



# AN INTRODUCTION TO THE EUROPEAN CONVENTION ON HUMAN RIGHTS

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COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

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# Human rights in Europe

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## Human rights for our time

This 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 (the Convention) 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 there are some comments on how human rights in Europe may expand and be strengthened in the near future.

The 10 initial signatories of the Convention 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 Convention.

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 65 years ago, and it has been signed and ratified by all states that have since then joined the Council of Europe.

The Convention for the Protection of Human Rights and Fundamental Freedoms – the full title of the European Convention on Human Rights– was signed in 1950 and came into force in 1953. The Convention did not come out of thin air. Like the Universal Declaration of Human Rights, promulgated by the United Nations (UN) 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 for individuals. The UN International Court of Justice, also known as the World Court, hears cases brought by states, not individuals, and likewise the International Criminal Court, dealing with cases of genocide, crimes against humanity and war crimes.

It does not put the member governments in the dock if they break the Universal Declaration’s lofty aspirations. The Convention 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 Convention 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

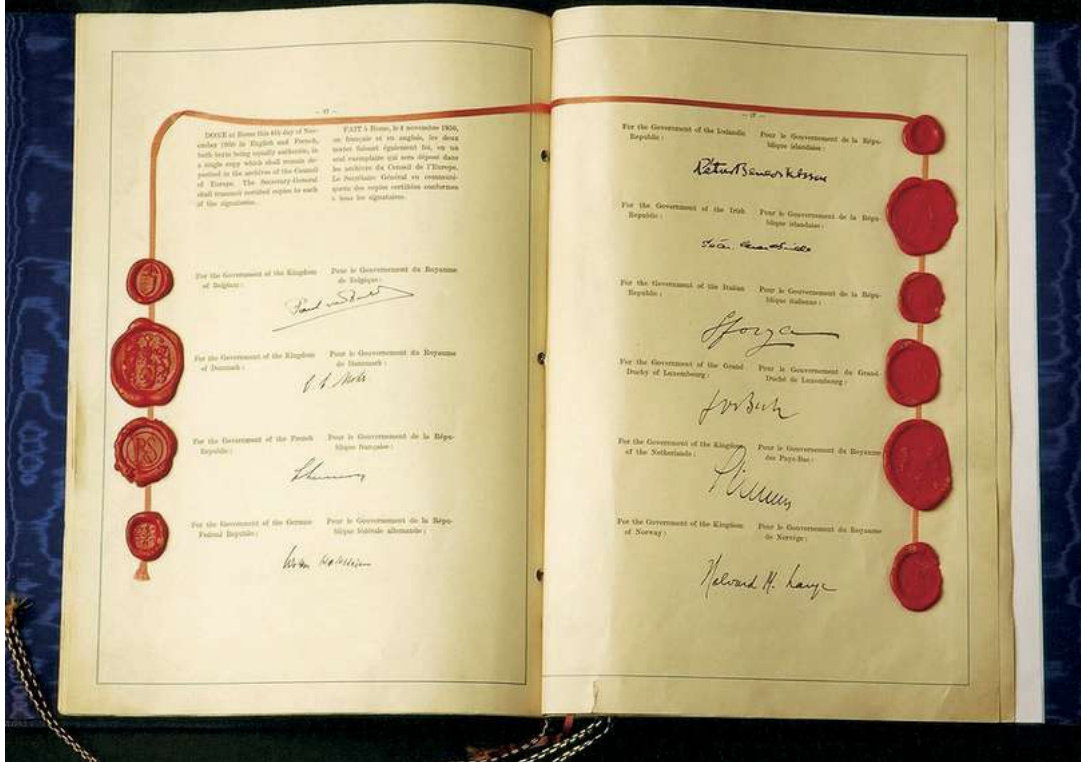
steps for the collective enforcement of certain of the rights stated in the Universal Declaration”.

## **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. Those who wrote the European Convention on Human Rights dared to hope that there would never again be war in Europe and never again the abuse of human rights that it had brought with it. 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. The very first Convention of the newly established Council of Europe was the European Convention on Human Rights.

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 Convention 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 European Court of Human Rights, with states exposed to peer pressure and review by their colleagues in the



The European Convention on Human Rights

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 over 65 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.

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 they can 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 of Europe. 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 Convention 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.

The Convention 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.

But the Convention has not banished war from the continent of Europe. The invasion of Cyprus by Turkey in the 1970s, the Balkan Wars of the 1990s, the Russo-Georgian war of 2008 and the more recent conflict between Russia and Ukraine involving the occupation of Crimea and incursions in Eastern Ukraine have given rise to thousands of individual cases against the belligerents. They have also triggered cases by one state against another, the historic ones now settled, but the more recent ones still pending before the Court.

## 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 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. This issue has become more acute than ever in the digital age with the global reach of social media. Defining the responsibility of individuals as authors and the role of major digital companies as publishers is an acute

issue. The Court's accumulated judgments, its case law or jurisprudence, offer a continuing commentary on just how far the rights enumerated in the Convention 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 Convention 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 three generations, 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 European Convention on Human Rights 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 residing or travelling in 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 Convention, covering Articles 2 to 18 and some additional protocols.

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.

### **Key rights in the Convention**

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 an effective remedy; prohibition of discrimination.

Subsequent amendments to the Convention 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 prohibition of collective expulsion of aliens. A protocol in 1983 and another in 2002 concerned the abolition of the death penalty. 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 Convention, 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 Convention and its various protocols, and relate them to cases that have come before the Court.

Almost 20% of Court judgments find a violation of the right to a fair trial (Article 6), another 20% relate to the right to liberty and security (Article 5) and 17% relate to inhuman or degrading treatment (Article 3). A further 15% relate to abuse of the right to an effective remedy (Article 13) and 12% relate to the excessive length of proceedings (also Article 6). The failure of states to protect the right to property (Article 1 of Protocol No. 1) is the concern of a further 11% of judgments and about 2% of violations concern the right to life (Article 2) (based on 2017 statistics).

## **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 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, 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.

## **Rights added in later protocols**

Protection of 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.

Cases considered in the pages which follow attempt to put flesh on the bones of this argument, but the general reader will be aware of the issues surrounding “rendition flights” in Europe. Here some signatory states of the Convention 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 has passed judgment on various aspects of this when individual cases have been brought before it, notably concerning Poland and Italy, the “former Yugoslav Republic of Macedonia”, Romania and Lithuania.

Some issues treated by the Court may have an obvious and general application, such as the persecution of journalists and editors, discrimination against minorities, the denial of free elections or a ban on assembly and demonstration. Many other 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 Convention relates.

## **IMPROVING HOW THE CONVENTION WORKS**

Over recent years there has been increasing concern about the backlog of cases brought before the Court and the inordinately long time taken to process them. Likewise, concern has been expressed about the backlog of Court judgments that member states have been slow to execute, either by changing their laws or administrative procedures, or in providing other effective measures such as compensation for successful litigants. This concern led to a Joint Declaration in Brussels in March 2015 by all the signatories of the Convention which listed a number of steps they undertook to implement to improve the Court’s procedure for admitting cases, educating lawyers and others involved about the Convention and making the execution of judgments at national level more efficient. These reforms are now starting to have positive effects with a reduction of cases waiting for a decision on admissibility, shorter times before judgments are delivered, and a clearing of the backlog of cases where signatory states had not satisfactorily executed the judgments of the Court. Readers will find more details of this increased efficiency in the administration of justice under the Convention at later points in this booklet, but first we should look in some detail at a selection of cases that make up human rights law in practice as decided by the Court and applied by the member states.



The European Court of Human Rights

# Cases that make human rights law

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**H**ere we look at a selection of cases where the judgments of the European Court of Human Rights have interpreted the Convention in important and interesting ways. In this section of our guide we look at key rights, roughly following the order of the articles in the Convention. Key elements of the text of various articles are highlighted on the relevant pages, so that readers have an easy point of reference.

Since the Court in Strasbourg first began handing down judgments in 1960, successive decisions have transformed the legal landscape of the states which have ratified the Convention.

Often rulings have not been immediately welcomed by the governments of the day. Sometimes they have been reluctant to accept fresh rights. Many, over the course of time, have come to be seen as inevitable milestones in the march of progress. Opponents of the Court's developing case law fear that its ever-expanding interpretations of the Convention have turned the Court in effect into a law-making body rather than simply an interpreter of the Convention.

While the Convention itself is the fundamental point of reference, the Court's cumulative judgments – its jurisprudence or case law – guide the wider interpretation

of human rights law throughout Europe. Inevitably this builds up slowly and in a rather uneven pattern, as there are more cases relating to some of the articles than to others. But it steadily makes judges across the continent aware of judgments from Strasbourg, helps lawyers grasp the arguments deployed and see their relevance for cases they are dealing with nationally, and teaches students of law about the mechanisms of the Court and the importance of the Convention. If national courts all delivered judgments that were in line with the provisions of the Convention and the case law of the Court, then very few new cases would find their way to Strasbourg. Litigants would be satisfied that their human rights were adequately protected at home. Sadly, that is still far from the case.

So the Court has increasingly taken a proactive role in trying to speed up the understanding and application of case law in domestic courts throughout Europe. It organises seminars for judges and lawyers, encourages students of law to specialise in human rights, and publicises its judgments actively both in the media and on its own website. Together with the steady stream of judgments, these activities help guide the gradual emergence of common interpretations and common standards for the legal protection of human rights across the national jurisdictions of the continent.

## HUMAN RIGHTS FOR EVERYONE

All states which are members of the Council of Europe have a legal duty to respect human rights and to ensure that they apply to everyone in their jurisdiction. States cannot be selective, preferring one group of citizens – for instance their own nationals – to another, as human rights are universally applicable. And they have an obligation to ensure that the rights of the Convention are applied throughout their territory, not allowing areas of lawlessness in which human rights can be ignored or abused. This issue came to the fore in a case from Georgia where a convicted person was not released from jail in an autonomous region of the country after his pardon and the order for his release had been issued by the central authorities.

Tengiz Assanidze was sentenced to eight years' imprisonment in 1994 for illegal financial dealings and possession of firearms and was committed to prison in the Ajarian Autonomous Republic. Five years later he was pardoned by the President of Georgia, but was not released by the Ajarian authorities. While he was still being held, but after his pardon, he was tried locally on an additional charge of kidnapping and was sentenced by the Ajarian High Court to a further 12 years in prison. He was subsequently acquitted by the High Court of Georgia which ordered his release in 2001. More than three years later he was still in custody in a prison run by the Ajarian Security Ministry.

The Court judgment recognised that the central authorities in Georgia had done all that they could under domestic law to secure compliance with the

judgment acquitting the applicant. They had tried to resolve the issue by political means and had repeatedly urged the Ajarian authorities to release him, but all to no avail. Nonetheless, it was the responsibility of the Georgian state to find a solution to the problem. As a signatory of the Convention, Georgia undertook to secure the rights and freedoms of the Convention for everyone within its jurisdiction, without exception or reservation. That is what Article 1 of the Convention implies (*Assanidze v. Georgia*, 2004).

### Article 1 – Obligation to respect human rights

The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section 1 of this Convention.

## LIFE AND DEATH

Europe is the only continent where the death penalty has been abolished. Or, to be more exact, it has been abolished in almost all of Europe. Let's look at how we got to where we are.

The experience of arbitrary killing in wartime was still strong in the minds of those who drafted the Convention in 1950. But public opinion at the time that the Convention was originally adopted was not clearly in favour of abolition of the death penalty for serious crimes such as murder. In negotiating Article 2 of the Convention (protecting the "right to life")