

CommHR(2026)1

Universal rights, national duties: protecting the integrity of the ECHR

Speech by Michael O'Flaherty
Council of Europe Commissioner for Human Rights

Roma Tre University, 13 January 2026

Magnifico Rettore, distinguished professors, dear students,

On January the 3rd, two deeply respected Holocaust survivors passed away, Josef Veselsky, who happened to be my neighbour in Dublin, and Eva Schloss, the step-sister of Anne Frank.

Both of them, as so many other survivors, had devoted much of their later lives to recounting the horrors of the Holocaust and insisting on the importance of preserving and protecting the post-war order of democracy, rule of law and human rights.

Rightly, they saw the development of regional and global laws and institutions - all essentially in the service of the Universal Declaration of Human Rights - as non-negotiable protections against tyranny.

I think we can all agree that what was achieved was remarkable. Whether under the auspices of the United Nations or the Council of Europe or otherwise, the fabric of treaties, oversight bodies and support systems is beyond what anyone could have envisaged in the immediate post-war ruins of this and other continents.

What's more, in large part, it worked.

At least on this continent liberal democracy eventually became the most common governance model. The rule of law, if never fully respected, was at least accorded a high public status. Wars did occur, but many others were averted through peaceful means of conflict resolution. Many of our countries observed a notable increase in levels of human rights compliance.

Or, at least, what I have described to you is a form of the high-water mark, a description of the post-war order that did become recognisable and more or less describes the situation in - let us say - the first years of the new millennium.

Much has gone wrong since then.

Take conflict-related violence. According to Professor Oonagh Hathaway of Yale University, in the period 1989 to 2014, battle-related deaths in cross-border conflicts averaged fewer than 15,000 a year. Since then, the average has risen to 100,000 a year.

Turning to the rule of law, a think tank, the World Justice Project, reported in 2025 that for the eighth year in a row, the rule of law has declined in most countries. As a result, they speak of what they term a “rule of law recession”.

Europe is not exempt. On the 2025 World Justice Project rule of law index, some 22 Council of Europe member states score less than seven out of ten points across eight rule of law indicators. The score for Italy is 6.6.

Turning to human rights, I can draw on my own experience.

I have observed a shift in some places from denial of human rights violations to a downright repudiation of the protection systems, to an *a la carte* approach to binding treaty commitments, to, taking just one example, the persecution of human rights defenders and the impeding of the essential work of civil societies.

Behind or in parallel to all of these developments, we can observe a weakening of interstate multilateral systems and a breakdown of trust at many levels - between states; between regions; between citizens and the state, and otherwise.

The denouement of the post-war world order was brought into sharp relief in recent weeks, above all with the persistent persecution by Russia of its neighbour Ukraine, but also with the illegal abduction by the US of the Venezuelan strongman Maduro and his wife.

Allow me briefly to share a sense of how we globally got here. In essence, we have, over a decade, tolerated an interplay of forces which, with hindsight, incrementally degraded the system. These include:

- a tolerance of weak or flawed regional and international systems. (Think of the deeply underfunded human rights institutions and the unreformed United Nations Security Council);
- a failure to thickly embed commitment to human rights, democracy and rule of law in many countries that did not have a strong history of freedom;
- a related failure adequately to come to terms with colonial legacies;
- inadequate efforts to stem the rise of global inequalities;
- drawing on much of the above and otherwise, a rise of political sovereignism, nativism and ideologies that are de-linked from the philosophical primacy of human dignity (I have in mind here the ideology of some of Europe's far-right parties);
- a high and seemingly growing tolerance of venality on the part of political leaders;
- and finally, it seems we have in large part, and despite the efforts of Veselsky and Schloss, forgotten the “why” of our laws and institutions, the pursuit of that peace envisaged in the United Nations Charter.

In this global landscape, Europe must confront an existential question: whether to embrace the trend of sidelining international law and basic principles of fairness and humanity, or to take pride in its own model of society – grounded on human rights, rule of law and democracy.

Unfortunately, some would incline, at least in part, towards going down the first route. A sign of this is the recent statement by some 27 Council of Europe member states regarding the European Convention on Human Rights and the practice of the European Court of Human Rights. In broad terms, what the signatories desire is a weakening of the protection afforded to some people under the treaty and under related practise. Notably, the initiative for the statement was led by the governments of Denmark and Italy.

So then what to do? The essential starting point here is to acknowledge the central role of states. Only states can arrest the slide and fix the systems. In the first instance, we must address and seek to persuade them.

And today, allow me to address them in one specific context that is clearly within my mandate as Council of Europe Commissioner for Human Rights; that is the initiative regarding the European Convention that I referred to before.

First, I address the 27 signatories of that statement. To them, I say that I absolutely respect their entitlement to discuss their treaty commitments. I welcome that they are engaging the current Council of Europe framework for these discussions.

I encourage them to bring all of their reflections within this context, rather than also developing parallel texts, like the statement, that are not in benefit of debate among all the Member States.

Now, turning to the broad Council of Europe membership, allow me to make three points.

First, I encourage all member states to undertake their deliberations with the active participation of national human rights institutions and relevant civil society, including NGOs, legal professional bodies and academics.

Second, since the primary context for current concerns regards the management of migration, it is important to ensure that it is fully evidence-based. We should, for instance, keep in mind that the EU agency Frontex reports that irregular migration to the EU was down by 25% in the first 11 months of 2025, and that in any case we are nowhere near confronting the situation that we saw back in 2015. In other words, it does not seem to be that migration represents a challenge to the extent that is suggested.

Staying with migration, a frequently repeated justification to reduced convention rights concerns an alleged inability to deport foreign criminals. This view is inconsistent with facts on the ground. For instance, in 2025, the UK-based Oxford Bonavero Institute of Human Rights found that in a 15-month period, just 0.73% of sentenced foreign nationals successfully appealed an expulsion order.

Figures such as these matter greatly. Apart from addressing the evidence base for change, they challenge the framing whereby the broad irregular migration cohort is somehow characterised as criminal. Constant focus on a small group of foreigners who commit crimes is also deeply impacting on the general migrant populations in member states, creating mistrust and giving licence for discrimination and even violence.

Beyond data, it is essential that nothing is done or no impetus is given towards the violation of fundamental human rights principles. I have in mind the prohibition of refoulement – the forcible return of a person to face torture or persecution in the receiving state.

This absolute entitlement has the status of customary international law, and attempts to interfere with it would be unacceptable.

It is no less essential to respect the universality of human rights. Any discourse that suggests a hierarchy of rights holders, on the basis of their being more or less deserving, is deeply problematic. Apart from the basic principle of equality and universality, today it's migrants, who is next? If authorities get to designate broad groups of people who they do not like and whose protections should be weakened, we enter onto a dangerous, slippery slope.

One further profoundly principled legal consideration is to ensure that all discourse and proposals do nothing to diminish the independence of the European Court of Human Rights, or indeed of any other court. The principle of independence of the judiciary is essential to the rule of law state.

In moving on, I should address the question of why states should listen to us, to our arguments and advocacy. It's an important question, particularly given how often we are ignored.

Here in the first place, I am clear that we should never shy away from demanding compliance with legal obligation. Perhaps today in our societies law is diminished, but for many states it still contains much force. Law is of absolute – and not of relative – significance. And if we lack the courage to assert and follow our norms, we concede the struggle to authoritarian leaders. Attempts to court voters by imitating the language of those who seek to undermine our rights and democracies are destined to fail, as voters will always prefer the original to the copy. The enormous soft power Europe still holds hinges on its consistency.

What's more, in terms of why we must act, after decades of engaging with states I repeatedly encounter leaders and high officials who care deeply, but who need support to do the decent thing.

Furthermore, it is not difficult to make the business case for law and human rights claims, to show how, for instance, respect for the human rights of all of us – including vulnerable groups – makes our societies more secure and more prosperous. Indeed, investing strongly in policies addressing poverty, inequality and health services would counter narratives of decline and address processes that feed the anti-rights discourse.

Ultimately, at least with regard to democratic states, never forget that our claims can so often be shown to be based on the will of the people.

And that then brings me to my final point.

We, the people, must make much clearer that our will is for strong democratic rule of law-based and rights-respecting societies.

And how do we do that? Ultimately, by embedding public values in our own lives and institutions - a topic that is a little bit beyond my scope today. But let me just say that it is essential that we fortify our institutions, including our national human rights institutions and bodies – to which I will pay particular attention through this visit in Italy – but also the judiciary and independent media.

And so then, in conclusion, will we succeed? Can we be hopeful? Absolutely.

When Veselsky, Schloss and other survivors emerged from the hell of the holocaust, the post-war achievements were unthinkable. Nevertheless, they found the hope to believe in a better future and they just got on with it. So too should we.

Thank you.