


# The Council of Europe and the protection of human rights

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## The Council of Europe and the protection of human rights

Since 1950, the Council of Europe has been the instigator of a whole series of international treaties through which the states party thereto have undertaken to protect the human rights and fundamental freedoms of all persons within their jurisdiction. The number of rights that are protected is continually growing. For example, the 1950 European Convention on Human Rights protects civil and political rights, the 1961 European Charter protects economic and social rights, the 1996 Framework Convention protects people belonging to national minorities, including their cultural and linguistic rights, etc. Similarly, additional protocols to the conventions increase the number of rights that are recognised. Furthermore, the adoption of conventions such as the *Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data* in 1981 or the *Convention on Human Rights and Biomedicine* in 1996 demonstrates the Council of Europe's commitment to adapting the instruments of protection so as to meet changing circumstances.

Each convention concluded in the area of human rights established new supervisory mechanisms involving specific bodies. The protection of human rights has also been reinforced by new measures, such as the possibility for individual appeals under the European Convention on Human Rights since 1994 (Protocol No 9 of 6 November 1990), or for collective complaints under the European Social Charter since 1998 (Protocol of 9 November 1995).

### The European Convention on Human Rights

Since its entry into force on 3 September 1953, the *Convention for the Protection of Human Rights and Fundamental Freedoms* (ECHR), through binding judicial procedures, protects the civil and political rights of individuals, including human rights (right to life, prohibition of torture, etc.), citizens' rights (freedom of thought, of expression, of association, etc.) and applicants' rights (right to a fair trial, no punishment without law, etc.). Protocols Nos 1, 4, 6, 7, 12 and 13 to the Convention build on and widen the scope of the rights recognised in the 1950 text.

Unlike conventional international treaties, which are based on the principle of reciprocity between contracting states, the Convention establishes objective obligations for states towards individuals, irrespective of the conduct of cosignatory states. This, in fact, is the ECHR's unique innovation: the full range of its common and foremost values are set out and enshrined in positive law through a system that provides collective safeguards and can be petitioned by both states and individuals. The Convention thus institutes a mandatory 'international public order' from which the states party to the Convention cannot derogate in the adoption and application of domestic legal standards. This does not infringe upon states' national autonomy regarding their assessment of the Convention's provisions. Indeed, the subsidiarity principle, which states that, in the first instance, it is the duty of states to ensure that human rights are respected at national level, operates in practice under the rule on the exhaustion of local remedies. The European Court intervenes only when national arrangements for safeguarding human rights have failed.

The European Court of Human Rights has built up a body of progressive case-law, based on a teleological interpretation of the Convention and on the notion of the appropriate effects of its provisions. Bringing domestic legislation into line with the standards set by the Convention, as well as the repercussions of the Court's case-law on national legal systems, have contributed to strengthening a genuine European law on human rights. The achievement of a level of minimum protection, common in all the states which are party to the Convention, permits the Court to refer to the Convention as a 'constitutional instrument for safeguarding public order in Europe'.

### Other conventions for the protection of human rights

Unlike the *Convention for the Protection of Human Rights and Fundamental Freedoms*, the other conventions for the protection of human rights that have been signed under the auspices of the Council of Europe have not established judicial control mechanisms. Those control measures — less binding since they are a matter of political arrangements — are generally based on a **system of reports** which are published

periodically by governments and reviewed by a supervisory body. That body verifies conformity of national standards and practices with the Convention's provisions and presents its findings to the Committee of Ministers, which, where appropriate, makes recommendations to the state concerned. This mechanism may be reinforced by a **system of complaints**, which enables all persons complaining of violations of the Convention to submit complaints for examination by a supervisory body (see the European Social Charter), or through a **system of visits**, which allows the supervisory body to send rapporteurs to the countries concerned (see the Convention for the Prevention of Torture).

Some of the most important conventions include:

— **The 1961 European Social Charter.** The Charter entered into force in 1965 and was replaced in 1999 by the revised 1996 European Social Charter that applied to those states having ratified it. The Charter aims to safeguard the economic and social rights of individuals, referred to as 'second generation' human rights compared to civil and political rights. Unlike 'first generation rights', which emerged historically as claims for non-intervention, full protection of economic and social rights requires active involvement from governments. The Charter recognises, amongst other things, the right to work, the right to a fair remuneration, the right to organise, the right to bargain collectively, the right to vocational training, the right to health protection and the right to social security. Since its entry into force, the Charter has used a system of reports, which are examined by a *Committee of Independent Experts* and a *Governmental Committee*, and since 1998 (Protocol of 1995), a system of collective complaints, which particularly applies to national and international employers' and workers' organisations.

— **The 1987 European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.** The Convention entered into force in 1989. It aims to strengthen the protection of individuals held in custody against torture or inhuman or degrading punishments or treatment (Article 3 of the ECHR) by means of a preventive system of visits. The Convention established a *European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment* responsible for organising visits to detention centres. Following such visits, the Committee draws up and forwards to the state in question confidential reports which include any recommendations that the Committee deems necessary, and, once a year, it submits a general report on its activities to the Committee of Ministers.

— **The 1995 Framework Convention for the Protection of National Minorities.** The Convention entered into force in 1998. It enshrines principles that the states party thereto undertake to uphold with a view to enabling 'persons belonging to a national minority' to preserve their religion, language, traditions and cultural heritage. By its very nature as a framework agreement which includes 'programme-type' provisions, the Convention avoids recognising the controversial category of 'third generation' collective rights (compared to first and second generation individual rights). The Convention simply sets out general objectives which states must pursue by means of national legislation and appropriate government policies, as well as by means of bilateral and multilateral agreements with other states, particularly neighbouring states, so as to ensure the protection of persons belonging to national minorities in question. Reports by states on the measures taken in order to comply with the principles of the Framework Convention are assessed by the Committee of Ministers, aided by an advisory committee.