



Freedom(s)

Learning activities
for secondary schools
on the case law
of the European Court
of Human Rights



COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Freedom(s) – *Learning activities for secondary schools on the case law of the European Court of Human Rights*

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the Directorate of Communication
(F-67075 Strasbourg Cedex or
publishing@coe.int).

Cover: SPDP, Council of Europe
Photos: Council of Europe
Layout: Jouve

Council of Europe Publishing
F-67075 Strasbourg Cedex
<http://book.coe.int>

ISBN 978-92-871-8069-8
© Council of Europe, March 2015
Printed at the Council of Europe

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Preface

“Explore and Act for Human Rights” is a Council of Europe programme which seeks to engage students in learning about contemporary citizenship and the moral choices that come with living in a democracy. Its great strength is that it brings these subjects to life by locating them in actual cases which have been



brought before the European Court of Human Rights. In adopting this approach, we are not simply telling young people about our shared values. We are showing them what pluralism, democratic freedom and the rule of law mean in real, everyday life.

This is an extremely important endeavour. Each new generation is called upon to understand and safeguard the values which bind our continent together. Defending these traditions will eventually fall to them and we must help young people develop their capacity to think critically, in order that they can apply long-held principles in a fast changing world. Human rights are not static, nor are democratic citizens passive. It is therefore not by accident that the programme is entitled “Explore and Act for Human Rights”.

This collection complements other resources that are available for teaching human rights, and it makes a distinct contribution in three ways.

First, the focus is on cases where individuals are challenging established practices, and in so doing are indirectly advancing the interests of others. Some involve young people; a handful may be public figures; but most are ordinary people – and all have felt compelled to take a stand, all with wider implications and consequences.

Second, the cases relate back to key societal values, including tolerance, respect for others, fairness and protection against arbitrariness. Confronted with these themes, students soon begin applying them to their own relationships and communities. For example, *Opuz v. Turkey* involves the degree to which the police should intervene to protect citizens from serious threats of violence, but when do school students have a moral responsibility to step in and protect their classmates from bullying? *D.H. and Others v. the Czech Republic* considers the compatibility of separate teaching arrangements for Roma children, but also allows us to contemplate and address our own stereotypes and prejudices.

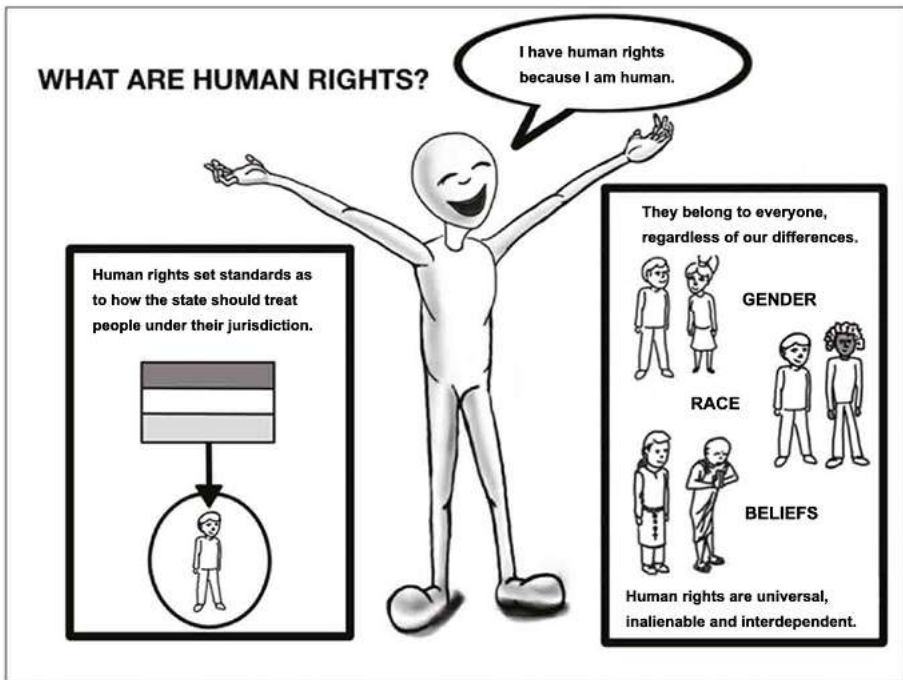
Third, these materials are for young people, by young people. They have been produced by talented and enthusiastic teams of students and recent graduates in law and education, drawn from a number of institutions across Europe, and field-tested in a range of schools. Different teams, with their varied backgrounds, have brought fresh and challenging perspectives. The result is a set of rich and nuanced materials which help young people grasp the role interpretation can play in the law.

So I am delighted to encourage Council of Europe member states and states parties to the European Cultural Convention to use this unique resource, adapting it to the specific needs of your classrooms, while teaching young people across our continent about the values and laws we all share.

Thorbjørn Jagland
Secretary General of the Council of Europe

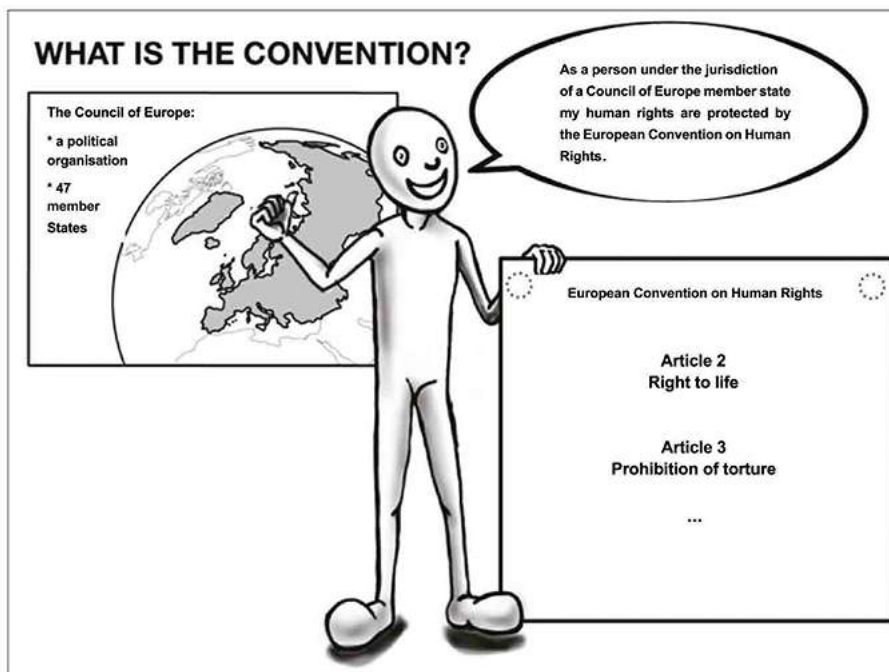
1. Introducing the European Convention on Human Rights and the Court

1.1. What are human rights?



Human rights are rights that all human beings possess simply by virtue of being human. There are many different theories of human rights, but the common idea is that there are certain inherent, fundamental human features (characteristics and capabilities such as autonomy, dignity, interests and needs) that we all share, irrespective of our circumstances. These “rights” are necessary for our well-being, but are vulnerable to attack by acts or omissions by others. Therefore, they need to be protected through human rights principles. Human rights prescribe how states are to treat persons under their jurisdiction. They are often classified into: civil and political rights (protection of life and physical and mental integrity, as well as personal and political freedoms); social, economic and cultural rights (right to work, education, social security, health); and “third generation” rights (right to development, peace and a safe environment).

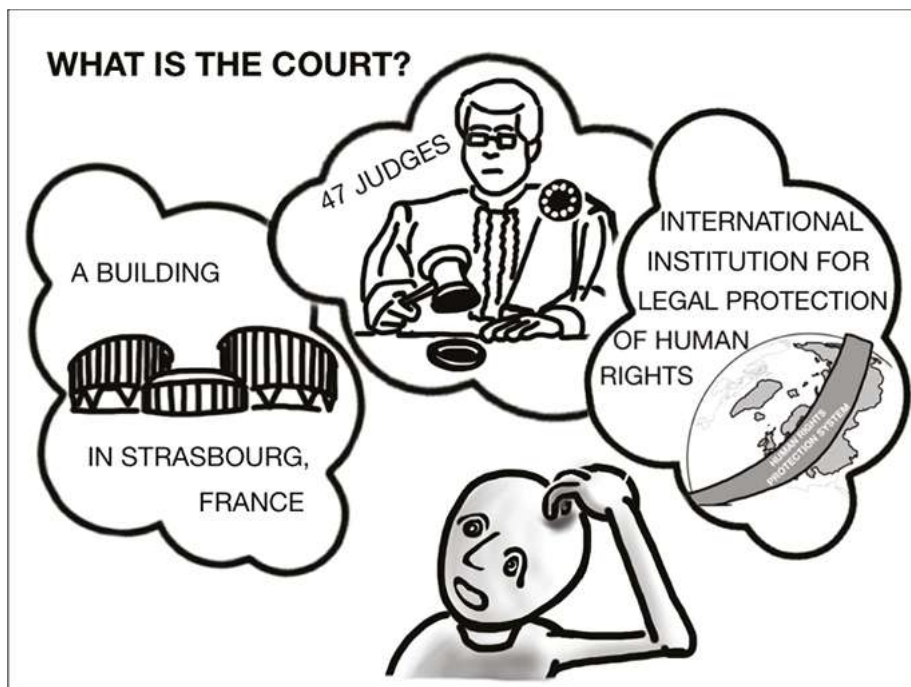
1.2. What is the European Convention on Human Rights?



The European Convention on Human Rights (hereinafter “the Convention” or “the ECHR”) is the first internationally binding instrument on human rights (adopted in 1950, entered into force in 1953). All the member states of the Council of Europe (a political organisation of 47 member states) have ratified the Convention. As of 3 February 2015, 16 Protocols to the Convention have been adopted (of which 14 are in force), some expanding the rights to be protected, and some amending the framework of the convention system.

The Convention provides for civil and political rights and freedoms (such as the right to life, freedom from torture, the right to private and family life, freedom of expression, etc.). With a few exceptions, rights conferred by the Convention (and its Protocols) are not absolute and must be balanced against the rights of others and the public interest. States can derogate from certain rights in the time of war or other public emergencies. As the Convention is conceived of as a “living instrument”, the rights have been interpreted dynamically, in light of present conditions, which has extended the scope of the Convention to situations that were unforeseeable when it was adopted. The Convention therefore does not only protect against conventional types of human rights violations in the form of direct interference by state agents (e.g. unlawful arrest, violence in police custody), but also against violations of rights by private individuals (e.g. sexual and domestic violence, trafficking) where the state fails to take necessary steps to prevent a violation, or fails to sanction it appropriately.

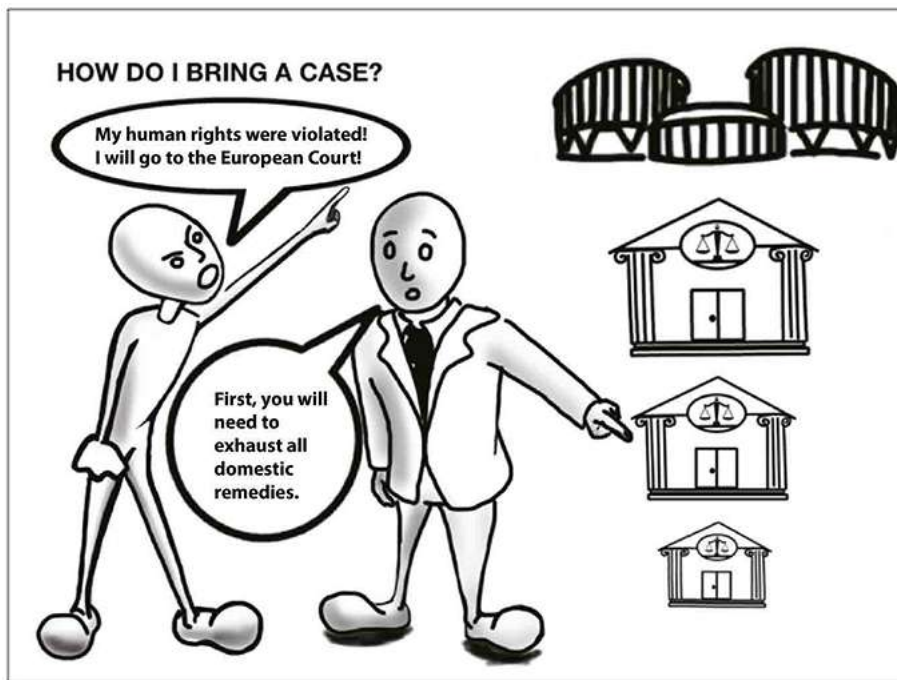
1.3. What is the European Court of Human Rights?



The European Court of Human Rights (hereinafter “the Court”) is the first international human rights court, established by the Convention in 1959, and it is still the only international court to which an individual can apply directly. The Court is considered the most effective international mechanism for the protection of human rights and acts as a quasi-constitutional court of Europe that establishes common European human rights standards. Since 1998, it has had sole responsibility for the enforcement of the Convention. It is a full-time court with 47 judges.

The Court’s jurisdiction is to examine and pass judgment on inter-state cases and applications by individuals against contracting states, and to provide advisory opinions on legal questions concerning the interpretation of the Convention when requested by the Committee of Ministers of the Council of Europe. Applications by individuals constitute the majority of cases heard by the Court. As of the end of 2014, 69 900 applications were pending before the Court.

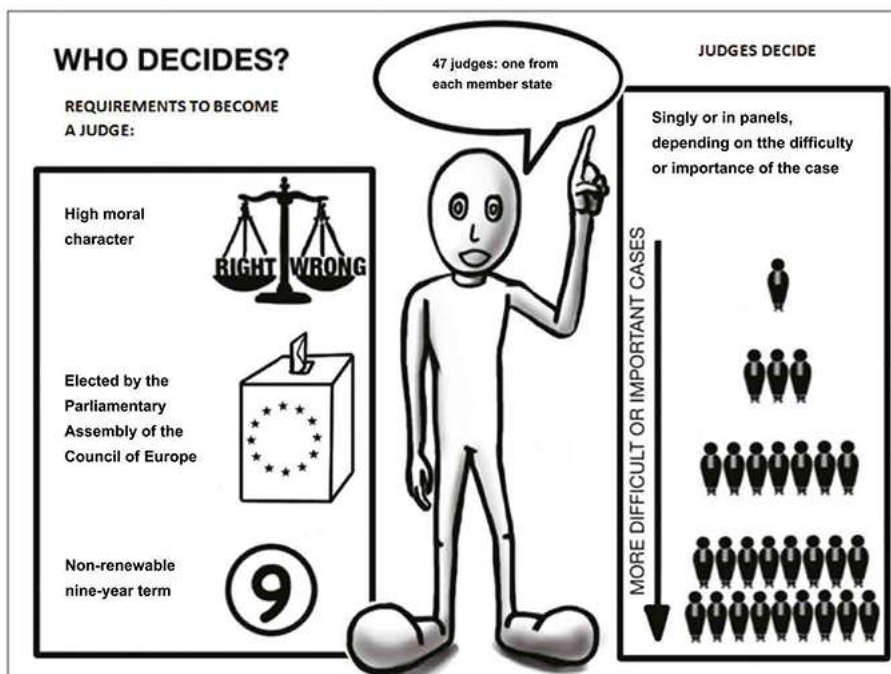
1.4. How do I bring a case to the Court?



You can bring a case to the Court if you consider that the state has violated your rights, but before the Court will consider your arguments you must have met the so-called “admissibility” requirements. One of the most important criteria is the rule of “exhaustion of domestic remedies”. Prior to the lodging of an application with the Court, all available and effective remedies that are available in your state have to have been exhausted (that is you need to go through your own country’s courts), and the application has to be submitted within six months of the delivery of the final decision. The application also has to concern a right that is protected under the Convention. The person complaining has to be directly affected, and must have suffered significant damages, unless respect for human rights as defined in the Convention and its Protocols requires an examination of the application on its merits. The application must not be “manifestly ill-founded”, or constitute an abuse of rights.

If you think that your application satisfies these criteria, you can submit an application on the official form. You do not need to be represented at the initial stage, although legal representation will be required from when the Court notifies the concerned state about the application. After that stage you can also be granted legal aid and you must write to the Court in one of its official languages. However, you can submit an application in your own language.

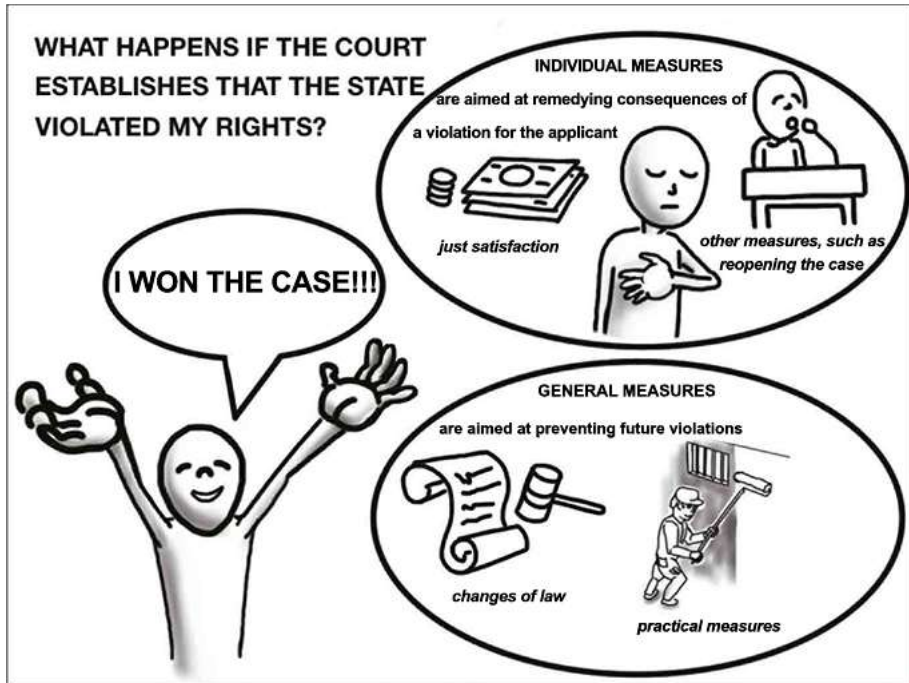
1.5. Who decides?



There are 47 judges at the Court, one from each member state. They must be of a high moral character and have relevant qualifications. Judges are elected by majority vote in the Parliamentary Assembly of the Council of Europe from the three candidates each contracting state nominates, for a non-renewable nine-year term. They perform their duties in an individual capacity and are independent. Judges sit in a Committee of three judges, Chambers of seven judges and a Grand Chamber of 17 judges. A single judge can reject plainly inadmissible applications (but may not examine applications against the state in respect of which he or she was elected). The three-judge Committee is empowered to declare applications admissible and decide on the merits of a case when it is already covered by well-established case law. The seven-judge Chamber decides on the merits of all other cases, except where jurisdiction is relinquished to the Grand Chamber.

The Grand Chamber can hear cases that raise serious questions of interpretation and application of the Convention, a serious issue of general importance, or cases that may depart from previous case law. A Panel of five judges decides whether the Grand Chamber accepts referrals. The Grand Chamber can also re-hear a case decided by the Chamber if the Panel accepts the request. The request can be submitted by any party to the case within a period of three months from the date of the judgment of the Chamber.

1.6. What happens if the Court establishes that the state violated my rights?



The contracting parties undertake to abide by the final judgments of the Court in the cases to which they are parties. The Court, however, does not generally specify what measures states need to take and it does not monitor the implementation of its judgments. This is the task of the Committee of Ministers (the intergovernmental body made up of foreign affairs ministers or their diplomatic representatives from the 47 member states and assisted by the Department for the Execution of Judgments of the European Court of Human Rights). There are two types of measures required: individual measures, aimed at remedying the consequences of a violation for an applicant (just satisfaction and other necessary measures such as re-opening of the proceedings); and general measures, aimed at preventing future similar violations, such as changes of law, policies or practical measures, for example refurbishing outdated prison facilities in case of a complaint related to prison conditions.

It is for the state to identify the measures in co-operation with the Department of the Execution of Judgments. The first step in implementation is for the state to produce an action plan within six months from the date that the judgment becomes final (three months from the date of delivery, unless the case has been submitted to the Grand Chamber). If the judgment is unclear regarding what is required for implementation, the Committee of Ministers may agree by a two-thirds majority vote to refer back to the Court (a referral decision) for clarification.