

Thematic Unit II

The international protection of human rights in the European regional system

The international protection of human rights at regional level: special reference to the work of the Council of Europe

THE WORK OF THE COUNCIL OF EUROPE

Western Europe is the region where the protection of human rights, especially civil and political rights, has come furthest, thanks mainly to the work of the Council of Europe.

International organisation created on 5 May 1949. This European organisation, inspired by the dream of a United States of Europe after the Second World War, is an ideological community based on the triple pillars of parliamentary democracy, the rule of law, and respect for human rights.

The creation of the Council of Europe by the London Statute of 5 May 1949 makes it the oldest of the organisations pursuing the ideals of European coordination rather than integration, as the European Union will later become.

The legal status of the Council of Europe is governed in accordance with its statute, approved by the 1949 Treaty of London. As defined in its statute in Article 1, the purposes of the Council of Europe are to bring about a closer union among its members to safeguard and promote the ideals and principles which constitute their common heritage and their economic and social progress.

To achieve its objectives and properly deploy its powers, the Council of Europe has a number of internal bodies, among them:

- **Consultative/Parliamentary Assembly composed of** member state **parliamentarians** appointed by the national parliaments of each member state, reflecting the most predominant political groups in the countries of Europe.
- **Committee of Ministers** which is the real centre of gravity of the organisation, at the level - in principle - of foreign ministers.
- **General Secretariat**, whose functions are exercised in a coordinated manner, integrated within its own institutional mechanism, through which the organisation's will is shaped, articulated, and implemented.

It meets only twice a year and may hold extraordinary meetings if necessary.

In addition, the Council of Europe has been endowing itself with other autonomous institutional instruments, which have assumed the exercise of the new functions and powers with which the Council of Europe has been endowed. The most relevant of these international bodies linked to the organisation, due to the political and legal significance of its work, is undoubtedly the European Court of Human Rights.

The Council of Europe consists of 47 member states, all of Europe in the broadest geographical sense. None of the European states partially recognised in the UN framework (Kosovo, the Turkish Republic of Northern Cyprus, South Ossetia, Abkhazia, Transnistria, and Nagorno-Karabakh) is currently a member of the Council of Europe. The Holy See and five non-European states have observer status: the United States, Canada, Japan, Israel, and Mexico. Its importance lies in the impetus given by a broad group of states to the development of the European Union and its political and ideological orientations.

Member States

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- [Austria](#)
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- [Bosnia and Herzegovina](#)
- [Bulgaria](#)
- [Belgium](#)
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- [Ukraine](#)

THE 1950 EUROPEAN CONVENTION ON HUMAN RIGHTS

The Council of Europe has established a genuine treaty system for the recognition and guarantee of human rights. The key instrument is the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, which has been supplemented by 13 additional protocols.

The states parties recognise the rights and freedoms enumerated in the convention 'to everyone within their jurisdiction', thereby establishing obligations of result by virtue of which the rights recognised are immediately enforceable. The framework of provisions contained in the convention and its protocols essentially protect civil and political rights, although it also protects some rights of a social and cultural nature.

The 1950 Convention for the Protection of Human Rights, after the reforms introduced by Protocol 11, maintains the fundamental body for monitoring compliance with the obligations assumed by states and guaranteeing recognised rights: the European Court of Human Rights (ECtHR).

Any state party may refer to the ECtHR any breach of the provisions of the convention and its protocols which, in its opinion, may be imputed to another state party. **The ECtHR may hear an application lodged by any individual, nongovernmental organisation, or group of individuals** who consider themselves to be victims of a violation by a state party of the rights recognised in the convention or its protocols. The ECtHR is composed of judges equal to the number of states.

Parties to the convention (currently 43) may sit in committees of three judges, in chambers of seven judges, or in a grand chamber of 17 judges. The procedure before the ECtHR begins with an **admissibility phase**, which verifies whether the alleged facts constitute a *prima facie* violation of the rights and freedoms recognised in the convention and its protocols and, in **the case of individual applications**, also verifies whether the appellant has exhausted domestic remedies and whether the application meets the formal requirements of Article 35 of the convention. If the application is declared inadmissible, the case is closed.

Admitted applications undergo a second phase of adversarial examination and, if necessary, amicable settlement. If an amicable settlement is reached, the ECtHR issues a decision with a summary of the facts and the solution agreed upon by the parties. If no amicable settlement is reached, the procedure continues until a reasoned judgment of the ECtHR declares whether or not there has been a violation of the rights recognised by the convention and its protocols.

The court's judgments, which are final and binding, are transmitted to the Committee of Ministers of the Council of Europe, which 'shall ensure that they are enforced'. The judgement must be complied with by the sentenced state in accordance with the procedures provided for in its domestic law, which should normally lead to a review of the act which caused the violation. In cases where the domestic law of the state allows only imperfect reparation of the consequences of the measure causing the violation, the ECtHR judgment shall provide for adequate compensation to the injured party.

THE 1961 EUROPEAN SOCIAL CHARTER

The European Social Charter, in Part I, contains an extensive list of economic, social and cultural rights which are considered only 'as the objective of a policy to be implemented by all appropriate means, both nationally and internationally the realisation of the conditions necessary to ensure the effective exercise' of these rights. Part II develops in detail the content and scope of the rights to be protected.

Under the terms of Part III, each contracting party undertakes, first, to regard Part I of the Charter 'as a declaration setting out the objectives the realisation of which shall be pursued by all appropriate means'; second, 'to regard itself as bound' by at least five of seven specific articles contained in Part II; and, third, 'to regard itself as bound' by such additional articles or paragraphs of Part II as each contracting party may choose; and fourthly, 'to be bound in addition' by such additional number of articles or paragraphs of Part II of the charter as each contracting party may choose, provided that the total number of provisions by which a state is bound shall not be less than ten articles or 45 paragraphs, with the option of accepting such additional number of articles or paragraphs as it may deem appropriate. Thus, there is no uniformity in the obligations assumed by the states parties.

There is also no real mechanism for judicial control of the application of the charter. Each state party must submit to the Secretary General of the Council of Europe a **biennial report** on the implementation of the provisions of the charter which it has accepted. In addition, each state party must submit to the Secretary General of the Council of Europe, at the request of the Committee of Ministers of the Council of Europe, reports on the provisions of the charter which it has not accepted. These reports shall be examined by the Committee of Experts established by the convention and its conclusions may lead the Committee of Ministers to make such recommendations to the states parties as it deems appropriate.