



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

European Law Institute (ELI) Conference

Key Note

The rule of law *is* social and cultural resilience

Speech by Mattias Guyomar

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First of all, let me thank the organisers for having invited me to participate in this very stimulating debate about the Resilience of the Rule of Law.

I am really pleased to intervene with my friend Chief Justice O'Donnell.

How can the rule of law remain resilient, maintain public trust, respond to profound societal, technological and geopolitical change, and draw strength from culture in all its forms?

To talk about the resilience of the rule of law, we must consider first what the rule of law is. Rule of law implies not only lawfulness (Quid Juris) but also Justice (Quid Ius). That is to say laws which align with fundamental human rights, fairness, and moral legitimacy.

Without justice in this sense, the risk is to have rule *by* law, but not rule *of* law.

The tools of lawfulness are easy to identify. We know a constitution, statute or piece of legislation when we see it. As lawyers, we know how to interpret and implement a law. But justice is a notion which can be more difficult to grasp.

It is an essential human instinct and we certainly know it in the breach; children are the first to react to perceived unfairness. But as we mature into adult members of society we become more complex and we may understand justice in the moment, and in a social and political context. It is human nature to adapt to changing social contexts. This may be a strength and form of resilience, because it allows us to be flexible. Flexibility can be expressed in law through judicial pragmatism, ensuring fair decision making in new and challenging situations. It is in this regard that the “living instrument” doctrine of the European Court must be understood.

However, that flexibility has limits because rule of law means remaining connected to the essential meaning of universal justice. Even where social and political values may not encourage this.

In her epic account of the Weimar Republic,¹ historian Katya Hoyer draws a devastating picture of how the law can be changed once this element of justice is disregarded. She reviews in careful detail how, through the use of all manner of cultural and political manoeuvres, social values were eroded until the population was willing to accept almost any level of degradation against the other humans in their midst, along with laws and regulations attempting to legitimise such horror.

Her account of the particular attention devoted from the outset by the Nazi party to take over the legacy of Nietzsche in order to try and establish the notion that their ideas had always been part of the national fabric, shows the close relationship between the cultural heritage and legal norms.

¹ Weimar, Life on the Edge of Catastrophe, Katya Hoyer, Penguin books 2026.

As Stefan Zweig lamented about the shift in values during that period in *The World of Yesterday*, “The herd instinct of the mob was not yet as offensively powerful in public life as it is today; freedom in what you did or did not do in private life was taken for granted - which is hardly imaginable now - and toleration was not, as it is today, deplored as a weakness and debility, but was praised as an ethical force.”

This possibility for social and political values to shift away from previously accepted norms, also means that practitioners of law, in particular judges, have a special responsibility to rule with justice, and in so doing, uphold the rule of law as recalled by Mr Ferrand, President of the French “Conseil Constitutionnel” last Tuesday. The German Basic Law of 1949 reflects the importance of this judicial role. In seeking to safeguard the rule of law after the war, it placed human rights at the centre of the lawfulness of the German State. It also created a strong constitutional court that could keep popular majorities from exceeding the limits of the constitution.²

Ronald Dworkin, the great American legal philosopher, explained that when judges interpret the law they enter into an engagement with longstanding social, moral and cultural values, of fairness and equity. These might be separate from ideas that are popular in the moment. He describes linking to these values through as a ‘chain novel’ where each judgment in a caselaw system is linked to the cases of the past and carries with itself the possibility of securing the political ideals of fairness, justice, and procedural due process.³

The particular role of judges in upholding those essential values of justice is evident. Prof Hans Petter Graver in his work on judicial resistance looks for situations where judges were able to connect with principle of justice. And those where they could not. He recounts deliberations among German judges during in the 1930s overheard by a young referendar, where older and experienced judges were subdued to nonsense lectured to them by a young Nazi-appointed judge. They were ashamed and obedient, coerced to depart from enforcing the law as they knew it.⁴ Their ability to maintain a connection with justice and to safeguard the societies which they served, had been lost.

This shows that the link to justice is fragile. But culture can provide a vital reinforcement. In other words, the resilience of justice is informed and supported by the culture around us. It can enable our empathy through literature and theatre; free our emotional connections through music and art; and it can directly warn us about what lawless societies, or those subject to rule *by* law might look like.

Orwell’s 1984 is frequently referred to as the dystopian novel of totalitarianism.

More recently, Margaret Atwood’s vision in the *Handmaid’s Tale* and *The Testaments* reveals to us a world where the total oppression of women is fully enshrined in the legal systems. And as she has said about her works, they are not fiction as such. All of the social and legal instruments used by the Gilead Regime in her dystopia are based on real world examples.⁵

² The Basic Law: A Fifty Year Assessment, Published online by Cambridge University Press: 24 June 2019, Donald P. Kommers. Originally printed in the *German Law Journal*, Volume 20, Issue 4, May 2019, pp. 571 – 582.

³ ‘Dworkin’s Law & Justice’ <https://hac.bard.edu/amor-mundi/dworkins-law-justice-2013-02-15>, at the Hannah Arendt Center for Politics and Humanities.

⁴ [Judges Under Stress and the Duty to Resist](#)

⁵ Margaret Atwood on the real-life events that inspired *The Handmaid’s Tale* and *The Testaments*, 8 September 2019, Penguin Articles. “In case someone said, ‘How did you make this up?’ As I’ve said about a million times, I didn’t make it up” (<https://www.penguin.co.uk/discover/articles/margaret-atwood-handmaids-tale-testaments-real-life-inspiration>).

Novels by Milan Kundera, notably "*The Joke*" give access to the lived experience of communist totalitarianism. Cinema could also provide an immersive cultural experience of the erosion of the Rule of Law and its tragic consequences such as the beautiful movie *Vincere* by Mr Bellocchio about Mussolini's rise the power in Italy.

TV and film offer many examples of differently imagined societies. Staying in the science fiction realm, highly dystopic visions, including about how we might live with social changes coming from technology have been a staple of literature and the big and small screens, from Asimov to Blade Runner and more.⁶

The close link between the rule of law values of equity, fairness and dignity with the art and culture around them can also be seen in the breach. The famous Degenerate Art Exhibition which the Nazi regime forced citizens to attend is in retrospect, one of the best known and most ironic examples. Featuring works by Klee, Dix, Picasso, Mondrian, Chagall and Kandinsky among others, it was an inspirational collection of European art. Exactly, the powerful opposite of its intention.

What is the place of the European Court of Human Rights in this?

The European Court of Human Rights was created in the aftermath of the Second World War. The Convention is itself inspired by the constitutional identities of the member States of the Council of Europe. It claims – as stated in its Preamble – a "common understanding", a "common respect for human rights" and a "common heritage of political ideals and traditions, respect for freedom and the rule of law",⁷ whose commitment is no longer based solely on reciprocity, but on "positive obligations" in the protection of human rights. who benefit from a real "collective guarantee".

This development reflected in concrete terms the idea, expressed during the *travaux préparatoires* of the European Convention by Mr Roberts, representative of the United Kingdom, that "the freedom of the common man in any country is the concern of the whole".⁸

In this sense, the European Court of Human Rights is an institution which incarnates the rule of law, at the European level. It is expressly designed to be Dworkin's chain creating links to longstanding social, political and cultural values, of fairness, equity and dignity.

To ensure the resilience of the rule of law it is therefore particularly important that the Court's work is known, and understood. Actions on communication and visibility have been a priority of my Presidency, including in the cultural sphere.

For example, for our Open day celebrating 75 years of the European Convention of Human Rights last year, we took a creative step by organising a show with a local theatre company, members of which performed to make the Convention and the Court's role accessible to visitors.⁹

We further developed this cultural trend with a showing of Costa-Gavras' acclaimed film "*Z*", and discussion around its theme of justice.¹⁰ Increasing visibility through the arts is an avenue that could be further explored, indeed, law shapes culture, and is shaped by culture in return¹¹.

Contacts with other judiciaries can be very inspiring in this regard. On a recent visit to Spain, I had the great pleasure to be welcomed by the Spanish Constitutional Court who showed us a

⁶ Such as in The Three Laws of Robotics are a set of rules devised by science fiction author Isaac Asimov, which were to be followed by robots in several of his stories. The rules were introduced in his 1942 short story "Runaround" (included in the 1950 collection I, Robot).

⁷ Council of Europe. Preamble to the European Convention on Human Rights. Rome, November 4, 1950.

⁸ Council of Europe, Travaux préparatoires de la Convention européenne des droits de l'homme, Leiden, Brill | Nijhoff, 1975.

⁹ For another example see the play, "Kyoto : Saving the world is a filthy business" by Joe Murphy and Joe Robertson and based on the negotiations of the Kyoto Protocols was successful at the RSC in June 2024 and then transferred to the West End and New York.

¹⁰ To mark the 75th anniversary of the European Convention on Human Rights, PACE and the Strasbourg Court jointly hosted a screening of Greek director Costa-Gavras' acclaimed film "*Z*" on 17 November at the Cinéma Le Cosmos in Strasbourg.

¹¹ 22 January 2026, the President of the Court and judge elected in respect of France, Mattias Guyomar, delivered the opening remarks at the Franco-German cultural exchange, held in Strasbourg.

wonderful book and series of videos they had developed where each judge had selected a painting from the Prado and explained how for them, it related to one of the rights in their Constitution.¹²

As these examples demonstrate the value of culture in communicating about the rule of law, and therefore feeding its resilience, it is no surprise that we also find that the Court's caselaw underlines the need to protect culture, stating that : "The conservation of cultural heritage and, where appropriate, its sustainable use, have as their aim, in addition to the maintenance of a certain quality of life, the preservation of the historical, cultural and artistic roots of a region and its inhabitants. As such, they are an essential value, the protection and promotion of which are incumbent on the public authorities".¹³ It inspires us and we are working on a similar project.

The Court has emphasised that freedom of expression under the Convention includes "the freedom to disseminate works of art"¹⁴. It has underlined, regarding the banning of a book in Türkiye by the famed French author *Appollinaire*, that where a work is of such standing that it forms part of European literary heritage, then the margin of appreciation accorded to the State to prevent access to such a work of art, is limited.¹⁵

There is a powerful and mutually reinforcing exchange between law, legal institutions and cultural projects. Courts and judges, in particular the European Court of Human Rights uphold the Rule of Law. In so doing, they preserve the framework in which culture can flourish. Culture of all types reminds society and the legal institutions within it of what the Rule of Law truly means; a constant, enduring connection with justice and fundamental rights.

Because of this, the more there are exchanges of this type, the more resilient the rule of law will be. It helps society to understand the law, and the law to understand society.

I turn finally, to the part of the question that was posed about how the rule of law can remain resilient when responding to profound societal, technological and geopolitical change.

Answering this from the perspective of the European Court of Human Rights, I would say that we are built to do this. The Court was designed to rule on individual applications, including those that concern emerging rights.

The cases that come before us are people's unresolved questions and disputes about how to deal with the changes they are confronted with. Whether it is devastation brought by war, or the impact of climate change. In providing an answer to their claim, the Court has concluded whether their rights have been violated or not in the European context. This is an action with real world consequences but it also gives meaning and context to their claim.

A rapid loss of justice can occur when people feel that they had "no certainty anymore".¹⁶ Where a Court decision allows people to place their uncertainties about change, into a context, it can give them back their connection to justice.

¹² Los Derechos Constitucionales, un paso por el prado / Constitutional Rights, a walk through the Prado. See also [Los derechos constitucionales. Un paseo por el Prado.](#)

¹³ *The J. Paul Getty Trust And Others V. Italy*. 35271/19, 02/05/2024 § 340.

¹⁴ *Affaire Akdaş C. Turquie* 16/02/2010, § 24.

¹⁵ §§ 29-30

¹⁶ How fascism takes hold of a city | Katja Hoyer | The New Society, [How fascism takes hold of a city | Katja Hoyer | The New Society.](#)

That is one reason why the Court's recent judgment in the case of *Netherlands and Ukraine v Russia* was so important. The Court recalled that the treaty system cannot tolerate actions that "repress individual freedoms, restrict political freedoms and display a blatant disregard for the rule of law – aimed at undermining the very fabric of democracy on which the Council of Europe and its member States are based" ¹⁷. In so doing, it not only engaged the responsibility of the respondent State: it also affirmed, in the name of European public order, that the Convention system cannot allow the erasure of the legal identity of a Member State under the pressure of force.

In this sense every case that the Court rules on adds to the resilience of justice in the societies it serves. Giving them a place in the chain-novel that Dworkin evoked. In turn, with the safeguard of the rule of law preserved, those societies can express and address the challenges and values that they experience, including those coming from new technologies or other elements.

These many examples of legal and cultural exchange demonstrate how culture allows all of us, including lawyers and judges, to understand that justice is not only the tools and technicalities of law, it is the ability – the need – to judge with the head and the heart. Beyond the legal system it is culture, humanity and universal values that makes resilient the Rule of Law.

I look forward to our discussions.

Thank you.

¹⁷ ECHR, Grand Chamber, *Ukraine and the Netherlands v. Russia*, nos. 8019/16, 43800/14, 28525/20 and 11055/22, 9 July 2025, § 177.