THE EUROPEAN CONVENTION ON HUMAN RIGHTS

A LIVING INSTRUMENT
The European Convention on Human Rights

A living instrument
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The European Convention on Human Rights

The European Convention on Human Rights, signed in Rome on 4 November 1950, was the first instrument to crystallise and give binding effect to the rights set out in the Universal Declaration of Human Rights. It lays down absolute rights which can never be breached by the States, such as the right to life or the prohibition of torture, and it protects certain rights and freedoms which can only be restricted by law when necessary in a democratic society, for example the right to liberty and security or the right to respect for private and family life.

A number of rights have been added to the initial text with the adoption of additional protocols, concerning in particular the abolition of the death penalty, the protection of property, the right to free elections or freedom of movement.

The European Court of Human Rights

The European Court of Human Rights, judicial organ of the Council of Europe, examines applications from individuals, but also inter-State applications, lodged by a State against another State party to the Convention. Currently 47 countries have undertaken to secure fundamental rights and freedoms, not only to their nationals but to everyone, even non-Europeans, within their jurisdiction.
Case-law

The Court’s case-law is rich and relates to many different subjects. The Convention violation most often found by the Court concerns the right to a fair hearing, because of a lack of fairness or excessively lengthy proceedings. The right to liberty and security and the right to the protection of property also frequently give rise to findings of violations.

The Court has ruled on many societal issues such as abortion, assisted suicide, body searches, domestic slavery, adoption by homosexuals, the wearing of religious symbols in schools, the protection of journalists’ sources, or the retention of DNA data.

Impact of the Convention

The reason for the significant impact of the Court’s work is the binding force of its judgments. A State which is found to have committed a violation will be required to provide redress for the damage sustained by the applicant and, as far as possible, remedy any consequences of the violation. The State must also make sure that no similar violation occurs, in other words that nobody else is a victim of the violation found. In practice this often gives rise to a change in legislation.

By amending their legislation or practice to bring them into line with the Convention, the States allow everyone to benefit from the further development of human rights protection. A single judgment may thus have an impact on the whole population of a State. Supervision of the execution of a judgment lies in the hands of the Committee of Ministers, the executive organ of the Council of Europe.

Examples of changes resulting from the Court’s judgments:

- **Cyprus** abolished the criminal offence of homosexual relations between consenting adults;
- membership of a union is no longer an obligation in **Denmark**;
- **France** recognises an equality of succession rights between legitimate children and children born out of wedlock,
- the **United Kingdom** prohibited corporal punishment in State schools,
- **Switzerland** enacted a law to regulate phone tapping,
- and many States have introduced remedies to enable people to complain about unreasonably lengthy proceedings.

Impact of the Convention

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The Convention, a modern instrument

What gives the Convention its strength and makes it extremely modern is the way the Court interprets it: dynamically, in the light of present-day conditions. By its case-law the Court has extended the rights set out in the Convention, such that its provisions apply today to situations that were totally unforeseeable and unimaginable at the time it was first adopted, including issues related to new technologies, bioethics or the environment. The Convention also applies to societal or sensitive questions relating, for example, to terrorism or migration.
Reforms of the Convention system

Since it was set up in 1959 the Court has completed the examination of some 910,000 applications, whether by delivering a judgment or a decision, or by striking the case out of its list.

Faced with an increasing volume of cases, the member States of the Council of Europe have adopted various Protocols to the Convention for the purpose of improving and strengthening the supervisory mechanism initially created. New judicial formations have thus been introduced to deal with the most straightforward cases.

In parallel the Court has also reformed its working methods in order to boost its efficiency and streamline its resources. For example, it has put in place the pilot judgment procedure to deal with the massive influx of applications concerning similar issues, also known as systemic issues, resulting from the non-compliance of domestic law with the Convention.

It has also adopted a prioritisation policy which takes account of the importance and urgency of the questions raised in order to decide on the order in which applications are processed.
Appendix 1: The Convention in brief

Article 1
Obligation to respect human rights

- States must ensure that everyone on their territory or on territory controlled by them has the rights and freedoms set out in the Convention.

Article 2
Right to life

- Everyone's right to life is protected by law.

Article 3
Prohibition of torture

- No one may be tortured or treated in an inhuman or degrading manner.

Article 4
Prohibition of slavery and forced labour

- No one may be treated as a slave or made to carry out forced labour.

Article 5
Right to liberty and security

- Everyone has the right to liberty. All persons who are arrested have the right to be told why, soon after their arrest. They must be brought before a judge straight away and stand trial within a reasonable time or be released until their trial takes place.

Article 6
Right to a fair trial

- Everyone has the right to a fair hearing, within a reasonable time, by an independent and unbiased court.
- All persons who are accused of an offence are innocent until proven guilty. They must be informed quickly of the charges against them and be able to prepare a defence. They have the right to be represented by a lawyer paid for by the State if they cannot afford to pay for one themselves.

Article 7
No punishment without law

- No one may be found guilty of an offence which did not exist at the time the events took place.

Article 8
Right to respect for private and family life

- All persons have the right to respect for their private and family life, their home and their correspondence.

Article 9
Freedom of thought, conscience and religion

- All persons have the right to freedom of thought, conscience and religion. They may practise their religion in public or in private and change their religion.

Article 10
Freedom of expression

- Everyone has the right to freedom of expression. This includes freedom of opinions and the freedom to share and receive information and ideas.
11. Right to assembly and association

Everyone has the right to take part in peaceful meetings and join associations. This includes the right to set up a trade union and the freedom to join one.

12. Right to marry

Everyone has the right to marry and found a family.

13. Right to an effective remedy

Everyone must have the possibility of complaining to a court if his or her rights have been violated.

14. Prohibition of discrimination

The rights and freedoms contained in the Convention apply to all persons, regardless of factors such as gender, skin colour, religion, political opinions, or origins.

34. Individual applications

The right to apply to the ECHR is absolute. States may not interfere with that right in any circumstances.

Article 1 of Protocol No. 1

Protection of property

All persons have the right to own property and to make use of their possessions.

Article 2 of Protocol No. 1

Right to education

Everyone has the right to education and teaching.

Article 3 of Protocol No. 1

Right to free elections

Everyone has the right to take part by secret vote in electing the legislature (that is, the national parliament) and the European Parliament.

Article 2 of Protocol No. 4

Freedom of movement

All persons who are lawfully within a country may move around freely within it and choose where they want to live.

Article 1 of Protocol No. 6

Abolition of the death penalty

No one may be sentenced to death or executed by the State.

Article 2 of Protocol No. 7

Right of appeal in criminal matters

Anyone convicted of a criminal offence has the right to appeal to a higher court.
All persons have a right to compensation if the courts convict them wrongly.

No one can be tried twice for the same criminal offence unless new facts are proven.

Married couples have the same rights and responsibilities, both towards each other and towards their children.

All persons must be able to exercise their rights without being discriminated against for reasons such as gender, skin colour, political or religious beliefs, or origins.

The death penalty is prohibited even in wartime.

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**Appendix 2:**

**Signatory States of the Convention for the Protection of Human Rights and Fundamental Freedoms**

better known as the European Convention on Human Rights
(Rome, 4 November 1950)

For the Government of the Kingdom of Belgium: Paul VAN ZEELAND
For the Government of the Kingdom of Denmark: Otto Carl MOHR
For the Government of the French Republic: Robert SCHUMAN
For the Government of the German Federal Republic: Walter HALLSTEIN
For the Government of the Icelandic Republic: Pétur BENEDIKTSSON
For the Government of the Irish Republic: Seán MAC BRIDE
For the Government of the Italian Republic: Carlo SFORZA
For the Government of the Grand Duchy of Luxembourg: Joseph BECH
For the Government of the Kingdom of the Netherlands: Dirk STIKKER
For the Government of the Kingdom of Norway: Halvard Manthey LANGE
For the Government of the Saar: Edgar HECTOR
For the Government of the Turkish Republic: Mehmet Fuat KOPRÜLU
For the Government of the United Kingdom of Great Britain and Northern Ireland: Ernest DAVIES

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**Article 3 of Protocol No. 7**
Compensation for wrongful conviction

All persons have a right to compensation if the courts convict them wrongly.

**Article 4 of Protocol No. 7**
Right not to be tried or punished twice

No one can be tried twice for the same criminal offence unless new facts are proven.

**Article 5 of Protocol No. 7**
Equality between spouses

Married couples have the same rights and responsibilities, both towards each other and towards their children.

**Article 1 of Protocol No. 12**
General prohibition of discrimination

All persons must be able to exercise their rights without being discriminated against for reasons such as gender, skin colour, political or religious beliefs, or origins.

**Article 1 of Protocol No. 13**
Abolition of the death penalty

The death penalty is prohibited even in wartime.
Appendix 3: Key dates

5 May 1949
- Signing of the Treaty of London establishing the Council of Europe.

4 November 1950

3 September 1953

21 January 1959
- First election of judges of the European Court of Human Rights by the Consultative Assembly of the Council of Europe.

14 November 1960
- The Court delivers its first judgment: Lawless v. Ireland.

1 November 1998
- Establishment of the new Court under Protocol No. 11 to the European Convention on Human Rights. This single full-time Court replaces the previous supervisory system.

1 June 2010
- Creation of new judicial formations to speed up the processing of cases. Judges now serve a nine-year non-renewable term of office.
Appendix 4: The Protocols to the Convention

Additional Protocol
Entry into force: 18 May 1954
Better known as Protocol No. 1: provides for new rights, and in particular the right to peaceful enjoyment of possessions, the right to education and the right to free elections by secret ballot.

Protocol No. 2
Entry into force: 21 September 1970
Confers competence on the Court to give advisory opinions at the request of the Committee of Ministers.

Protocol No. 3
Entry into force: 21 September 1970
Amends former Articles 29, 30 and 34 of the Convention.

Protocol No. 4
Entry into force: 2 May 1968
Provides, in particular, for the prohibition of imprisonment for non-fulfilment of contractual obligations, the right to liberty of movement and freedom to choose one’s residence, and the prohibition of expulsion of nationals and collective expulsion of aliens.

Protocol No. 5
Entry into force: 20 December 1971
Amends Articles 22 and 40 of the Convention.

Protocol No. 6
Entry into force: 1 March 1985
Concerning abolition of the death penalty.

Protocol No. 7
Entry into force: 1 November 1988
Provides, in particular, for a right of appeal in criminal matters, the right to compensation for wrongful conviction, the right not to be tried or punished twice, and equality between spouses.

Protocol No. 8
Entry into force: 1 January 1990
Amends the functioning of the European Commission of Human Rights.
The European Convention on Human Rights – A living instrument

Protocol No. 9
Entry into force: 1 October 1994
Grants applicants the right, in certain circumstances, to request the Court to deal with their case.

Protocol No. 10
Signed: 25 March 1992
Improves the Convention supervision procedure within the former Convention system (this instrument lost its purpose with the entry into force of Protocol No. 11).

Protocol No. 11
Entry into force: 1 November 1998
Establishes the "new Court".

Protocol No. 12
Entry into force: 1 April 2005
Introduces a general prohibition on discrimination.

Protocol No. 13
Entry into force: 1 July 2003
Concerning the abolition of the death penalty in all circumstances.

Protocol No. 14
Entry into force: 1 June 2010
Provides, in particular, for the creation of new judicial formations for the most straightforward cases and a new admissibility criterion. This Protocol also extended the length of judges’ term of office from six to nine years, non-renewable.

Protocol No. 15
Entry into force: 1 August 2021
Introduces a reference to the subsidiarity principle and the margin of appreciation doctrine. It reduces the time-limit for applying to the Court from six months to four.

Protocol No. 16
Entry into force: 1 August 2018
Enables States Parties' highest-ranking courts to request an advisory opinion from the Court.
Appendix 5: Chart of signatures and ratifications of the European Convention on Human Rights (Treaty No. 005)

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Chart of signatures and ratifications of the Protocols to the Convention is available on the website of the Treaty office: www.coe.int/en/web/conventions.
The Council of Europe is the continent’s leading human rights organisation. It comprises 47 member states, including all members of the European Union. All Council of Europe member states have signed up to the European Convention on Human Rights, a treaty designed to protect human rights, democracy and the rule of law. The European Court of Human Rights oversees the implementation of the Convention in the member states.