



European Human Rights Law



The European Convention for the Protection of Human Rights and Fundamental Freedoms

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Ευρωπαϊκή Ένωση
Ευρωπαϊκό Κοινωνικό Ταμείο

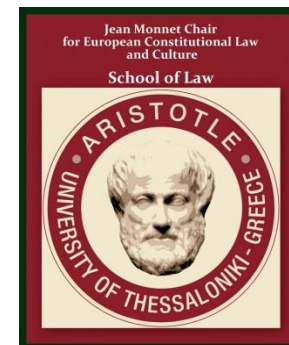


ΥΠΟΥΡΓΕΙΟ ΠΑΙΔΕΙΑΣ & ΘΡΗΣΚΕΥΜΑΤΩΝ, ΠΟΛΙΤΙΣΜΟΥ & ΑΘΛΗΤΙΣΜΟΥ
ΕΙΔΙΚΗ ΥΠΗΡΕΣΙΑ ΔΙΑΧΕΙΡΙΣΗΣ

Με τη συγχρηματοδότηση της Ελλάδας και της Ευρωπαϊκής Ένωσης



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Bibliography

- *Dirk Ehlers, The European Convention for the Protection of Human Rights and Fundamental Freedoms, in Dirk Ehlers, European Fundamental Rights and Freedoms, De Gruyter Recht, Berlin, 2007 pages 25 ff.*



General principles (1/19)

I.

- **Universal, regional and national recognition of fundamental rights.**
 - 1948 – The **Universal Declaration of Human Rights.**
 - 1966- **The International Covenant on Civil and Political Rights.**
 - 1966- **The International Covenant on Economic, Social and Cultural Rights.**



General principles (2/19)

- The **Universal Declaration of Human Rights** :
 - the right to life and liberty,
 - the prohibition of slavery and torture,
 - the right to equality before the law and to an effective remedy.
- **LIMITATIONS** : the respect for the rights and freedoms of others, morality, public order and the general welfare in a democratic society.
- ✓ customary international law.



General principles (3/19)

- ✓ **The two Covenants: the ICCPR and the ICESCR**
 - the **ICCPR** : provisions on the death penalty.
 - The reports delivered under the ICCPR assessed and analysed by the **Human Rights Committee**.
 - ICCPR: an optional *complaint procedure for state* AND an optional complaint procedure for *individuals*.
 - *Most European states acceded to the ICCPR.*
- ✓ **The ICCPR greater protection to Human Rights than the initial status of the EConvHR.**



General principles (4/19)

- The American Convention on Human Rights, the African Charta on Human and Peoples' Rights and the Arab Charta on Human Rights. → regional guarantees.
- ✓ **The Council of Europe:**
 - The European Social Charter.
 - 4 November of 1950: **The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).**
- into force on 3 September 1953.
- **14 Protocols.**



General principles (5/19)

- In 2004, the ECtHR received nearly 41,000 applications.
- Therefore, for simple cases can be finally disposed of by single judges.
- ✓ Member States are allowed to provide a higher level of fundamental rights protection than the ECHR.
- ✓ Different rank of the European Convention within the internal legal orders.
 - ECHR → the status of ordinary legislation.
 - Two approaches:
 1. *provisions of international law must be converted into national law.*
 2. *Application model → direct application.*



General principles (6/19)

- ✓ ECtHR → a guide to the interpretation of fundamental rights and principles under the Basic Law.
- ✓ ECHR : a **quasi- constitutional** order (*s.Dirk Ehlers*)

- **Article 6(2) of the TEU**: the Union observes the fundamental rights as guaranteed by the ECHR and as they result from the constitutional traditions common to the Member States.
- The ECHR → no direct obligations under EU and EC law
- **The ECHR and the constitutional traditions** common to the Member States → **subsidiary means** for the determination of the **general principles of Community law**.
- But, things changed with **the entry into force of the Charter of Fundamental Rights**.



General principles (7/19)

- After the EU acceded to the ECHR.....**the Convention**→ **directly applicable.**
- ✓ The relationship between the **two European Courts (ECJ and ECtHR)**→ a **controversial issue** in science.



General principles (8/19)

II. Functions of the European Convention Human Rights

1. *The Status Negativus.*

The Convention protects the freedom of the individual by guaranteeing a certain sphere of liberty (*e.g. physical integrity, life, freedom of movement, freedom of thought, expression, marriage, education, religion etc.*) and the right to be free from unlawful governmental interferences but also a right to **reversal of such interferences.**

2. *Guarantee of Equality before the Law.*

NO general equality right, but only prohibition of discrimination with no reasonable justification (ECourtHR)- the principle of proportionality

➤ s. Article 14 of the ECHR.



General principles (9/19)

II. Functions of the European Convention Human Rights

3. *Guarantee of the Status Positivus.*

- Positive obligations → take measures.
- Rights to governmental action : **Original- Derivative rights.**
- The only example within the Convention: *an individual is to be compensated for wrongful conviction of a criminal offence (art. 3- 7th Prot.).*
- “Liberty rights require the state to provide for effective mechanisms to terminate an (unlawful) interference or to reverse its consequences.”
(*Grabenwarter*).



General principles (10/19)

II. Functions of the European Convention Human Rights

3. *Guarantee of the Status Positivus.*

- ✓ Protection of citizens from **unlawful private interference**.
- An example: the protection of life and the prohibition of torture.

4. *Status Activus.*

- The civic rights.
- The obligation of the states for free elections.



General principles (11/19)

II. Functions of the European Convention Human Rights.

5. Procedural rights.

- **Article 5** of the Convention → protects against unlawful detentions,
- **Article 6** → a fair judicial process,
- **Article 7** → the principle of “*nulla poena sine lege*”
- **Article 13** → a right to an effective remedy.
- **7th Protocol to the Convention** → a right of appeal in criminal matters and a right not to be tried or punished twice (“*ne bis in idem*”)
- **The right to a fair trial** + overlong duration of court proceedings.
- ❖ But, does the ECtHR itself observe this obligation ???
- The ECHR imposes also **objective requirements** on the Contracting States.



General principles (12/19)

III.

- ❖ The ECHR must be **interpreted** in the light of its object and purpose.
- ✓ Need for effective interpretation of the Convention.
- ✓ The Convention is a *“living instrument which must be interpreted in the light of present day conditions”*.



General principles (13/19)

IV. Beneficiaries of the Convention rights

- ✓ The Convention (including Protocols) generally protects “**everyone**” within the jurisdiction of the Contracting States.
- **Age or legal capacity** does not count for the protection under the Convention.
- ✓ Even a **post-mortem protection** by the ECHR is possible.
- ✓ **Legal persons under private law** may also invoke the guarantees of the ECHR.
- ❖ *“The state does not benefit from, but is bound by the Convention rights.”
(D.Ehlers)*



General principles (14/19)

V. Bodies subject to the Convention Rights.

1. *Convention States of the Council of Europe.*

- The state is strictly responsible for every violation of the Convention.
- Not only **positive action** but also **omission** by the state
→ violation of the Convention.
- breaches of **supranational law** may also → **liability**.
- ✓ A state is **not responsible for acts of sovereign power on its territory where such power** is in fact exercised by another state.



General principles (15/19)

2. The *institutions of the Council* themselves are bound by the Convention and the Protocols.

- Direct and Indirect obligations.

- The Convention only *served* as a subsidiary means for the determination of the general principles of Community law.

- ✓ Since the entry into force of the 14th Protocol to the ECHR (2010) → **things changed** → accession of the EU to the ECHR.



General principles (16/19)

✓ A **collision** between the applicable **international or supranational law** on the one hand and the provisions of the ECHR.

SOLUTION: an individual application under Article 34 of the Convention inadmissible, if the law of the international or supranational organisation provides a level of protection of fundamental rights which is comparable to the protection guaranteed by the ECHR.



General principles (17/19)

- The Contracting States remain responsible for compliance with the Convention rights !
- There must be ensured that the international or supranational legal order guarantees a **standard** of protection comparable to the ECHR.
- The ECtHR still reserves for itself the ***final say*** in determining ECHR !!
- After the accession of the EU to the ECHR, the Convention → part of EU law.
- The ECtHR should not have the last word on questions involving the **compatibility of Community law with the Convention.**



General principles (18/19)

- Convention rights have **no direct (horizontal) effect** on private individuals.
- ✓ The Convention rights may require the state to protect private persons against **unlawful interferences by other private individuals**.
- Article **1** of the ECHR → the Contracting States guarantee the rights and freedoms to everyone within their “jurisdiction”. (**Jurisdiction= territory**).
- Article **56** of the ECHR and Protocols enable a Contracting State to extend the Convention to all or any of the territories for whose international relations it is responsible.



General principles (19/19)

✓ The Convention has **no retroactive effect** → *binding from the date of ratification !*



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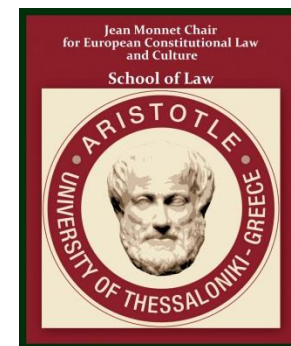
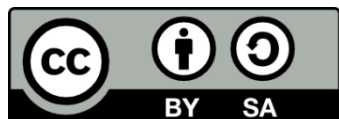




The End

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ΑΡΙΣΤΟΤΕΛΕΙΟ
ΠΑΝΕΠΙΣΤΗΜΙΟ
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