

Human Rights Set Sail from Strasbourg

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Abstract:

The purpose of this paper is to situate the European Convention on Human Rights and the European Court of Human Rights within the European institutional and legal landscape, noting the origins behind this international treaty, and the reforming Protocols that have amended the original text. It explains who can apply to the Court, how a complaint is dealt with, and the mechanism in place to enforce a judgment in the violating State. It explains how the Court relies on various types of documents and methods to diffuse its output, with a look at the full text database of the Court case-law, known as HUDOC. Finally the presentation illustrates how the Court Library catalogue can be used to search for references to secondary literature on the Court's case-law.

Keywords: European Court of Human Rights, European Convention on Human, human rights, case-law

Introduction

The European Convention on Human Rights, a short text of 59 articles with some additional protocols, and its institution, the European Court of Human Rights¹, have shaped human rights in Europe for almost 60 years.

Why do human rights set sail from Strasbourg? This is where the European Court of Human Rights is located, and the nautical allusion refers to the structure of the Court building which looks like an ocean liner ready to cruise with her precious cargo of human rights. The British architect, Richard Rogers, had this intention in mind when he created the building.

The Court² is an organ of the Council of Europe³, was established in 1959 and delivered its first judgment in 1960. It rules on alleged violations of the rights set out in the European

¹ <http://www.echr.coe.int/Pages/home.aspx?p=home> - European Court of Human Rights website

² <https://www.youtube.com/watch?v=EPWGdhgQlqk&list=PLT-6qb4oU5fiINe8Cp23qVZ5kNHEX747X>
Film on the Court

³ <http://www.coe.int/en/web/about-us/videos> - Film on the Council of Europe

Convention on Human Rights, monitoring respect for the human rights of 800 million Europeans in the 47 Council of Europe member States that have ratified the Convention. It can, on occasion, include nationals of other countries, and indeed the Court has examined cases that relate to matters beyond the European continent, for example on the treatment of a prisoner in Aruba, and the use of force by British soldiers in Iraq.

Not to be confused with...

The Council of Europe^{4 5} should not be confused with another European organisation that was established later, the European Union, which has only 27 member states. It too has its own court, the European Court of Justice based in Luxembourg, which rules on the interpretation of European Union law.

Disconcertingly the European Union also has a human rights document, the “Charter of Fundamental Rights” which forms a section within the Treaty on the European Union. Additionally the European Union has been in a process of discussions for several years over its intentions to sign up to the European Convention on Human Rights.

Beginnings of the Convention

The Council of Europe⁶, parent organization of the European Court of Human Rights, was set up in Strasbourg in 1949. The idea to establish this international organization was born out of the catastrophe that befell the European continent in 1939-1945, and the political desire to have an organisation to preserve peace and security in Europe based on human rights, democracy and the rule of law.

The founding fathers’ imagined a document, the Convention, as a concrete expression of their beliefs which would protect the rights and fundamental freedoms of persons living in Europe. Work on this idea started even before the Council of Europe Statute was signed on 5th May 1949, and following a series of meetings to draft the text of the Convention, it was eventually opened for signature at the Barberini Palace in Rome on 4th November 1950. Almost immediately work began on the text of a Protocol to the Convention to cover three rights not included in the original text, these being the rights of property, education and free elections.

Since the European Convention on Human Rights⁷ entered into force on 3rd September 1953, it has been amended by 16 Protocols. Some of the Protocols have introduced rights and freedoms not included in the original text, such as the Additional Protocol just mentioned, while others have introduced changes to procedure or reform of the Convention protection machinery.

The Fourth Protocol secures rights to the liberty of movement and the freedom to choose one's residence, the prohibition for both the expulsion of a national and the collective

⁴ <http://www.coe.int/en/web/about-us/who-we-are> - Brief facts on the Council of Europe

⁵ **The Council of Europe : its law and policies** / [edited by] Stefanie Schmahl [and] Marten Breuer. - Oxford ; New York : Oxford University Press, 2017. - Iviii, 986 p. ; 26 cm. - ISBN: 9780199672523 (hbk.)

⁶ <http://www.coe.int/en/web/about-us/videos> - Film on the Council of Europe

⁷ http://www.echr.coe.int/Pages/home.aspx?p=basictexts&c=#n1359128122487_pointer
Text of the European Convention on Human Rights

expulsion of aliens, as well as no deprivation of liberty for non-fulfilment of contractual obligations.

The Seventh Protocol secures rights to appeal in criminal matters, compensation for wrongful conviction, and the right not to be tried or punished twice for an offence, it also includes equality of rights and responsibilities between spouses.

The Twelfth Protocol provides for a general prohibition of discrimination.

Protocols Six and Thirteen address the abolition of the death penalty. Today all member States but one have signed Protocol Six, and all member States but two have signed Protocol Thirteen. There has been no capital punishment in the member States since 1997, making the European territory from Lisbon to Vladivostok a de facto death-penalty free zone.

All the other Protocols have reformed the Convention system. Most importantly Protocol Eleven which abolished the part-time Commission and introduced a permanent full-time Court, and made the right to individual petition mandatory for all member States, and Protocol Fourteen which improved the filtering mechanism for processing the Court's applications.

The Convention today, as amended by Protocols 11 and 14, is divided into a preamble, and 3 sections plus its 6 extant Protocols (Additional (1), 4, 6, 7, 12 and 13).

The preamble and first section, articles 1 to 18, enumerate right and freedoms:

- Article 1 – obligation to respect human rights
- Article 2 – right to life
- Article 3 – prohibition of torture
- Article 4 – prohibition of slavery and forced labor
- Article 5 – right to liberty and security
- Article 6 – right to a fair trial
- Article 7 – no punishment without law
- Article 8 – right to respect for private and family life
- Article 9 – freedom of thought, conscience and religion
- Article 10 – freedom of expression
- Article 11 – freedom of assembly and association
- Article 12 – right to marry
- Article 13 – right to an effective remedy
- Article 14 – prohibition of discrimination
- Article 15 – derogation in time of emergency
- Article 16 – restrictions on political activity of aliens
- Article 17 – prohibition on abuse of rights
- Article 18 – limitation on use of restrictions on rights

The second section, articles 19 to 51, is concerned with procedural aspects of the Court, and the last section, articles 52 to 59, are miscellaneous provisions.

So who can apply to the Court?

A member State can bring a case against another member State, this conforms to the general understanding that conventions or treaties moderate the relations between States. However, individuals, who consider that they have been the victim of a violation of the rights and guarantees set out in the Convention, can also bring a case before the Court, the alleged violation must have been committed by one of the States bound by the Convention. This

special feature of the Convention permitting private individuals to lodge applications has been an innovation in international law. It is the individual petitions that form the major part of the Court's workload, and the main body of its case-law.

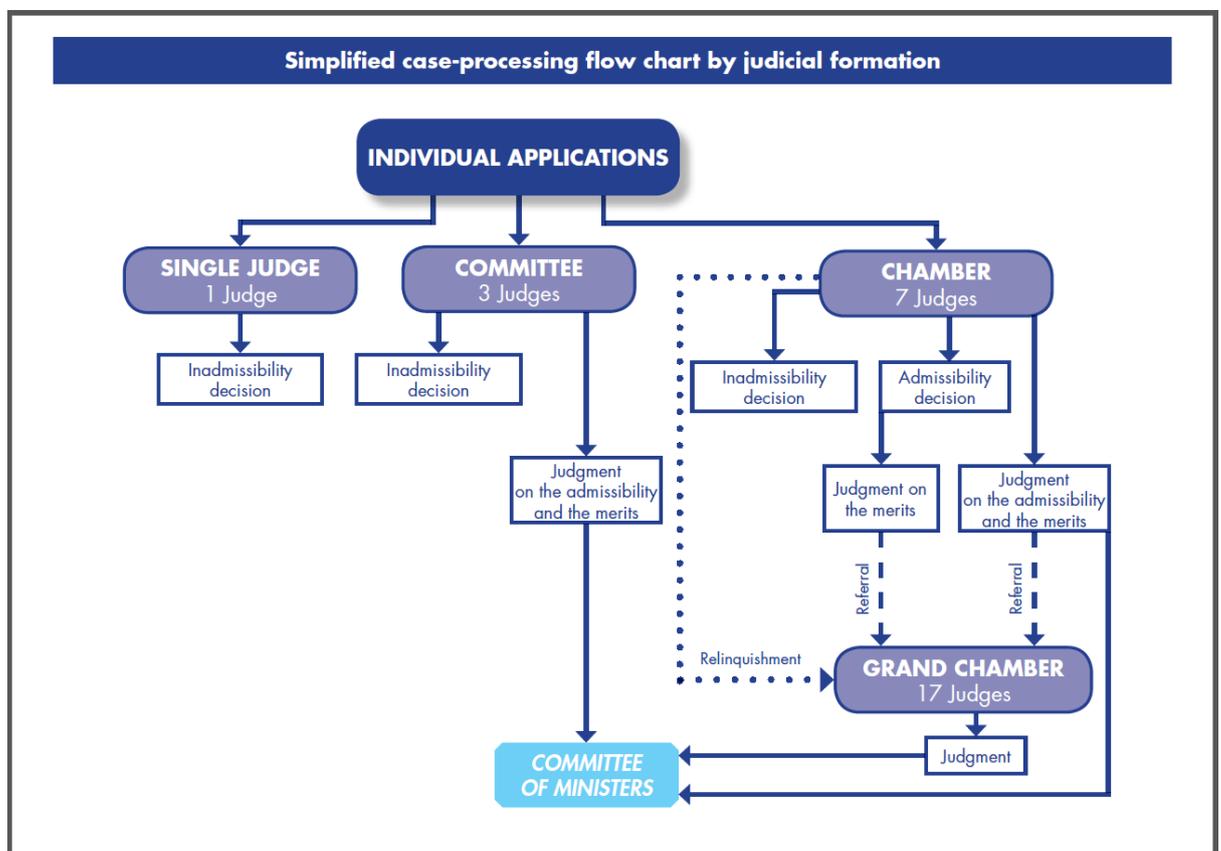
Procedure before the Court

Before bringing a case to the Court an applicant must have exhausted all domestic remedies, meaning the complaint in the application that arrives in Strasbourg has been examined by the highest domestic court which has also delivered a decision.

The application is then assessed according to set admissibility criteria. The Court's Single Judge formation and Committee of Three Judges are competent to declare applications inadmissible, the Committee of Three Judges, additionally, can deliver judgments in cases of well-established case-law.

There are two other formations, Chambers and the Grand Chamber. The Chambers, made up of 7 judges, can deliver judgments, but they can also relinquish jurisdiction of a case to the Grand Chamber, composed of 17 judges, for applications that raise serious questions of interpretation or application of the Convention.

The Court's case-law is made up of decisions on admissibility, and final judgments which can cover a wide range of subjects arising out of the provisions of the Convention. These texts are set out in a standardized fashion, containing a summary of the Strasbourg proceedings, a statement of the facts, including relevant domestic law and the legal reasoning supporting the final conclusions. Judges may append separate opinions either concurring or dissenting.



What happens after the Court has pronounced its judgment?

After pronouncing a judgment the Court's work is done, it has no machinery to enforce a judgment. It is the work of the Council of Europe's Department for the Execution of Judgments of the European Court of Human Rights⁸ that takes over the task of supervising the conclusion of the judgments. The Department⁹ coordinates with both the Committee of Ministers, the executive organ of the Council of Europe, where it gives advice and assistance, and also with the member State governments supporting their efforts to achieve compliance with the judgments.

The aim is to stop the ongoing violation, to prevent new violations, and to remedy the situation for the applicants. The member States achieve this by making corrective measures through legislation, or introducing administrative reforms, and ensuring the applicant has redress and receives a payment of just satisfaction. It is by these means the overwhelming majority of the Court's judgments are executed.

Statistics on the case-law

Since 1959 the Court has examined around 730,000 applications, with only 20,000 delivered as judgments. The majority of applications, then, are declared inadmissible because they either do not comply with the necessary formalities or they are struck off as a friendly settlement is reached between the parties.

Of the judgments delivered since 1959 more than a quarter concern just 2 member States, Italy and Turkey. However for 2016 most judgments concerned 4 member States, the Russian Federation, Turkey, Romania and the Ukraine.

Regarding subject matter, more than 40% of violations have concerned Article 6 on the right to a fair trial and in particular on the excessive length of proceedings. The second most frequently found violation has concerned Article 5 on the right to liberty and security. Other serious violations have been found concerning Article 3 on the prohibition of torture and inhuman or degrading treatment, Article 13 on the right to an effective remedy, Article 8 on the right to respect for private and family life, and Article 2 on the right to life.

The Court is said to have become a victim of its own success, due to the sheer quantity of individual petitions. Several factors have contributed to the increase in applications, but particularly there has been an increase in the overall awareness of the Court by the public in general, and there was the doubling of the member States when the former central and eastern European countries joined the Council of Europe during the 1990s. This resulted in a massive increase in the workload for the Court, and has necessitated the reforms to its working methods as introduced by Protocols 11 and 14. Still, at the end of 2016 there was a backlog of about 79,750 applications pending before a judicial formation.

How to find the Court's case-law and information on the Convention

The initial sources for case-law were published works, and these are still useful when tracking down decisions and judgments dating from the earlier period of the Convention protection system that have escaped inclusion in the case-law database, HUDOC.

⁸ <http://www.coe.int/en/web/execution>

Department for the Execution of Judgments of the European Court of Human Rights

⁹ <http://www.coe.int/en/web/execution/supervision-video> - Film on the Execution of judgments

For the former European Commission on Human Rights, and covering the period from 1960 to 1974 there is the:

Collection of Decisions of the European Commission on Human Rights = Recueil des décisions de la Commission européenne des Droits de l'Homme / Council of Europe.

European Commission on Human Rights. - Vol. 1-46

Then from 1975 to 1998:

Decisions and Reports = Décisions et rapports / Council of Europe. European Commission on Human Rights. - Vol. 1-94B

To this title there are useful companion volumes of *Summaries and indexes* providing case-law summaries and a variety of indexes to application numbers, applicant names, respondent State, and related Convention article and subject matter.

For the European Court of Human Rights there are for the period 1960 to 1996 :

Série A : Arrêts et décisions = Series A : Judgments and Decisions / Conseil de l'Europe. Greffe de la Cour. - Köln ; Berlin ; Bonn ; München : Carl Heymanns Verlag. - Vol. 1-338

Subsequently titled from 1996 to date:

Reports of Judgments and Decisions = Recueil des arrêts et décisions / European Court of Human Rights. - Oisterwijk : Wolf Legal Publishers. - Vol. 2008 -

There was another publication containing the pleadings, oral arguments, etc., for the period 1960 to 1987:

Série B : Mémoires, plaidoiries et documents = Series B : Pleadings, Oral Arguments and Documents. - Köln ; Berlin ; Bonn ; München : Carl Heymanns Verlag. - Vol. 1-104

Today, however, the Court uses its website as a vehicle to diffuse information about its case-law and the Convention. Here it publishes press releases, makes available a variety of e-publications, provides access to the free full text HUDOC database on the Court's case-law, and stocks Youtube videos about the Court, and educational videos from the HELP programme - "Human Rights Education for Legal Professionals".

HUDOC, the case-law database, has become a focus for more than just the Court's output, and it now contains the full texts documents from some of the other monitoring bodies of the Council of Europe, specifically the Torture Committee, European Commission on Racism and Intolerance, the European Social Charter, and documents from the Department of the Execution of the Judgments.

Nevertheless HUDOC is the first port of call when seeking the Court's output - judgments and decisions, communicated cases, advisory opinions, legal summaries and press releases. Besides these it also includes the decisions and reports of the former European Commission on Human Rights, and the resolutions of the Committee of Ministers made at the conclusion of the execution of the judgments.

HUDOC's interface allows for searching on case title, application number, or by using a keyword to find cases with similar content. Filters are available to refine by State, violation of Convention article, by Judge, and document type.

Results returned are the full text of the case, plus its associated data such as the case importance level, a note of the conclusions and Convention articles considered, references to domestic law and other Strasbourg case-law, a note on any separate opinions, and a note on

translations both official and unofficial, as well as links to press releases and other related documents.

For a basic search to find a specific case use the following field searches can be used :

- Case title field – type any part of the case title in the field, putting more than one word within quotes eg. Hatton ; “Leyla Sahin”
- Application number field – each application has a unique number, it is made up of a running number followed by a slash then the last 2 digits of the year in which the application was deposited at the Court. For instance for the above mentioned cases :

Hatton and others - 36022/97

Leyla Sahin - 44774/98

- ECLI number field – each application is provided with an ECLI number, so for the above mentioned cases

Hatton - ECLI:CE:ECHR:2003:0708JUD003602297

Leyla Sahin - ECLI:CE:ECHR:2005:1110JUD004477498

Once the case-law is loaded into HUDOC it is also given a European Case Law Identifier number. This is a minimum set of uniform metadata to harmonise with standards set by the European Union. The ECLI number facilitates finding national and regional level case-law, and the ECLI system is a recognizable format composed of five mandatory elements :

ECLI – to identify the identifier being used

Country code, or regional level code – CE (Council of Europe)

Code for the Court rendering the judgment – ECHR

Year the judgment was rendered – 4 digits

Number up to a maximum of 25 alphanumeric characters in a format decided by the Court concerned :

- month the document was rendered (2 digits),
- day the document was rendered (2 digits),
- type of document ('JUD' for judgment, 'DEC' for decision, 'REP' for report),
- application number (with leading zeros to a total of nine digits)

A note on citation

Citations follow a particular pattern: name of case (in italics), application number, paragraph number (for judgments), then abbreviation of the European Court of Human Rights (ECHR), and year and number of volume are added if the case is published in the *Reports of Judgments and Decisions*. From the beginning of 2008 there is no volume number indicated.

Examples of citations:

Campbell v. Ireland, no. 45678/98, § 24, ECHR 1999-II (delivered by a Chamber ; published)

Campbell v. Ireland [GC], no. 45678/98, § 24, ECHR 1999-II (delivered by the Grand Chamber ; published)

McNamara v. United Kingdom, no. 22510/13, 12 January 2017 (unpublished)

For the case of Baka against Hungary the official citation is:

Baka v. Hungary, no. 20261/12, ECHR 2016

Then for identification purposes for the Baka case there are also the URL and the ECLI number, these are not official:

<http://hudoc.echr.coe.int/eng/?i=001-163113> (document URL at head of case full text)

ECLI:CE:ECHR:2016:0623JUD002026112 (ECLI number)

A note on translations

The Court has two official working languages, English and French, yet only some of the case-law is translated into both languages. Cases published in the *Reports of Judgments and Decisions = Recueil des arrêts et décisions* appear in the two languages as will cases making a significant contribution to the development of the case-law in general. Much of the rest of the case-law exists only in one of the official languages.

In recent years the Court launched a case-law translation programme to make Convention standards more accessible to the member States, and as part of the drive to reduce the number of applications arriving at the Court. There are now over 21,000 texts - judgments, decisions and legal summaries - in thirty-one non-official languages available in HUDOC.

Use of social media

The Court has taken up the opportunities provided by social media to broadcast its information. From 2012 case-law has been delivered via RSS feeds, and it is now possible to follow only one respondent State, or indeed create a custom feed from a HUDOC search for a specific set of parameters.

Twitter was introduced in 2015 and tweets are sent out for press releases and case-law summaries.

The Court, though, has no Facebook page.

Supporting documentation

There is a range of documentation, again accessible from the Court's website, to help understand both the case-law and the application of the Convention articles.

The *Case-law Information Note* is a monthly publication containing summaries of case-law, and has a useful annual index. It is delivered online, and available via an RSS feed.

The *Overview of the Court's Case-Law* is an annual publication designed to highlight judgments and decisions which raise new issues or develop new principles, or raise important matters of general interest. It can be found as a PDF document on the Court's website or is available for e-readers, tablets and smart phones. It can also be obtained as a paper publication.

The *Case-Law Guides* to Convention articles, *Case-law Research Reports* and *Factsheets* on topics, help enlarge understanding of the Convention and will include references to supporting case-law. Besides English and French versions, much of this material is also available in translations other than the two official languages.

Finding secondary literature

For the many who follow the Court's activities, be that our own judges and lawyers, legal professionals, academics and students from around the globe there is also an interest in having access to the secondary literature on the Court and its output.

The Court's Library and its catalogue is the source to consult. The Library houses a specialized collection of books and periodicals covering the international law of human rights.

The catalogue contains over 60,000 records of references to the books and their chapters, and periodical articles. Coverage is mainly in the two official languages, but material in other

European languages can also be found. It is an essential source for any scholar interested in human rights protection, seeking references to the literature on the European Convention protection system, as well as other systems such as the inter-American and African protection systems. It is rich in sources to the literature on the European Court's case-law, and all aspects of the Convention, from its individual articles, its interpretation and application in the member States.

The Library undertakes its own cataloguing and indexing, with the latter there is a particular attention to express specific themes, these being the Convention articles, the case-law, topics linked to the Convention text, as well as topics in international human rights law. The level of detail provided by the indexing permits retrieval of sources to answer quite specific information requests.

Thus the two databases, HUDOC, and the library catalogue, are complementary tools. HUDOC is searched to examine the full text of a case, and the Library catalogue can be searched for comments on the case in question.

The best way to search for material in the catalogue is by using subject keywords from the in-house keyword list. Abbreviations are used for some of the key concepts associated with the Convention:

SUBJECT	Keyword
European Court of Human Rights cases ("affaire" + name)	affaire Handyside
European Convention on Human Rights	ECHR
Article of the European Convention on Human Rights	ECHR-1 ECHR-2 ECHR-3 ECHR-6-3-c etc.
Protocol of the European Convention on Human Rights	ECHR-P1 ECHR-P6 ECHR-P12
European Court of Human Rights	ECHRCOURT
Case-law of the European Court of Human Rights	ECHRCOURT-case-law
Procedure at the European Court of Human Rights	ECHRCOURT-procedure
Rules of the European Court of Human Rights	ECHRCOURT-Rule

An example of a search is :

Council of Europe ECHR

LIBRARY OF THE EUROPEAN COURT OF HUMAN RIGHTS
BIBLIOTHÈQUE DE LA COUR EUROPÉENNE DES DROITS DE L'HOMME

Links Home Bulletins Council of Europe Catalogue Case-law Contact Catalogue

Go Back Help Logout

Advanced Search

author And

title And

subject And

subject And

series And

periodical title And

ISBN - ISSN And

words or phrase

Search Reset

language:

collection:

match on:

pubyear:

sort by:

Conclusion

The Court and its Convention are the most effective international human rights control mechanism in existence today and both have had a tremendous impact on the legal landscape in Europe and beyond¹⁰. To return to the nautical theme we can say that the repository of case-law and the documentation in the institution's Library act like an anchor for fundamental rights in Europe.

Acknowledgments

European Court of Human Rights for "Simplified case processing flow chart"

HUDOC team for HUDOC interface

Library for OPAC interface

¹⁰ **The conscience of Europe : 50 years of the European Court of Human Rights** / [general editor : Jonathan Sharpe ; editorial board : Egbert Myjer ... [et al.]]. - London : Third Millennium Publishing, 2010. - 224 p. : ill. ; 29 cm. + CD-Rom. - ISBN: 9781906507459 (hbk.)