

Introduction

Headquartered in Strasbourg, the European Court of Human Rights (ECHR) is a judicial organ that is not part of the European Union. It supervises the enforcement of the European Convention on Human Rights (1950), which obligates member states to protect and enhance various civil and political rights for their citizens and everyone else within their jurisdiction. These fundamental rights include the right to life, the protection of property and the freedom of expression.

History

The ECHR was established in 1959, but it has been a full-time court only since 1998. Its decisions and judgments are binding on countries that have signed the European Convention on Human Rights. Its proposed measures typically constitute changes in national legislation and financial compensation. The provisions of the Convention are subject to differences in interpretation, so it is a dynamic rather than a static instrument of law. Over the years, the ECHR has had a tendency to interpret articles broader, which has made the Convention applicable to more rights and in more contexts. In addition, the Convention itself was extended at various occasions; the articles on non-discrimination and on the abolition of the death penalty, for example, were added only in 2005 and 2003 respectively.

How does the ECHR work?

The number of judges working at the Court reflects the number of signatories, which is currently 47. The judges are independent, so they do not represent their countries. The Parliamentary Assembly of the Council of Europe elects the judges after three candidates are proposed by each state. The judges serve non-renewable terms of nine years.

The ECHR does not have the jurisdiction to initiate cases. It can only take up allegations of violations of the Convention that are filed by either citizens or a state. There are two types of application: 'individual' applications brought by a person, group of individuals, NGO or company, and 'inter-State' applications made by one state against another state. The vast majority of cases has been initiated by individuals claiming a violation of the Convention had taken place.

Domestic remedies must have been exhausted before a case can be handled at the ECHR. This means that violations of the Convention must have been brought to national courts up to the highest level of judiciary before the Court will take the case into consideration. There are two reasons for this rule of procedure. First, it provides the state an opportunity to rectify the alleged violation at the national level. Second, it somewhat alleviates the workload of the ECHR, which is considerable. Indeed, the Court has to deal with over 50,000 new applications each year.

Before a case is examined, it is checked for admissibility. If the Court decides that a case is inadmissible, this cannot be appealed against. Judgments and decisions by the ECHR are also final. However, up until three months after the decision or judgment, parties are granted the possibility to request a review by the Grand Chamber.

In 2010, Protocol No. 14 entered into force, which aims to enhance the efficiency of the ECHR. Case selection and processing was made easier by implementing a new judicial formation that handles the simplest cases. Furthermore, the protocol created a new admissibility criterion of 'significant disadvantage', leading to a reduction of the number of cases taken on.

Facts and figures

- ❖ In roughly fifty years, the ECHR has delivered more than 10,000 judgments
- ❖ Since the Court was established, over 50% of the judgments referred to violations of Articles 1 and 6 of the Convention, which concern the protection of property and the right to a fair hearing respectively

Arguments

For

- ❖ The ECHR is crucial to guarantee the enforcement of the European Convention on Human Rights
- ❖ The organ is a platform for citizens and states to expose human rights violations and to bring about improvements in national legislation

Against

- ❖ The ECHR has become over-intrusive in domestic affairs and threatens national legal traditions
- ❖ The increasingly broad interpretation of the Convention has caused it to drift away from its founding principles

"[The ECHR] has achieved some vitally important things over the decades: exposing torture; winning victories against degrading treatment in police custody; holding heavy-handed states to account."

PM David Cameron, 2012

"[The ECHR] has been unable to resist the temptation to aggrandise its jurisdiction and to impose uniform rules on member states. (...) It considers itself the equivalent of the Supreme Court of the United States, laying down a federal law of Europe."

Lord Hoffmann, retired senior British judge, 2009

Technical Terms

- ❖ **Domestic remedies:** A principle of international law stating that protection of human rights should be carried out by national governments.
- ❖ **Decisions and judgments:** A decision only concerns the admissibility of a case and is usually given by a single judge. A judgment, in contrast, is delivered after examination of the case and is usually given by more than one judge.
- ❖ **Grand Chamber:** A panel of seventeen judges at the ECHR that hears cases once a request for referral has been accepted.

Links

- ❖ http://www.echr.coe.int/Documents/Court_in_brief_ENG.pdf
- ❖ http://www.echr.coe.int/Documents/50Questions_ENG.pdf