

The European Court of Human Rights

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In the Political Resolution of the Hague Congress, the Congress, considering that any future European Union or Federation should be open to all European nations democratically governed, provided for the setting up of a Commission to undertake immediately the double task of drafting a Charter of Human Rights and of laying down democratic standards. The Resolution already referred to the liberty of thought, assembly and expression, as well as the right to form a political opposition. But this was not all. The Congress participants also called on the future European Assembly to promote the establishment of a Court of Justice with a view to ensuring constitutional control of and respect for such a Charter. The aim was to go beyond a mere declaration of human rights which was not legally binding. On the basis of an ambitious preparatory report and of a draft Convention drawn up by Alexandre Marc, Head of the Institutional Department of the Union of European Federalists (UEF), the Cultural Committee of the Hague Congress also considered the issues involved in the establishment of a supranational Supreme Court and of a Charter. Several delegates emphasised the need to take measures to ensure a distinction between the executive and the judiciary and to promote freedom of the press, the free movement of works of art and the liberty of thought. During the debates held by the various parties involved, there also emerged the need to define a specifically European concept of human rights and of the relationship between citizens and the State in order to differentiate from the Universal Declaration of Human Rights that was being drawn up at the same time by the United Nations Commission on Human Rights (UNCHR). Moreover, the Universal Declaration was to be officially proclaimed in Paris on 10 December 1948, even though the city of The Hague had been home to the International Court of Justice since 1945.

The idea of a European Court of Human Rights, already put forward in April 1947 by Count Richard Coudenhove-Kalergi in his discussions with various European MPs, was quickly revived by the majority of pro-European movements. They set the future deliberative or consultative Assembly the task of drafting an appropriate proposal. However, this did not prevent some of them from getting straight down to work. Accordingly, on 21 May 1948, the French participants at the Hague Congress met in Paris on the initiative of the French Liaison Committee of the Movements for European Unity. On 10 June, the Liaison Committee set up a Special Charter Committee responsible for drafting a European Charter of Human Rights. In September 1948, it was the turn of the European Parliamentary Union (EPU), at its Congress in Interlaken, to consider a draft International Declaration on Human Rights.

Consideration of a proposal for the establishment of a European Court of Human Rights was on the agenda of the first meeting of the International Council of the European Movement held in Brussels from 25 to 28 February 1949. The Legal Committee, chaired by the Belgian federalist and Socialist, Fernand Dehousse, Professor at the University of Liège, drafted recommendations for all the member states of the Council of Europe. A proposal was adopted. In particular, it laid down that the Court would be responsible for safeguarding the individual, family and social rights of an economic, political, religious or other nature in the Universal Declaration of Human Rights that it was necessary and practical to protect by juridical process (security of life and limb, freedom of association and assembly, freedom of religious belief, equality before the law, the sanctity of the home, freedom of petition and so on). The Court, which would have jurisdiction to determine all cases concerning the infringement of these rights, would be capable of prescribing measures of reparation or of requiring that the national authorities take penal or administrative action. The governments of the signatory States, as well as all natural or legal persons, being either nationals of or domiciled in one of those States, would have the right to appear before the Court once internal legal remedies had been exhausted. In addition to laying down the composition of the Court, the Dehousse proposal also provided for the establishment of a European Human Rights Commission that would be independent of any government and would be responsible for investigating petitions and supervising the observance of the future Convention on Human Rights.

The European Movement's Legal Committee was also responsible for the drafting of a Convention, in line with the principles set out in the Dehousse proposal, to be submitted to the Council of Europe. In its Preamble, the Statute of the Council of Europe of 5 May 1949 stipulated that the signatory States were 'reaffirming their devotion to the spiritual and moral values which are the common heritage of their peoples and the true source of individual freedom, political liberty and the rule of law, principles which form the

basis of all genuine democracy.’ A draft Convention was forwarded to the Council of Europe in July 1949. Two months later, at its inaugural session, the Consultative Assembly of the Council of Europe adopted a Resolution on Human Rights that was quickly taken up by the Committee of Ministers and the national governments. Chaired by the British Conservative MP, Sir David Maxwell Fyfe, co-rapporteur for the European Movement’s Legal Committee and active member of the Cultural Committee of the Congress of Europe in The Hague, the Committee on Legal and Administrative Questions of the Council of Europe adopted as the basis for its work the preliminary draft Convention drawn up by the former French Minister, Pierre-Henri Teitgen, who was Chairman of the European Movement’s Legal Committee. This document sought to resolve three issues:

- list and define the rights and freedoms to be guaranteed;
- specify the method for laying down the conditions for the exercise of these rights and freedoms;
- specify the mechanism for the collective enforcement of these rights.

As far as the first issue was concerned, the Consultative Assembly believed that only the fundamental rights of political democracy could be guaranteed, whilst social rights would have to be dealt with at a later stage. Consequently, it approved the Committee’s choice of the 10 rights and freedoms derived from the Universal Declaration of Human Rights as adopted in December 1948 by the General Assembly of the United Nations (UN). However, owing to a failure to reach agreement on the definition of the right to property and of the right of parents to exercise a preference for the type of education that they may choose for their children, the Consultative Assembly decided to refer the paragraphs relating to these two rights to the Committee on Legal and Administrative Questions and to assign to it the task of drafting a more precise definition in time for the next session. The preliminary draft also provided for governments to undertake to hold, at reasonable intervals, at the very least in the home country of some of them, elections by universal suffrage in a free and secret ballot and to allow political criticism and opposition. With regard to its next task of laying down the conditions for the exercise of these rights and freedoms, the Consultative Assembly established the principle according to which each member state would be responsible for making arrangements, within its own borders, for the exercise of the freedoms guaranteed by the Convention. Lastly, the Assembly unanimously acknowledged the need for a system of judicial review and recommended the establishment of a European Court of Human Rights, even though it specified that States would also be entitled to submit their disputes to the International Court of Justice in The Hague. A recommendation was made for the setting up of a European Commission of Human Rights, an investigative and conciliation body. During debates held by the Consultative Assembly on the subject of human rights, the Belgian Catholic Senator, Étienne de la Vallée Poussin, member of the EPU, raised the issue of displaced persons. However, discussion of the subject was postponed indefinitely.

The efforts of the Council of Europe soon brought results. It was on 4 November 1950, in Rome, that the Foreign Ministers of 13 member states signed the Convention for the Protection of Human Rights and Fundamental Freedoms or European Convention on Human Rights. On 28 November, in Paris, it was signed by the representative of Sweden. However, the Convention did not enter into force until 3 September 1953. In keeping with the main proposals of the European Movement, the Convention was supported by a two-tiered review mechanism, for it depended both on the European Commission of Human Rights and on the European Court of Human Rights. It was on 12 July 1954 that the European Commission of Human Rights held its inaugural session.