

Human rights in Europe

Human rights for our time

This little book offers a guide for the general reader to some of the key issues of human rights in Europe. If you are interested in knowing more about human rights – your rights – and how the Council of Europe protects and promotes them, read on. You will find a first section that lists the rights in the European Convention on Human Rights and its various protocols, then a section describing some of the cases that illuminate how these rights affect people in practice, a further section briefly describes how the European Court of Human Rights (the Court) functions, another describes how the Council of Europe tries in other ways to protect and promote human rights across the continent, and finally some comments on how human rights in Europe may expand and be strengthened in the near future.

In these pages you will find a simple description of what is a complex system. The Council of Europe is an umbrella organisation that brings together 47 states to promote democracy, human rights and the rule of law. It works by setting standards for the whole continent through conventions agreed – and then signed and ratified – by as many of the member states as possible. Being a central concern, the European Convention on Human Rights was the very first convention agreed by the states that set up the Council of Europe over 60 years ago, and it has been signed and ratified by all states that have since then joined the Council of Europe.

The European Convention for the Protection of Human Rights and Fundamental Freedoms – the full title of the European Convention on Human Rights or ECHR – was signed in 1950 and came into force in 1953. The ECHR did not come out of thin air. Like the Universal Declaration of Human Rights, promulgated by the United Nations in December 1948, it was the

product of its time, the years immediately following the Second World War. The UN declaration was – and remains – a document of great moral value and authority, but it does not establish mechanisms for implementing the rights it proclaims. Only in the exceptional and specific circumstances of a war crimes

The 10 initial signatories of the ECHR in 1950 were Belgium, Denmark, France, Ireland, Italy, Luxembourg, the Netherlands, Norway, Sweden and the United Kingdom. Since then all states joining the Council of Europe have signed and ratified the ECHR.

tribunal does it create any procedure and set up a court to adjudicate on cases, to condemn the guilty and offer redress to victims. It does not put the member governments in the dock if they break the Universal Declaration's lofty aspirations. The ECHR went further and established the European Court of Human Rights, setting up legal mechanisms to enforce meaningful respect for human rights in Europe.

In the opening declaration of the ECHR the initial 10 states declared their resolution “as governments of European countries which are like-minded and have a common heritage of political traditions, ideals, freedom and the rule

of law, to take the first steps for the collective enforcement of certain of the rights stated in the Universal Declaration”.

Never again!

It was the devastating experience of the Second World War that led European statesmen to strengthen the protection of the rights of individuals vis-à-vis the state. Arbitrary arrests, deportations and executions, imprisonment without charge, concentration camps and genocide, torture and show trials were part of very recent experience across much of Europe. European leaders wanted to protect future generations from such experiences. “Never again” was their watchword.

Western Europe learnt from its past mistakes and the Council of Europe, which was established in 1949, reflects a system of international relations based on the values of human rights, democracy and the rule of law – values clearly distinct from those underpinning either fascism or communism.

It not only lists civil and political rights for individuals; it also gives everyone in Europe practical protection for their rights by imposing obligations on states. The ECHR ensures the right of individual petition, which allows any individual to bring a case to the Court against his or her own state. It also provides for collective enforcement of the judgments of the Court of Human Rights, with states exposed to peer pressure and review by their colleagues in the Committee of Ministers, a body that sits in Strasbourg and reviews the Court's judgments to check that member states follow up what the Court decides.

Some of the most pressing political and ethical issues of our day relate to human rights. Whether the focus is on the treatment of those detained in the war against terror, on abortion or assisted suicide, on the freedom of the press or on the right to privacy, on gay marriage or on the restitution of property, all these issues involve human rights as laid down in the Convention. Although signed 60 years ago, it is now more than ever a document for our times.

The European Convention on Human Rights and the Court were created in the democratic states of western Europe in the 1950s, largely as a reaction to the recent flagrant abuses of human rights under fascism. They were later strengthened to contrast with the distortion of due legal process through one-party rule in the eastern half of Europe that was then under communist domination.

The ECHR acts as an example to other regions of the world. The Organisation of American States has established a court for the protection of human rights. The African Union has also adapted the European model.

Since then, growing numbers of people in Europe have enjoyed legal protection for a long list of rights and freedoms. They have at their disposal the European Court of Human Rights before which to demand redress if they think these rights have been abused. With the fall of the Berlin Wall in 1989, the collapse of communism across central and eastern Europe, and the break-up of the Soviet Union in 1991, many new states joined the Council of Europe. Now all 47 member states – from Iceland to

Armenia, from Portugal to Russia – accept the jurisdiction of the European Court of Human Rights in Strasbourg, and the Convention must be ratified by each state which joins the Council. All now subscribe to the protection and promotion of democracy, human rights and the rule of law, and in one form or another all 47 of them have built the ECHR into their national law. Their observation of it may be patchy and abuses of human rights certainly occur in Europe, but they can be brought before a court where the individual can seek redress against the state that has abused his or her rights. Nowhere else in the world can you do that.

Rights and obligations

Many lawyers argue that human rights are “absolute” and have to be respected before all else. They also argue that they are “indivisible” and an abuse of one right weakens the protection of all rights. But human rights often have two aspects: a positive right which is often self-evident – the right to life and liberty, freedom of expression, of conscience and religion, the right to marry, for instance – and also a negative or balancing aspect, which may not be immediately apparent. Rights often conflict with each other, and rights often imply obligations.

Freedom of expression, for instance, implies limits that prevent one person’s freedom of expression offending another, perhaps by intruding into their privacy. Hence the right implies an obligation to be tolerant. And even tolerance must know some limits, as excessive tolerance could lead to anarchy and the destruction of other human rights. The European Court’s accumulated judgments, its case law or jurisprudence, offer a continuing commentary on just how far the rights enumerated in the ECHR should be asserted as “absolute” and how far their application in practice is balanced by other considerations. The circumstances of each case help to determine the nature and degree of respect accorded in practice to any right.

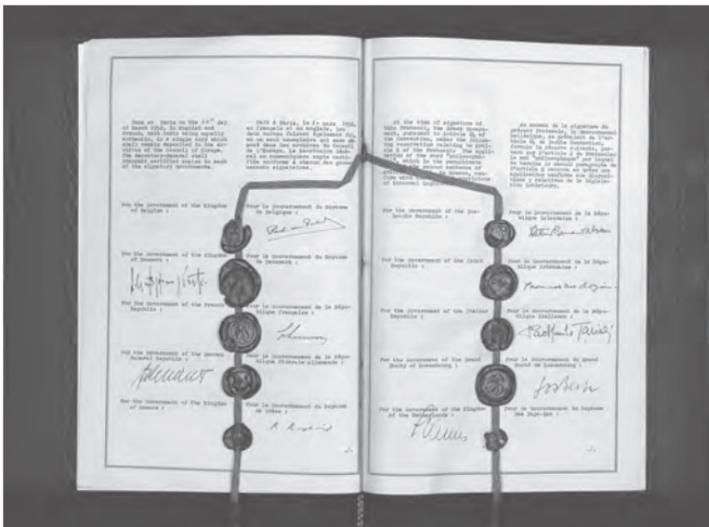
The ECHR is a dynamic document, interpreted by the Court in the light of the specific circumstances of each case. As Europe has developed over the past 60 years, rights have been added to the Convention by way of supplementary protocols – the right to education and to property, for

example. And the Court's interpretation of the Convention has developed, lending now greater, now lesser emphasis to some of the balancing factors that inevitably qualify human rights in specific situations. In practice, the cases demonstrate and make the law.

What rights are in the Convention?

The ECHR is a brief document, not even the length of this short book. The very first article ensures that the rights it lists apply to everyone "within the jurisdiction" of the states which sign up to it. Human rights are not restricted to citizens of the member states but apply to everyone living on their territory. States have a duty not to discriminate between individuals in that respect.

The rights themselves are listed in the first section of the ECHR, covering Articles 2 to 18, and some additional protocols.



Signatures on the European Convention on Human Rights.

Key rights in the ECHR

Right to life; prohibition of torture; prohibition of slavery and forced labour; right to liberty and security; right to a fair trial; no punishment without law; right to respect for private and family life; freedom of thought, conscience and religion; freedom of expression; freedom of assembly and association; right to marry; right to effective remedy; prohibition of discrimination.

Articles 2 to 18 cover the rights enumerated in the original Convention: the right to life, the prohibition of torture, of slavery and forced labour, the right to liberty and security, as well as the right to a fair trial and the prohibition of punishment without due process of law. The list goes on to include the right to respect for private and family life, freedom of thought, conscience and religion, freedom of expression, of assembly and association, the right to marry and the right – when these rights and freedoms are violated – to an effective remedy.

Subsequent amendments to the ECHR have added further rights. The first protocol (1952) added the protection of property, the right to education and the right to free elections. A later protocol (1963) concerned the prohibition of imprisonment for debt, freedom of movement, the prohibition of the expulsion of nationals from their state, and the collective expulsion

of aliens. A protocol (1983) and another (2002) concerned the abolition of the death penalty. And another (1984) concerned safeguards relating to the expulsion of aliens, the right of appeal in criminal matters, compensation for wrongful conviction, the right not to be tried or punished twice for the same offence, and equality between spouses. Another protocol (2000) went beyond Article 14 of the ECHR, which refers only to non-discrimination in regard to the rights set out in the Convention, to introduce a general prohibition of discrimination in respect of any right set forth by law. Later pages of this brief guide will consider a selection of the rights enumerated in the ECHR and its various protocols, and relate them to cases that have come before the Court.

Over 20% of Court judgments find a violation of the right to a fair trial (Article 6) and over 25% relate to the excessive length of proceedings (also Article 6). A further 8% relate to abuse of the right to an effective remedy (Article 13).

The failure of states to protect the right to property (Article 1 of Protocol No.1) concerns a further 14% of judgments, while 10% relate to the right to liberty and security (Article 5), and about 8% of violations concern the right to life (Article 2) and the prohibition of torture or degrading treatment (Article 3).

How relevant are Convention rights today?

Human rights, lawyers argue, hang together to form a closely knit set of rights and obligations, and chipping away at one part of them weakens them all. That is what they mean by rights being “indivisible”. So states have to

Rights added in later protocols

Right to property;
right to education;
right to free elections;
prohibition of imprisonment for debt;
freedom of movement;
prohibition of expulsion of nationals;
prohibition of collective expulsion of aliens;
abolition of the death penalty;
right of appeal in criminal matters;
compensation for wrongful conviction;
right not to be tried or punished twice;
equality between spouses;
general prohibition of discrimination.

live up to high standards in a range of specific areas to show that they are not – unwillingly and perhaps unwittingly – starting off down a slippery slope towards a lack of respect for human rights as a whole. The onus is on public officials like the police and the military, the intelligence services, the judiciary and prison staff, on doctors and nurses, as well as on civil servants more generally and on politicians in government in particular, to observe high standards of behaviour as regards respect for human rights.

Cases considered in the pages which follow attempt to put flesh on the bones of this argument, but the general reader will already be aware of the issues surrounding “rendition flights” in Europe. Here some signatory states of the ECHR have admitted involvement in CIA flights intended to move terrorist suspects to detention centres where they could be subjected to torture – euphemistically called “enhanced interrogation techniques” – in order to obtain information that could help public authorities in the “war on terror”. Such

actions, or complicity in such actions, raise serious questions about states' commitment to human rights, and the Court will doubtless be called on to pass judgment on different aspects of this when individual cases are brought before it.

The abuse of human rights is sometimes front page news, but at other times hardly publicised at all. Big issues may include the persecution of journalists and editors, discrimination against minorities, the denial of free elections or a ban on assembly and demonstration. But many cases relate to individual and highly personal issues, such as the continuation of slavery in a domestic setting, media intrusion into the privacy of family life, the restitution of property seized illegally in the political convulsions of recent European history or the right to a fair trial. The degree of media coverage is no measure of the importance of these issues to the individuals concerned. But the fact that the media frequently do cover cases before the Court is a measure of their awareness and concern for the seriousness of the issues to which the ECHR relates.