

## Preface

Amongst its many achievements, the Council of Europe is best known for its work in human rights. Whatever the future pace or direction of European integration, the willingness of European states after 1945 and again after 1989 to commit themselves to political co-operation with a view to establishing long-lasting peace on the continent through the development of a shared commitment to democratic values cemented into place the most crucial aspects of a new European understanding. States have signed up for such a package not out of narrow and short-term self-interest but on account of a genuine desire to prevent repetition of the mistakes of the past, and it is a rejection of that past which explains the central importance of the rule of law and respect for human rights in this new regional order.

A particular category of beneficiaries of this new concern is persons deprived of their liberty for whom the human rights dimension of the work of the Council of Europe has a particular resonance. Indeed, detainees were certainly not slow to take advantage of the right of individual application to the (former) European Commission on Human Rights, and in consequence, Commission and Court jurisprudence in respect of the treatment of persons deprived of their liberty helped clarify the practical impact of state responsibilities under the European Convention on Human Rights in this area from the outset. At the same time, deliberations by the Parliamentary Assembly and by the Committee of Ministers led to recommendations and resolutions seeking to encourage member states to take specific action in certain areas connected with deprivation of liberty, including matters relating to staffing and training, prison conditions and the development of alternatives to loss of liberty. Subsequently, the establishment of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the CPT") provided a vital additional impetus to states to take further action, and the impact of this innovation – a further instance of the commitment of European states to effective implementation of human rights protection – has been profound. And if any further proof of the focus of the Council of Europe on the status, protection and treatment of persons deprived of their liberty were needed, this is now available in the shape of the work of the European Commission against Racism and Intolerance ("ECRI") and of the Council of Europe Commissioner for Human Rights in examining particular situations of concern.

While attempting to bring together the wide range of standards established in case law, recommendations and CPT reports and celebrating the achievements of the Council of Europe, it is also appropriate to appreciate that there is often a difficulty in translating rhetoric into reality, for state commitments do not always result in appropriate action. Judgments of the Court readily illustrate this; and so do shortcomings noted by the CPT, by ECRI, or by the

Commissioner for Human Rights. Yet too much should not be made of these, for this would be to discount both the willingness of European states to allow the very awareness of these conditions or circumstances to be publicised (through the right of Council of Europe bodies to examine detention regimes and practices), and – more importantly – the requirement to undertake remedial action when found wanting. The essential point is not that there is still a gap between rhetoric and reality, but that there now exists a shared commitment in Europe to achieve real human rights protection.

The inspiration for this work can be traced to invitations to participate in seminars organised by the Council of Europe in a number of states which were at the time either seeking membership of the Organisation or which had most recently been admitted. It was not always easy to convey the richness (if not the over-abundance) of applicable European standards: but discussions during these seminars were always marked by an obvious desire on the part of the audience to understand and to begin to seek ways to give effect to these new state responsibilities. The present book is also a modest attempt to replicate at a European level the clarity and scope of Nigel Rodley's seminal work, *The Treatment of Prisoners in International Law*, and to supplement the contribution of Rod Morgan and Malcolm Evans in discussing and dissecting the work of the CPT in such publications as *Combating Torture – The Work and Standards of the European Committee for the Prevention of Torture*.

The aim, then, has been to produce a cohesive and comprehensive explanation of the work of the Council of Europe, and to provide some analysis of these standards. The audience, though, is intended to include non-Europeans who wish to understand (and possibly emulate) European approaches, for these judicial determinations, developments and initiatives may be of equal relevance elsewhere in societies and regions seeking to improve the protection of detainees. Some of this material draws upon earlier publications appearing under the imprint of Butterworths and Council of Europe Publishing or in the *European Law Review*, and all of it owes much to individuals too numerous to mention working then or now in DG-II of the Council of Europe. Recent Glasgow law graduates also assisted at certain points, in particular, Jim Duffy, Paul Harvey and Liam Timoney. The staff of the Human Rights Library of the Council of Europe provided invaluable support. The usual disclaimers apply.

The law is stated as at 31 December 2004, although it has been possible to refer to some subsequent developments and, in particular, to the revised (but still at the time of writing, draft) European Prison Rules.

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