



European Human Rights Law



The Notion of European Fundamental Rights and Freedoms-Chapter 1 (ECHR)

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Ευρωπαϊκή Ένωση
Ευρωπαϊκό Κοινωνικό Ταμείο

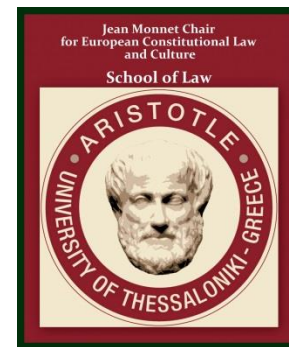


ΥΠΟΥΡΓΕΙΟ ΠΑΙΔΕΙΑΣ & ΘΡΗΣΚΕΥΜΑΤΩΝ, ΠΟΛΙΤΙΣΜΟΥ & ΑΘΛΗΤΙΣΜΟΥ
ΕΙΔΙΚΗ ΥΠΗΡΕΣΙΑ ΔΙΑΧΕΙΡΙΣΗΣ

Με τη συγχρηματοδότηση της Ελλάδας και της Ευρωπαϊκής Ένωσης



ΕΣΠΑ
2007-2013
πρόγραμμα για την ανάπτυξη
ΕΥΡΩΠΑΪΚΟ ΚΟΙΝΩΝΙΚΟ ΤΑΜΕΙΟ



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Bibliography

- ***Christian Walter, The Notion of European Fundamental Rights and Freedoms, in Dirk Ehlers, European Fundamental Rights and Freedoms, De Gruyter Recht, Berlin, 2007 pages 1 ff.***



History and Development of European Fundamental Rights and Fundamental Freedoms

I. International and European Human Rights Protection

- Universal Declaration of Human Rights (1948)
- European Convention for the Protection of Human Rights and Fundamental Freedoms (1950)
- The International Covenant on Civil and Political Rights (1966)
- The International Covenant on Economic, Social and Cultural rights (1966)



International and European Human Rights Protection (1/2)

On the European level, after World War II, a number of international organisations came up.

- The Council of Europe.
- The OSCE.
- The EC/EU.



International and European Human Rights Protection (2/2)

- **The Council of Europe**

Main aim: greater unity between its members

For

The Protection of Human Rights.

✓ “Guardian of human rights, rule of law and democracy”.

Both OSCE and the Council of Europe **aim at** the protection of human rights against infringements emanating from Member States.

- But, protection of human rights within the EC/EU is situated on a different level... since 1993.

- Protection of Human Rights ***against acts of the European Community Law.***



II. History and Development of Human Rights Protection in the Context of the Council of Europe and the European Convention on Human Rights

The Council of Europe

Among more than 170 treaties, the most important is:

- **The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).**
- The European Convention on Human Rights, originally had only 10 Member States.
- **“ The Constitutional instrument of European Public Order”**



II. History and Development of Human Rights Protection in the Context of the Council of Europe and the European Convention on Human Rights (1/9)

a. History

- Congress of Europe organised by the International Committee of the Movements for European Unity presided by Winston Churchill.
- Into force: 3 September 1953.
- Initially.....The admission of direct individual complaints to the European Court and was left to **the Commission and the Member State concerned** whether **to bring the case before the Court or not.**

There was **two** kinds of procedures:

1. **State complaints.**
2. **Individual complaints.**

- 1958: 8 declarations of acceptance were received.



II. History and Development of Human Rights Protection in the Context of the Council of Europe and the European Convention on Human Rights (2/9)



II. History and Development of Human Rights Protection in the Context of the Council of Europe and the European Convention on Human Rights (3/9)

b. Development of the Convention - the European Court and the Commission

- **14 Additional Protocols.**
- **Basic points:**
- **1st Prot (art. 1 to 3):** Protection of Property, the right to educate one's children and the right to free elections.
- **7th Prot (art.4):** The right not to be tried or punished twice.
- **7th Prot (art. 2):** The right of appeal in criminal matters.
- **6th Prot (art. 1 and 2) and 13rd Prot:** The abolition of death penalty.
- **4th Prot (art. 1):** Prohibition of imprisonment for debt.
- **4th Prot (art. 2):** Freedom of movement.
- **4th Prot (art.4):** Prohibition of collective expulsion of aliens.
- **7th Prot (art.5):** Equality between spouses during marriage and in the event of its dissolution.



II. History and Development of Human Rights Protection in the Context of the Council of Europe and the European Convention on Human Rights (4/9)

b. Development of the Convention - the European Court and the Commission.

- 14 Additional Protocols.
- **Basic points:**
- **The 9th and the 11th Prot altered the procedure of the Strasbourg system.**
- **The 11th Prot** amended the whole system, by abolishing the Commission and the **two-step procedure**.
- ❖ **Nov. 1998: ECHR: The sole judicial organ .**
- ❖ **The Individual complaint .**
- ❖ **2001 : 13.858 complaints.**
- ❖ Reform in **2004- 14th Prot.** ECHR: Single- judge decisions on the admissibility of applications.
- ❖ The Committee of Ministers has the right to refer to the Court questions.



II. History and Development of Human Rights Protection in the Context of the Council of Europe and the European Convention on Human Rights (5/9)

Germany early accepted the Commission's competency to deal with individual complaints.

UK followed and **France**

- The ECHR: “ The Convention is a living instrument which must be interpreted in the light of present-day conditions”.
- “controle de conventionnalite”.
- The Court exercises : quasi-constitutional judicial control.



II. History and Development of Human Rights Protection in the Context of the Council of Europe and the European Convention on Human Rights (6/9)

- The incorporation of the Convention into the ***British national system*** through the Human Rights Act of 1998 → major step.
- However,....
- domestic courts are required to apply the Convention ***directly*** within the justice system of the UK.
- Pursuant to Section 3, courts are required to interpret national legislation **in conformity with the Convention.**
- **Pressure on the authorities.**
- Laws in conformity with the Convention.



II. History and Development of Human Rights Protection in the Context of the Council of Europe and the European Convention on Human Rights (7/9)

- In **German Legal Order**, the Convention → **Ordinary Federal Law**
- **2004**: The Constitutional Court in Germany, found a new formula.....
- **BVerG** : The Judge should take into account:
 1. the **guarantees** of the European **Convention** and
 2. the **decisions** of the European Court of Human Rights.
- **BVerG** : “ non-compliance with a decision by the European Court of Human Rights may be brought before the Federal Constitutional Court as a violation of fundamental rights guaranteed in national constitutional law”.



II. History and Development of Human Rights Protection in the Context of the Council of Europe and the European Convention on Human Rights (8/9)

- The **European Court of Human Rights** requires:
 - ✓ **Member States to provide a level of protection *equivalent* to that of the ECHR**
 - **But...**
 - No direct **obligation** of European Community organs by the Convention.
 - A positive **obligation** of Member States from Article 1 of the ECHR.



II. History and Development of Human Rights Protection in the Context of the Council of Europe and the European Convention on Human Rights (9/9)

- The **Droits de l'Homme**
- *in The “Bosphorus”-case*
- says: “The Member States are not free from their responsibility under Convention when they transfer sovereign rights to an international organisation.”
- **Equivalent** protection of human rights necessary.



History and Development of European Fundamental Rights and Fundamental Freedoms (1/5)

2. Human Rights Protection in the Council of Europe

a) Human Rights Guarantees

- ✓ **The European Social Charter (1961):**
- ✓ 5 binding rights for Member States.
- ✓ surveillance procedure.
- ✓ **1999: a revised Social Charter.**
- ✓ **Spain, UK, Germany not signed the revised text.**



History and Development of European Fundamental Rights and Fundamental Freedoms (2/5)

- ✓ **The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1987).**
- ✓ **Preventive mechanisms against torture.**
- ✓ The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.
- ✓ Recommendations.



History and Development of European Fundamental Rights and Fundamental Freedoms (3/5)

- Council of Europe: priority= minority protection.
- ✓ 1992 -The European Charter for Regional or Minority Languages.
- ✓ 1995 -Framework Convention for the Protection of National Minorities.
 - In Germany 1998
- -not signed by France.



History and Development of European Fundamental Rights and Fundamental Freedoms (4/5)

- ✓ 1997 -The Convention on Human Rights and Biomedicine
 - ✓ 1998- The additional Protocol on the Prohibition of Cloning of Human Beings
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- - **Germany:** not signed.



History and Development of European Fundamental Rights and Fundamental Freedoms (5/5)

b) The Parliamentary Assembly after 1989/1990.

1949: The Committee of Ministers invites new members to the Council, in co-operation with the Parliamentary Assembly.

- ✓ The Parliamentary Assembly, sent rapporteurs to review national legal orders.
- ✓ Steps to the acceptance of the individual complaint procedure.
- ✓ A surveillance procedure for memberships
 - Russia's membership in question..

- Nowadays, the **Parliamentary Assembly** is concerned with human rights infringements committed in the fight against terrorism.



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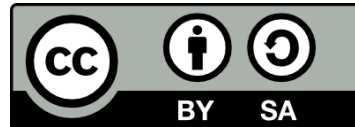
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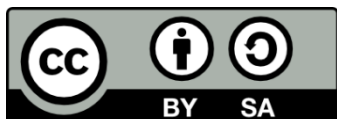




The End

Ioannis Yannakelos

Thessaloniki, Spring 2013-2014




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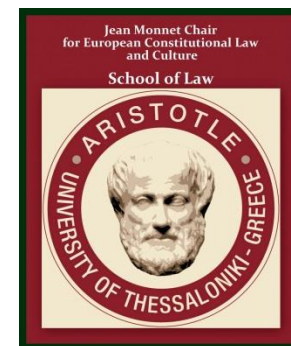


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Οποιαδήποτε αναπαραγωγή ή διασκευή του υλικού θα πρέπει να συμπεριλαμβάνει:

- το Σημείωμα Αναφοράς
- το Σημείωμα Αδειοδότησης
- τη δήλωση Διατήρησης Σημειωμάτων
- το Σημείωμα Χρήσης Έργων Τρίτων (εφόσον υπάρχει)

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