Thank you Mr Chairman.

Let me begin by warmly greeting, in the name of the European Court of Human Rights, the Presidents of Constitutional Courts who are present here today.

I am very happy to join with you, with the Secretary General, with Ambassadors, and with all those taking part in this timely conference today.

The conference is timely in that it comes at a period of reform of the Convention system and deep reflection about the protection of fundamental human rights in Europe in the long-term future.

From the very outset of this process, at the Interlaken conference, there has been strong emphasis on the principle of subsidiarity, and on the existence of effective remedies in the domestic legal order for complaints of violations of human rights.

That is a constant theme in the case-law of the European Court, which has so often stressed the subsidiary nature of its role under the Convention. In its case-law, the Court has described this issue as “primordial”.

Yet effectiveness is primordial too. The subsidiarity equation can only balance when the protection of human rights is indeed, practically and effectively, ensured at the national level. To use contemporary vocabulary, it is a matter of equipping the domestic system with the right tools to prevent or to redress breaches of the individual’s Convention rights.

Within the community of Council of Europe states, experience clearly shows that the existence of a procedure of individual complaint to the Constitutional Court can act as a highly effective safeguard for human rights. This is seen in the relatively low number of admissible cases that reach Strasbourg from those States where the individual has standing to raise his or her complaint before the Constitutional Court.

Let me add that the Constitutional Courts of Europe – or as in certain States the Supreme Court – are the natural and highly-valued interlocutors of the European Court. Our longstanding policy at Strasbourg is to develop a judicial dialogue with these courts, and we have the strong encouragement of States to do this in the Brighton Declaration.

And let me say before President Kiliç that our dialogue with the Constitutional Court of Turkey is one that we regard as being especially important.
One sees in Europe something of a tendency towards the introduction of individual complaints mechanisms before constitutional courts. It is a very welcome trend, which has and is transforming the protection of fundamental rights – be they constitutional or Convention rights – across Europe.

I applaud the determination and resolve of the constitutional courts to provide robust protection to those who come before them.

It is appropriate to take the Turkish example to illustrate the progress that I have spoken of.

Just over a year ago our Court decided the case of Uzun v. Turkey. This was the opportunity to study carefully the new constitutional remedy that took effect in the Turkish legal order in September 2013. In the decision, the European Court examined closely the accessibility of the remedy, the modalities for its exercise, the remedial powers of the Constitutional Court, and the legal effects of its decisions. The express intention of the legislature to confer on the Constitutional Court the power to deal with any complaint based on the Convention was a particularly important consideration. The analysis also had regard to the Constitutional Court’s capacity, noting the increase in the number of judges and additional administrative resources for its registry.

At the conclusion of its review, the European Court was satisfied that the new procedure must be considered a domestic remedy to be exhausted by applicants who came within its temporal scope.

The implications of this development are very significant. By strengthening the system of constitutional remedies, Turkey created the conditions to repatriate thousands of cases pending at Strasbourg. More importantly, it opened to these applicants the possibility of stronger, more effective remedies than are available from the European Court. The Constitutional Court enjoys a broad panoply of judicial powers, to the benefit of those who seek its intervention.

This welcome development did not happen without much effort and commitment within Turkey. It is only right to underline here the role of President Kılıç, whose deep commitment to strengthening the constitutional justice system in Turkey is praiseworthy indeed.

Let me also acknowledge the valuable support that was provided from Strasbourg. Both the Council of Europe and the Court assisted in the design and practical implementation of the new procedure. It was a valuable joint endeavour whose impact has been great indeed. In the course of today, the Conference will hear more about the Turkish experience from those best-placed to discuss it, including my colleagues from the Court Judge İşil Karakaş and Judge Angelika Nussberger.

The effects of constitutional justice are not limited to the ambit of individual cases, of course. By their very nature, constitutional rulings may go far beyond the confines of the instant case – the ramifications may be very broad. It is for this reason that Constitutional Courts are well-placed to analyse and resolve the structural problems that lie at the root of repetitive applications to Strasbourg.
The response of the European Court to unaddressed structural or systemic problems takes the form of the pilot-judgment procedure. This goes back ten years to the Broniowski case in 2004. The most recent pilot judgment was issued only last week – the case of Gerasimov and Others v. Russia. The complaint in this case was about the long delay in implementing, or the non-implementation of judgments in favour of the applicants that imposed obligations in kind on the public authorities – for example, to provide housing, or to improve housing for vulnerable persons, or to provide a specially-adapted car to a physically disabled person. There are some 600 cases of this sort pending before the Court, and that number is growing since there is no remedy in the Russian legal order for this problem.

The situation appears somewhat familiar, since the problem of non-execution of judgments in Russia is one that the Court has already addressed. I refer here to the Burdov (No. 2) pilot judgment, and the improvements that it brought about in domestic law. However, the legislative response to Burdov only encompassed judgment debts against the authorities. It was confirmed by the Supreme Court and the Supreme Commercial Court that the “Burdov” remedy did not apply if the judgment in question imposed an obligation in kind. This left a large group of people without a remedy for a violation of Article 6 and Article 13 of the Convention (and also Article 1 of the First Protocol for some of them). Thus the Court issued a new pilot judgment.

I am aware that the Russian Constitutional Court was concerned at the need to find ways to avoid situations in which a structural legal problem of that kind remains unresolved for a long time. Indeed, such situations are not only at odds with the Convention, but may also be held to affect the corresponding constitutional rights of many vulnerable citizens. I trust therefore that the recent legal amendments concerning the powers of the Russian Constitutional Court will open the way towards better enforcement of the rights secured in the Convention and in the Russian Constitution. I look forward to hearing more about those developments and their possible implications.

Permit me to raise one more point, a point that I place great importance on, and that is Protocol No. 16. The Protocol has my strong support, as I am convinced of its potential value for States and their highest courts. I take the opportunity to urge the Governments and courts represented here to give active consideration to accepting the Protocol and thereby opening a new channel of dialogue between the domestic and European levels. To date, 14 States have signed the Protocol; I hope that the 10 ratifications that are needed to bring it into effect take place in the near future.

In concluding, let me recall a very meaningful statement from the European case-law, by way of encouraging Constitutional Courts in their vital roles. It is that the guarantee of Convention rights – and constitutional rights – must be practical and effective, and not theoretical or illusory.

This is a guiding proposition for the European Court, setting out the ultimate measure of the protection of rights. I am sure that this is fully shared by the Constitutional Courts of Europe, and that the deliberations of this conference will guided by it too.

The European Court will remain keenly attentive to the role of Constitutional Courts as a key element in the judicial protection of human rights, and regard them as its natural, indeed pre-eminent partner in upholding the precious legal patrimony of the peoples of Europe.

Thank you.