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

Conference

Marking 30 years of Croatia's membership in the Council of Europe and the signing of the European Convention on Human Rights and Fundamental Freedoms

Domestic Courts on the Front Line of Human Rights Protection

- the Zagreb and Strasbourg views –

Shared Responsibility – The Driving Force behind the Convention System

Speech by Mattias Guyomar

Zagreb, 5 November 2026

Dear all,

At the heart of the Convention system stand the member States.

The commitment of the member States is the basis for the legitimacy and stability of this unique system grounded in the collective enforcement of human rights.

And you, the national authorities, are the primary guarantors of the human rights that the Convention protects, with our Court exercising its supervisory role once the domestic remedies have been duly exhausted.

Protecting the rights and freedoms defined within the Convention is our shared responsibility.

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It is particularly remarkable to note that the Convention was embedded in the Croatian legal order even before its formal ratification[1]. As early as 4 December 1991, the Constitutional Act on Human Rights and Freedoms and the Rights of Ethnic and National Communities or Minorities expressly provided that Croatia would protect fundamental rights and freedoms in accordance with, among other international instruments, the European Convention on Human Rights and its Protocols. This Act laid the foundations for the Convention's constitutional status within the Croatian legal system.

Building on these provisions, the Constitutional Court of Croatia held, already in 1995, that the rights guaranteed by the Convention were also constitutional rights and therefore enjoyed constitutional force.

As the Court observed in 2013, the Croatian Constitutional Court recognised that "the rights guaranteed in the Convention and its Protocols had to be considered constitutional rights with legal

[1] Croatia ratified the Convention on 22 October 1997. The Convention entered into force on 5 November 1997).

force equal to the provisions of the Constitution and recognised its competence to examine alleged violations of the Convention" [2].

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The Court has highlighted how the role of national authorities is critical "[*T]he machinery of protection established by the Convention is subsidiary to the national systems safeguarding human rights*"[3], as the Court affirmed in 1976, finding that *"[t]he Convention leaves to each Contracting State, in the first place, the task of securing the rights and liberties it enshrines*." These principles have continued to gain ground and have become an integral part of the protection mechanism operated by the Court.

This reminds us of the Court's Preamble to the Convention and the determination of its drafters "*to take the first steps for the collective enforcement of certain of the rights stated in the Universal Declaration"*.

As we reflect today, we are reminded of how far we have come, and how, thanks to our commitment of all the Member States, the Convention has brought into being the most effective international system of human rights protection ever developed.

The principle of subsidiarity has been formally embedded in the text of the Convention's Preamble with the entry into force of Protocol No. 15 in 2021. Since then, the Court defined the principles of subsidiarity and shared responsibility as the fundamental features of the European Public Order.[4]

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In terms of procedure, subsidiarity requires exhaustion of domestic remedies before an application can be brought to Strasbourg.

By requiring applicants to exhaust domestic remedies, as the Court has done recently, notably in decisions of *Mansouri v Italy*[5] and *Kuijt v the Netherlands*[6].

A non-exhaustion decision should not be seen as a failure of the Convention system but on the contrary as the expression of its well-functioning.

In the same vein, by confirming the constitutional appeal in Croatia in the context of registration of paternity[7] or of confiscation cases[8] - the Court noted that the Convention was directly available for applicants to rely on in Croatia, and that relying on it is necessary to properly exhaust domestic remedies.

In terms of substance, the principle of subsidiarity finds its expression through the margin of appreciation doctrine, which grants states a certain room for manoeuvre in interpreting and applying its provisions as they engage in the delicate exercise of balancing the rights of the individual and the public interest.

Therefore, on one hand judicial pragmatism allows the Court to embrace the member States' constitutional identities, and on the other, the margin of appreciation doctrine helps it to reconcile the universalism of human rights with national specificities.

[2] *Habulinec and Filipovic v. Croatia* (dec.), no. 51166/10, §§ 11 and 30, 4 June 2013
[3] *Handyside v. the United Kingdom*, 7 December 1976, § 48, Series A no. 24.
[4] *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* [GC], 2024, para. 411).
[5] *Mansouri v. Italy (dec.)* [GC], (application no. 63386/16, 29 April 2025
[6] *Kuijt v. the Netherlands* (dec.) [GC], no. 19365/19), 23 September 2026
[7] *Habulinec and Filipovic v. Croatia* (dec.), no. 51166/10, §§ 11 and 30, 4 June 2013
[8] *Merot d.o.o. and Storitve Tir d.o.o. v. Croatia* (dec.), §§ 36 and 38, nos. 29426/08 and 29737/08, 10 December 2013

Both these instruments are based on the same understanding: that there is no single, uniform way of protecting human rights. In the words of the 2018 Copenhagen Declaration, "*a range of different yet equally legitimate solutions may each be compatible with the Convention*"[9].

There are many different avenues to make such a shared responsibility practical and effective.

The Court's dialogue with domestic superior court judges occurs across multiple channels:

Firstly, through case-law cross-fertilisation, whereby national courts cite and apply Strasbourg jurisprudence while the European Court draws on comparative law and national practices to identify consensus and best practices.

The Court incorporates national constitutional identities into its own decisions, avoiding divergent approaches to the greatest extent possible, and grounding its work in judicial pragmatism, which means interpreting the law in the specific context of every case it examines.

In several Croatian cases, the Court demonstrated that the primary responsibility for reconciling competing Convention rights lies with the national authorities: where domestic courts fail to engage with the Convention standards, the Court will step in and perform its supervisory role[10] : "Since the domestic courts did not apply the criteria laid down in the Court's case-law for balancing freedom of expression with the right to reputation (…), the Court finds that it must carry out the required balancing exercise itself (...).[11]"

Where, however, national courts properly apply the relevant criteria and provide sufficient reasons, the Court will generally respect their assessment[12] : " (…) the domestic courts had regard to the relevant criteria laid down in the Court's case-law for balancing freedom of expression with the applicant's rights under Article 8 of the Convention. (…) there are no strong reasons to substitute its view for that of the domestic courts, which struck the requisite fair balance between the applicant's right to respect for his private life and the right of the news portal to freedom of expression.[13]" This example underlines the iterative and incremental dimension of the shared responsibility.

Moreover, in line with the "ground up", dimension of the Convention system, the Court is also inspired by domestic courts. With the help of a landmark Croatian judgment concerning racially motivated violence [the applicant and her partner of Roma origin were assaulted by two individuals who uttered anti-Roma insults], the Court extended States' positive obligations for situations of discrimination by association[14]. The Court stressed that the obligation on the authorities to seek a possible link between racist attitudes and a given act of violence (under Article 3 taken in conjunction with Article 14), also concerned acts of violence based on a victim's actual or presumed association or affiliation with another person who actually or presumably possessed a particular status or protected characteristic[15].

In sum the Court depends on national authorities to implement its judgments and secure Convention rights at the domestic level, while national courts benefit from the Court's jurisprudence in developing human rights standards.

It is vital that we pursue our dialogue in the spirit of mutual understanding, respect, and trust that are indispensable to the effective functioning of shared responsibility within the Convention system.

[9] Declaration of the High-Level Conference meeting in Copenhagen at the initiative of the Danish Chairmanship of the Committee of Ministers of the Council of Europe, 12-13 April 2018, §28(c).
[10] *Mesić v. Croatia*, no. 19362/18, 5 May 2022
[11] *Mesić, § 93.*
[12] *Mesić v. Croatia (no. 2)*, no. 45066/17, 30 May 2023
[13] *Mesić no 2,* §§ 72 and 81.
[14] *Škorjanec v. Croatia*, no. 25536/14, 28 March 2017
[15] *Škorjanec,* § 55

In this respect, I would like to emphasize the functional and crucial role played by the Superior Courts Network, created in 2015. Celebrating its tenth anniversary in 2025, the Network today brings together 112 top courts from 46 Council of Europe Member States – including Croatia's Supreme, Constitutional and High Administrative Courts – and nine observers from other parts of the world. Through this Network, our courts share information on recent judgments, exchange views on interpretative questions, and coordinate approaches to emerging human rights issues.

Our dialogue is also facilitated by bilateral meetings like the one here today. Every year, the Court welcomes many visiting delegations of Constitutional and Supreme court judges to Strasbourg. At the Opening of the Judicial Year in Strasbourg in January, we welcomed almost 300 members of the judiciary from all over Europe and beyond, including Prof. Frane Staničić, President of the Constitutional Court.

Last year, Croatia's Minister of Justice Damir Habijan visited our Court to discuss the strengthening of judicial cooperation and dialogue between the Court and Croatian judicial authorities.

I sincerely believe that these in-person contacts and exchanges, such as the one today, foster a better understanding of our respective roles.

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For our Court, the protection you as national courts provide to all persons within your jurisdiction, in the application of the principle of subsidiarity, is of paramount importance. The Court has not been designed and does not serve as a "fourth instance".

It is foremost the strength of the national judicial process, guaranteed by independent institutions, that remains the basis for ensuring the effective protection of rights.

Shared responsibility is a relationship of trust that is nourished by your work in preventing violations of the Convention, by the effective enforcement of judgments, and by constant dialogue between our institutions.

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It is especially important to ensure this effective shared responsibility between the Court and the national authorities at a time when Europe is facing war, a resurgence of authoritarian tendencies, an erosion of trust in the rule of law, and a rise in disinformation and populism.

In the face of these existential threats, we must stand together and support each other.

And pursue our judicial work – by exercising responsibility, applying judicial pragmatism, anchored in present realities, but above all –remaining faithful to the Convention' s purpose.

And to the purpose of the work of all judges: to protect peace through law and justice.

I hope today's meeting will bring us closer together and help us reinforce the mutual confidence that is the basis of our relationship.

Thank you.