"I am a foot soldier for human rights."*

Thank you.