



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

**Speech of Mr Guido Raimondi,
President of the European Court of Human Rights**

Conferral of the Treaties of Nijmegen Medal
Nijmegen, 18 November 2016

Ladies and Gentlemen,

I will begin my remarks today with words of thanks.

I offer them on behalf of the European Court of Human Rights.

I am deeply grateful to the city of Nijmegen for conferring on the Court this prestigious award.

It is a testament to this municipality's belief in - and its support for - the European ideal.

It is an honour for the Strasbourg Court to join with the previous Nijmegen laureates, all of them distinguished European figures, who have contributed much to the political and intellectual life of Europe.

In choosing the European Court of Human Rights as the recipient of this honour, you have chosen this time an institution. Of course, it can be said of an institution that it is only a framework, or a structure, within which a group of individuals perform their duties in pursuit of their mandated objectives. In the case of the Court of Strasbourg, our institution is one in which 47 judges carry out their duty to uphold fundamental rights throughout Europe. That is the institutional mandate which derives from the Convention, and which is given to each judge when he or she is elected to the Court. Along with the judges, the European Court is also composed of its Registry, which is indispensable to the administration of justice under the Convention.

It is the work of this large, international, professional community that has been honoured this year at Nijmegen.

But an institution such as the European Court of Human Rights is not fully summed up by referring to its members at the present moment in time. To take the just measure of it, a

broader and deeper perspective is needed. We need to hear something about its origins, its journey, its present state and where it might now be headed.

I will first revisit, very briefly, the origins of Europe's system of human rights protection. This is not a matter of mere historical interest. The conviction and the ambition that brought the Convention into being have lost none of their significance and none of their relevance for present-day Europe.

The same is true of the Nijmegen Treaties, which today's proceedings commemorate. I see strong points of connection between the historic Treaties and the historic human rights Convention.

The Treaties were treaties of peace, aimed at shifting the conduct of international relations in Europe from a basis of force and conflict to one of diplomacy, compromise and agreement.

Three centuries later, and coming out of the Second World War, the idea of an international treaty for the protection of fundamental human rights, as means to secure peace in Europe, found many supporters. Vital political momentum for this project came from The Netherlands – from the Congress of Europe held at The Hague in 1948. It was a visionary event. It gave strong impetus to the idea of a European polity that would be founded on peace, on shared values and principles, and pursuing greater unity among States and peoples. Part of that ambitious plan for Europe included the creation of a court to protect fundamental rights and freedoms. Europe, it was argued, should have a court endowed with the authority to hold States to account internationally for their failures in this domain.

The founders of modern Europe moved quickly thereafter. The establishment of the Council of Europe came the following year, 1949. And the first achievement of that new body was to realise one of the ambitions expressed at The Hague by adopting the European Convention on Human Rights, on 4 November 1950 in Rome. With this treaty, Europe got its Court.

In actual fact, the European Court of Human rights came into being only in 1959, completing the original trio of institutions that together composed the international mechanism of the Convention, the other two being the European Commission of Human Rights and the Committee of Ministers of the Council of Europe. That original architecture lasted up to the 1990s, when the great institutional reform came about. This was the merger of the two original Convention organs, the Commission and the Court, into a new, single and permanent judicial body, which came into being on 1 November 1998.

This was Protocol No. 11, which stands out as the landmark event of the history of the Convention. It signified the wish of the States to radically transform the nature of the European human rights regime. They made it an entirely judicial mechanism, binding on all States (the original system having allowed States the freedom to accept - or not – the right of individuals to petition Strasbourg and the jurisdiction of the Court). Through this reform,

in the view of some legal scholars, the European Court of Human Rights became a real constitutional court for Europe.

By that stage in its history, the European Court of Human Rights had already created a new legal landscape. It had given many hundreds of judgments, developing a sophisticated and extensive European human rights jurisprudence. This development began in the 1970s, which saw landmark judgments at Strasbourg: The *Golder* case, the *Tyrer* case, the *Marckx* case, the *Handyside* case, the *Airey* case, the inter-State case brought by Ireland against the United Kingdom. There are Dutch cases in that line-up too – the judgments in *Engel* and *Winterwerp* have been leading authorities on Article 5 of the Convention for nearly 40 years. As well as interpreting the articles of the Convention, the Court also laid down its general methods of interpretation. These have guided the Court ever since. The most significant of these is no doubt the principle that the Convention is a living instrument, to be interpreted in the light of present-day conditions. This is a cardinal notion under the Convention, ensuring the strong impact and the remarkable dynamism of European human rights law. As we have seen, the Convention and its institutions had post-war origins. But not only. The system we have today is of post-Cold war origin. The collapse of communism in central and eastern Europe saw these countries join the Council of Europe in the 1990s, ratify its key treaties and enter into the system of the European Convention on Human Rights. The number of Convention states rose to 30, then to 40 and then on to the current figure of 47. The population protected by the Convention increased to over 800 million persons. The transformation was immense, and it brought great challenges.

From the new States there came cases arising out of the difficult, sometimes very uncertain process of transition. To every challenge, every difficulty, an answer had to be found in the text, the principles and the case-law of the Convention.

Yet there was, and the point is an important one, no dilution of the standards established when the Convention was limited to the mature, settled, peaceful democracies of Western Europe. It was, and is, the same standard that is set for and applied to all of the States that are party to the Convention.

In one of its first Grand Chamber judgments in 1999 (*Selmouni v. France*), the new European Court stated that “the increasingly high standard being required in the area of the protection of human rights and fundamental liberties correspondingly and inevitably requires greater firmness in assessing breaches of the fundamental values of democratic societies.” It is a bold statement, and makes clear the committed stance of the European Court, firm in its purpose of safeguarding the rights and freedoms that are and must remain intrinsic to the identity of today’s Europe.

I will speak now of two challenges that the European Court of Human Rights is currently confronted with.

The first is the challenge posed by the very high number of cases that are brought before the Court each year. We see in this phenomenon the shortcomings that presently exist within some European States in relation to some of the Convention rights. These cases reveal structural problems or systemic failings. Solving these problems requires strong and sustained efforts from the national authorities, and will not be achieved in any short time span. To give one example, the Court has before it thousands of cases brought by prisoners who are incarcerated in very bad prison conditions, so bad that they undermine human dignity in violation of Article 3 of the Convention. It is a most serious state of affairs, given the fundamental nature of Article 3, and its absolute prohibition on inhuman and degrading punishment. This large group of cases, which come from several European States, is joined by other large groups, creating a "litigation logjam" at Strasbourg. In all, there are close to 75,000 cases pending at the Court today.

This overloading inevitably means a very long waiting time for the applicants, with the real risk of undermining the value and usefulness of the right to bring a case to Strasbourg.

The problem has been there for many years, a cause of great concern to the Court, the Council of Europe and the States. For its part, the Court strives to continuously to be more efficient and effective in its work. Efforts at Strasbourg must be matched by efforts at national level, aiming at, *first*, better prevention, *second*, more effective domestic remedies to deal with violations of rights when they occur, and, *third*, better implementation of the judgments given at Strasbourg that reveal a structural problem.

The second challenge is of a different nature. It is essentially a political one. The challenge is to the very idea of the Convention system. It questions the authority, and even the legitimacy of the European Court of Human Rights. You will no doubt remember how, a few years ago, the European Court was under high-profile attack from certain countries and certain quarters. If this is less visible now, it is only because other, bigger targets are being pursued, meaning the whole European project.

But the challenge to Strasbourg remains. It takes aim at what is said to be a judicial activism at the European level, over-reaching by a judicial European institution, over-riding national democracy and over-turning national decisions. It is not my purpose today to advance the necessary counter-arguments. I have done that elsewhere in the past, as have Court Presidents before me. I will simply say, let the Court be judged on the merits of its record, on the life and vigour it has given to the Convention.

You have given your verdict on this, in your decision to honour the Court in Nijmegen today, and I value it greatly.

I should not finish today without some comments on the way ahead.

What would be a bright future for European human rights?

The very simple answer is a future in which human rights in Europe improve and advance for all.

The challenge is continuous, and those tasked with upholding rights must be ever vigilant.

But whose is that task? It is the Court's, for sure.

It is also the task of the other component of the Convention system, which is the Committee of Ministers, whose role today is to supervise the implementation of the judgments given against States at Strasbourg. Although attention tends to focus on the Court, it must be recalled and emphasised that the European system is one of collective enforcement of human rights. And so, defiance of the authority of the Court – which happens, regrettably – is in reality defiance of the collective will of all States to uphold a common standard of protection of human rights.

But the task is broader still.

This brings me to the concept of subsidiarity, a familiar concept in the context of the European Union, and no less significant in the human rights context. Its meaning is plain – it is the principle that the primary responsibility for protecting human rights is located at the national level.

It is incumbent on all branches of the State – executive and legislative, judicial and administrative – to act in a manner consistent with human rights. For all its prominence, the correct role of the Court should be a subsidiary one. Its intervention should be required only where, at national level, a violation of human rights has not found a remedy.

This concept is reflected in the way the international system operates – no case can be considered at Strasbourg unless the applicant has exhausted domestic remedies. Subsidiarity has become the *leitmotif* in the process of reform that has been under way for several years. Over a series of political conferences held between 2010 and 2015, States have stressed the importance of moving the centre of gravity of the European system closer to the national level. The watchword here is *shared responsibility*, which opens a very positive perspective for the Convention system.

It holds out the promise of a better balance between the national and European arms of the system. It holds out the promise of improved protection of rights, with better prevention and better remedies available within the domestic system.

And it holds out too the promise of greater acceptability of human rights judgments, where these are for the most part given within the national system, and so are more attuned to the specific context and circumstances of 47 very diverse States.

Let it not be overlooked that the Convention is not about strict uniformity or full harmonisation. Instead it is about ensuring that the essential minimum standards are respected everywhere.

Soon we will see the concept of subsidiarity written into the text of the Convention. It is one of the amendments that will be made by the recent fifteenth protocol, now in the process of ratification by the States. For the reasons I have just given, it is not to be regarded as a retreat or a rolling back. On the contrary, it contemplates stronger, deeper roots for this most precious European treaty, and more faithful observance of the noble ideals that should forever be synonymous with Europe.

Ladies and Gentlemen,

As I conclude my remarks, it only remains for me to reiterate, in the name of the European Court of Human Rights, our gratitude in Strasbourg for this award.

And for myself, for your gracious welcome, and your kind attention to my words today, I thank you.