

User's guide

This *Short guide to the European Convention on Human Rights* is intended to provide a concise overview of:

- the case-law arising under the European Convention on Human Rights;
- the procedures followed by the European Court of Human Rights when reviewing individual petitions under the Convention; and
- the role of the Committee of Ministers as a supervisory organ, as well as that of the Secretary General of the Council of Europe in giving force to the European Convention of Human Rights.

As the title indicates, the Guide is intended to be *short*. The chapters on the substantive rights guaranteed by the Convention address only some of the most important and/or most current judgments of the Court. They do not discuss many of the interesting, but more peripheral cases, nor do they discuss unsuccessful claims and the reasons for their failure, although such a review would also be instructive. The Guide covers the case-law under the Convention to the end of 2003.

The sections on practical procedures focus mainly on applications from individuals, not states. In the interests of space, the Guide uses the terms "Convention" and "Court" to refer to the European Convention on Human Rights and European Court of Human Rights. The terms "Convention institutions" or "Convention organs" refer to the (now defunct) European Commission of Human Rights and the European Court of Human Rights taken together. On the few occasions when the Guide refers to applications, it refers to them by their numbers only.

In the interests of readability, full titles and details of the cases do not appear every time a case is mentioned. In its discussion of the case-law, the Guide uses the following citation forms to mean the following types of decisions and judgments:

Appl. No. or application: refers to an admissibility decision of the European Commission of Human Rights or the European Court of Human Rights;

(date): refers to the year of a judgment of the European Court of Human Rights.

Also in the interests of readability, the terms High Contracting Party, Contracting State, State Party and State will be used interchangeably throughout the Guide.

Although both the French and the English versions of the Convention are considered to be authentic, the Guide does not address the differences in

language between the two versions. I have used the English version when writing this Guide.

This *Short guide to the European Convention on Human Rights* intentionally limits its scope principally to the case-law and procedures of the European Court of Human Rights. Owing to the lack of space, it does not address many other matters of interest for those engaged in regional or international human rights law. It does not mention the European Social Charter, for instance, which governs the protection of economic and social rights within many Council of Europe member States, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, or the two regional instruments addressing the rights of minorities; nor does it address itself to the various human rights initiatives of the political bodies of the Council of Europe or those of the Organization for Security and Co-operation in Europe (Human Dimension) or the role of the European Union in protecting certain human rights. Likewise, it does not discuss the extensive human rights machinery of the United Nations and its specialised agencies.

Introduction

1. The Statute of the Council of Europe

From the very genesis of the Council of Europe, the principle of respect for human rights has been one of the cornerstones of the Organisation. At a meeting in The Hague in 1948, the Congress of Europe acted as the catalyst for the creation of the Council of Europe, adopting a resolution which reads in part as follows:

The Congress

Considers that the resultant union or federation should be open to all European nations democratically governed and which undertake to respect a Charter of Human Rights;

Resolves that a Commission should be set up to undertake immediately the double task of drafting such a Charter and of laying down standards to which a State must conform if it is to deserve the name of democracy.

The main substance of the first of these two propositions was included in the Statute of the Council of Europe as Article 3:

Every Member of the Council of Europe must accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms....

The importance of human rights is emphasised in several other provisions of the Statute of the Council of Europe, and Article 8 even provides that serious violations of human rights and fundamental freedoms are grounds for suspending or expelling a member State from the Council.

The Statute was signed on 5 May 1949. The drafting of a human rights charter was a high priority for the new Council of Europe and, only eighteen months after the Statute was signed, the ten member States signed the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) on 4 November 1950. The Convention entered into force on 3 September 1953.

2. The European Convention on Human Rights

The European Convention on Human Rights did not develop in a vacuum: it was preceded by both the Universal Declaration of Human Rights and the American Declaration of the Rights and Duties of Man. The Universal Declaration was in fact given pride of place in the Preamble to the Convention. The importance of the Convention to the protection of human rights at the international level should not be underestimated, however. In its Preamble, the Convention sets forth important principles:

[T]he foundation of justice and peace in the world... are best maintained on the one hand by an effective political democracy and on the other by a common understanding and observance of the Human Rights upon which they depend;

...

[T]he Governments of European countries which are likeminded and have a common heritage of political traditions, ideals, freedom and the rule of law ... take the first steps for the collective enforcement of certain of the Rights stated in the Universal Declaration.

Thus, the Preamble included the notion of political democracy that was lacking in the relevant provisions of the Statute of the Council of Europe. Of equal significance, however, is its focus on the collective enforcement of human rights.

The Convention was the first international human rights instrument to aspire to protect a broad range of civil and political rights both by taking the form of a treaty legally binding on its High Contracting Parties and by establishing a system of supervision over the implementation of the rights at the domestic level. Its most revolutionary contribution perhaps lay in its inclusion of a provision under which a High Contracting Party could choose to accept the supervision of the European Court of Human Rights in instances where an individual, rather than a State, initiated the process. One measure of the Convention's success has been the entrenchment of the right of individual petition as mandatory rather than optional: all States ratifying the Convention are now automatically bound to accept the jurisdiction of the Court to review individual complaints.