At a 65th birthday

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Although I've tried very hard, I have failed to identify – for the sake of this five minute presentation – one singular issue that would qualify as the primary challenge for the Council of Europe's human rights system in 2015.

A couple of years ago, this would have been easier. There was hardly any doubt that the Court's overwhelming backlog overshadowed any other problem. Four years ago, the Court was facing the unimaginable number of 160.000 applications pending before it. But, lo and behold, this number has now been reduced with some 100.000 cases, largely due to the novelties introduced by Protocol 14 ECHR, changes to the Rules of Court and, undoubtedly, great commitment by all those involved in the procedures in Strasbourg. In short, the previously large number of clearly unmeritorious cases has now been disposed of and, insofar as they still reach the Court, are being handled right away. I am informed that a second category of backlog cases, the repetitive or clone cases, is expected to be under control within two or three years from now. In sum, although the caseload of the Court as such remains huge, the Court can at least start concentrating on the cases that truly deserve its attention. I would therefore no longer call the Court's caseload the primary challenge for the ECHR system.

From the long list of remaining challenges, let me pick just a few. Time only allows for a quick inventory, not for providing solutions, if at all I could.

Firstly, the authority of judges. It has occurred that member states, under Article 22 of the ECHR, had to submit as many as four consecutive lists of candidates to the Parliamentary Assembly of the Council of Europe, before the Assembly was satisfied that the nomination represented a real choice between more or less equally qualified candidates. It has even occurred that, in order to restore the required balance, the state replaced the outstanding candidate, rather than the two

others. Moreover, political pressure is never far away during the process of drawing up the lists of candidates. This creates a serious risk for the quality and independence of the Court.

Secondly, the supervision of the execution of the Court's judgments by the Committee of Ministers. No matter how many judgments have been successfully executed under the Committee's supervision, the protracted non-execution of one single judgment can completely undermine the credibility and efficacy of the whole process. As we know, such non-execution does, unfortunately, exist. So there's another serious risk for the quality of the ECHR system.

Thirdly, forum-shopping by applicants. There is, at least from a Dutch perspective, a remarkable trend of applicants seeking refuge in other international human rights procedures than those provided for by the ECHR. While I feel unable to provide explanations for that phenomenon – the downside of the otherwise successful single judge procedure leading to unmotivated decisions may just be one of them – I do detect yet another challenge for the ECHR system. It may be true that only the Court delivers judgments that are binding upon states, at the same time non-binding views and decisions of other international organs play their part in creating binding obligations in the human rights area, if need be through the intervention of domestic judiciary proceedings. As a result, diverging jurisprudence may emerge and has in fact emerged, leading to different or unclear obligations for states. Also in terms of legitimacy of the Court this may work out negatively, since the public at large, understandably, will not make a sharp distinction between international supervisory bodies.

Finally, the increased intensity of the relationship with the European Union and, in particular, its Court of Justice. The process of accession of the EU to the ECHR, which picked up steam with the Treaty of Lisbon in 2009, has, six years onwards, gone back to the speed of a snail. ECJ advice 2/13 of December 2014 undeniably demonstrates how difficult it is to bridge the gap between the different legal cultures of the Union and the Council of Europe. At the same time, however, adjudicating human rights has become more and more daily bread and butter for

the ECJ as well, leading to a further risk of weakening the coherence, legitimacy and efficacy of the European human rights system.

My wish for the future of the ECHR system at its sixty-fifth birthday, therefore, is the support and care of many friends (and, of course, a minimum of judgments against the Netherlands!).