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COUR EUROPÉENNE DES DROITS DE L'HOMME

Opening of the Judicial Year 2026

Judicial Seminar

“Defending media pluralism and the democratic process in challenging times”

Closing remarks by Mykola Gnatovskyy

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Presidents and Judges of Supreme Courts,

Fellow Judges of the European Court of Human Rights,

Ladies and gentlemen,

My closing remarks for our seminar are in no way intended to be exhaustive. Rather, their purpose is humbly to sketch out the unanswered questions that will demand our continued vigilance, consideration and joint commitment going forward – all in the spirit of the principle of subsidiarity and shared responsibility that guides our work, both at the national level and at the European Court of Human Rights.

As the background document for this seminar reminds us, threats to our democracies now take not only the form of direct violations of rights but also more insidious guises, such as disinformation, excessive concentration of media ownership, foreign influence and algorithmic manipulation of information.

Against this backdrop, the key question of our seminar is as follows: what obligations do States and courts have to ensure that the conditions for truly free and pluralistic public debate remain in place, and to guarantee the authentic expression of the will of the people?

It has been established in the case-law of the European Court of Human Rights that freedom of expression is not just an individual right; it is a systemic condition for democratic life.

In this light, media pluralism and the general public’s right to diversified information become structural requirements. Domestic courts must ensure not only that there is no direct censorship, but also that the legal framework prevents excessive concentration of media ownership and secures editorial independence.

It is also their responsibility to keep a close eye on the spread of mass disinformation, particularly when orchestrated from abroad, and to protect the information sphere as a public, democratic good.

As Professor Veronika Bílková pointed out today, such structural vigilance additionally implies a functional approach to the right to information, conceived of collectively.

The challenge is all the more pressing because the right of access to reliable information, although not explicitly guaranteed as a stand-alone right in the Convention, is now essential for the effective exercise of freedom of expression.

When access to information is hampered, public debate freezes up, political responsibility erodes away and trust in institutions crumbles.

Our Court's case-law clearly recognises that States have positive obligations, especially towards journalists and civil-society organisations that act as *watchdogs*.

Moreover, the transformation of the media environment being driven by digitisation, social media and the attention economy is creating a constant need to adjust the legal framework. As Professor Roberto Mastroianni noted, this challenge calls for a coordinated response from national and European legal systems, to ensure protective measures are consistent throughout a cross-border digital space.

Courts must examine whether platforms' recommendation algorithms and business models are compatible with the requirements of open democratic debate. Digital regulation is therefore now a key issue for democracy.

The democratic process depends not only on the formal integrity of elections, but on the authenticity of the will expressed.

As the materials prepared for this seminar and today's interventions underlined, this *will* can be distorted not only by fraud, but by more sophisticated means: algorithmic manipulation of social media feeds, targeted disinformation campaigns, foreign-sponsored content designed to polarise or demobilise electorates.

These techniques seek to influence not what voters can do, but what they think and feel before they act.

The challenge for courts is to determine when such practices rise to the level of a legal injury to democracy itself.

In this regard, judicial control becomes more than a procedural safeguard. It is a fully fledged substantive instrument of democratic resilience. The recent judgment of the European Court of Human Rights in *Bradshaw and Others v. the United Kingdom* has been invoked today on numerous occasions. Indeed, it clarified that the obligations that Article 3 of Protocol No. 1 impose go beyond clean counting of ballots. It is required that the entire context of elections permit free formation and expression of the people's political will. I would further note that the judgment sets out a number of additional considerations which, in my view, will play a decisive role in shaping the future development of the instruments available to States and the approach that courts will be required to adopt when assessing them. In particular, the judgment recognises that interference in electoral processes has become a global phenomenon, now broadly acknowledged as such, and it affirms that States enjoy a wide margin of appreciation in devising and implementing measures to address these challenges.

As illustrated in that judgment, but also in the recent judgments of the domestic constitutional courts discussed today, this may justify State measures limiting access to hostile disinformation, provided these measures remain proportionate and legally justified.

President Christoph Grabenwarter reminded us that judicial control must include a structural understanding of the electoral environment and its conditions. In particular, how the judiciary can serve as a check on political and/or economic interference that distorts the true voice of the electorate.

Restrictions on political expression or candidate eligibility depend not only on abstract proportionality tests but also on real and present risks to the democratic order.

Courts must remain attentive to the weaponisation of fundamental freedoms by anti-democratic actors, both internal and external.

These risks call for a new generation of judicial tools. The judiciary must develop criteria for assessing democratic legitimacy of electoral environments, including media ecosystems, financing, digital campaigning, and third-party influence.

These threats may justify extraordinary judicial remedies, such as re-running elections or invalidating flawed results. While the line between judicial overreach and justified intervention is delicate, inaction in the face of systemic manipulation is also a failure of our responsibility.

President Irēna Kucina rightly observed that protecting the people's will means protecting not only the mechanics of voting, but the full participatory process of democratic choice, including access to information and a public sphere safe from manipulation.

This brings us to the broader context that directly links the erosion of media pluralism and democratic trust to war and destruction. The Russian Federation's war of aggression against Ukraine is not only a military assault, but a comprehensive hybrid campaign that includes systematic disinformation, internal destabilisation, and attempts to fracture European consensus.

The same playbook of disinformation and manipulation used against Ukraine has also targeted other Council of Europe member States, through narratives that undermine democratic legitimacy, sow division, and justify external aggression.

In this context, I turn to the words of the Grand Chamber of the European Court of Human Rights in its judgment on the merits in the inter-State case of *Ukraine and the Netherlands v. Russia* adopted last year in July:

"The events in Ukraine are unprecedented in the history of the Council of Europe. The nature and scale of the violence ... represent a threat to the peaceful co-existence that Europe has long taken for granted ... These actions seek to undermine the very fabric of the democracy ... by their destruction of individual freedoms, their suppression of political liberties and their blatant disregard for the rule of law."

These are not rhetorical observations. They are a judicial warning. Our Court has affirmed that peace, democracy and human dignity are interdependent, and when one is attacked, all are endangered.

So, Russia's war against Ukraine is thus not only a tragedy for one nation – it is a test of Europe's collective democratic resilience. If we fail to defend democratic processes, including media pluralism and free elections, we open the door to the very forces that seek our destabilisation and perhaps our destruction.

That is why this seminar – and our continued reflection – is essential.

It gives us, as judges, the space not only to reaffirm core principles, but to forge new ones suited to emerging threats. It reminds us of the need for shared vigilance, and of the law's capacity to protect what is most vital.

I would like to finish my closing remarks by expressing my deepest thanks to all our distinguished guests who have joined us for this seminar and for the ceremony that follows.

My special thanks go to the members of the Organising Committee: Judges Anja Seibert-Fohr, Lorraine Schembri-Orland, Davor Derenčinović and Oddný Mjöll Arnardóttir, as well as to the Registry colleagues, notably Tatiana Kirsanova, Bianca Boji-Tahvanainen, Zoë Bryanston-Cross and Valerie Schwartz, whose tireless efforts made this gathering a success: thank you.

Thank you for your attention.