



Quaker
Council for
European
Affairs

The European Convention on Human Rights

A common endeavour in
the name of human dignity

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Foreword

Human rights are about how we treat each other. They recognise the inherent humanity of each person, describe the things that are needed to lead a full and dignified life, and preserve in law the idea that there are some things it is never okay to do to people.

Human rights are also unique in the world of international deals and treaties, because they involve governments voluntarily limiting what they can do, for no other reason than because it is right. There is no wealth or power that flows directly from adhering to human rights (though the security and decency they provide can add greatly to the prosperity and influence of nations). But they do offer a reminder that what matters, in international affairs as well as individually, is how good we are, not how great.

No nation is perfect in how it treats its citizens. The rankings in this publication are testament to that. It is important, as we read through this document, to remember that every country – even those at the top of the list – have lost cases at the European Court of Human Rights, which means that there are people who were not treated with the respect and dignity they were due and which their government voluntarily promised to provide. Individual citizens have suffered unfairly, often for years; their cases are the faces behind the numbers.

Like many others, Quakers believe that there is a basic equality to all people. All people have worth, not because of what they have done but because they are human, children of God. Human rights laws are an attempt to spell out how people should be respected. They are a precious thing, and we reject them at our peril.

Oliver Robertson

Clerk, Quaker Council for European Affairs

July 2017



Introduction

Quaker work with European governments and institutions exists in part to ensure that the standards and ideals of the European Convention on Human Rights (ECHR) are achieved, and that Europe does not unpick the mechanisms built to prevent a repeat of the Holocaust and the destruction of total war.

This publication will introduce you to the ECHR, the important work that it does via the European Court of Human Rights, and why it is now more important than ever. It is part of QCEA's continued work with the institutions that support the ECHR – more important than ever at this crucial turning point for human rights in Europe. We hope you find it useful.

About QCEA

The Quaker Council for European Affairs (QCEA) is a non-profit organisation which brings a Quaker vision of peace and human rights to the European institutions. From our office in Brussels, we perform important work in the form of research, advocacy and 'quiet diplomacy', with the aim of bringing compassion and justice to European policy. Since the late 1970s QCEA has represented Quaker values and Quakers living throughout Europe, who also determine our work priorities. However, we try to speak for everyone who believes in a world of peace and human dignity for all.

A QCEA Study Tour before their visit to the Council of Europe in Strasbourg.

PHOTO: KATE McNALLY ↓



What is the ECHR?

Background

In the aftermath of the Second World War, and in particular the vast and unprecedented crimes against humanity which took place during the conflict, European leaders resolved to create common institutions which would ensure that a repeat of the horrors of 1939-45 would not just be undesirable but impossible in practical terms. To this day, this is the fundamental aim which underpins political cooperation in Europe, as well as the structures which facilitate it.

Following the war, it was felt that peaceful coexistence among European countries could best be assured through mutual oversight and common rules, and several international institutions were established to those ends. For example, the European Coal and Steel Community was created to pool control of industries which were central to the production of armaments – the idea being that no one country would have either the means or the secrecy needed to accumulate the tools of war. This particular organisation would eventually become the European Union.

However, even before the Coal and Steel Community was established, the Council of Europe (CoE) was founded in 1949 as the pan-European organisation for democracy, human rights and the rule of law. From its headquarters in Strasbourg, its role is to oversee and report on the status of fundamental freedoms across Europe. In addition to an executive branch, the CoE includes a Parliamentary Assembly which brings together elected representatives from the parliaments of member states.

The Convention

Shortly after the CoE's establishment – at which time it consisted of twelve member states – its Parliamentary Assembly gathered to draft what would become known as the European Convention on Human Rights (ECHR). By 1953, it had been ratified by the CoE's member states and entered into force. Every European country except Belarus is now a member of the Council of Europe, and therefore bound by the ECHR as a condition of their membership.

The Convention contains 18 articles which outline the rights of every European citizen, from the prohibition of torture to the freedom of assembly. The opening lines of the Convention declare that these fundamental rights —

“...are the foundation of justice and peace in the world and are best maintained on the one hand by an effective political democracy and on the other by a common understanding and observance of the human rights upon which they depend.”

This “common understanding and observance” is a reference to the mutually-binding nature of many of the international treaties and institutions which were set up following the Second World War, ensuring all countries are treated fairly but that no country is beyond reproach. But in the case of the ECHR, how are the common rules which protect our fundamental rights enforced?

The Court

The implementation of the Convention is overseen by the European Court of Human Rights, which – like other institutions of the CoE – is based in Strasbourg. The Court is made up of one senior judge from each of the forty-seven member states; in practice cases tend to be heard in smaller configurations of three or seven judges. Any legal case which falls within the scope of the ECHR can be heard by the Court, generally in one of three ways:

- a national court can refer a case to the Court in Strasbourg
- a claimant can appeal a national court’s decision at the Court, or
- a claimant can bring an eligible case against a member state directly to the Court, in exceptional circumstances.

In all cases, the Court’s decision is final, as it is the supreme judicial arbiter as regards human rights law in Europe. Its decisions can also overrule those of national courts. Where the Court finds that a violation of the ECHR has taken place, it can oblige the country concerned to take action – for example, to pay compensation to the claimant. In addition, the Court’s decisions set precedents which are referred to in future cases in courts across Europe, reinforcing the ECHR’s role as the central, shared pillar of our fundamental rights.

Why is the ECHR important?

The ECHR and the Court which ensures its application represent the cornerstone of the fundamental rights system which protects all Europeans. It represents something truly special – a common endeavour in the name of human dignity by almost fifty countries determined not to repeat the mistakes of the past. In the pantheon of international legal institutions both past and present, none command the same legitimacy, respect and geographic scope of the ECHR. But in concrete terms, what makes the Convention so important?

- It is the only legally-binding human rights agreement which unites all the countries of Europe (with the exception of Belarus) under a common set of rules.
- It provides citizens with additional, alternative judicial protection to that of national courts.
- The Court's rulings advance and refine the legal status of human rights across Europe.
- The ECHR and the Court are a model for transnational justice systems, proving that they are workable.
- Many minority rights at the national level have been created as a result of the Court's rulings, for example the right of LGBT people to serve openly in the British armed forces.
- The Convention absolutely forbids the death penalty, torture and slavery across the continent.

The seat of the European Court of Human Rights, located in Strasbourg.

PHOTO: CHAIM WAIBEL (CC) ↓



A crucial moment

Europe's human rights framework is facing challenging times. Populist politicians, gaining ground across the continent, often show little regard for the principles of the ECHR in theory or in practice. At the same time, many countries have responded to the arrival of refugees with harsh or ill-conceived measures which violate their fundamental rights. Of particular concern is the widespread detention of child migrants. Although it has shrunk in recent years thanks to a series of reforms, the Court's backlog of cases still stands at approximately 80,000, a situation which is has described as "fragile."¹

In the United Kingdom – a country which played a vital role in the establishment of the Council of Europe after the war – some sections of the media have poured scorn on the concept of "human rights" and the ECHR in particular, partly thanks to the Court's unpopular decisions concerning the deportation of suspects to countries where they are likely to be tortured, or the voting rights of prisoners. Some politicians have also spoken out in favour of more lax protections – most notably Prime Minister Theresa May, who favours an eventual withdrawal from the Convention. Given current trends towards nationalism, mass surveillance, a more punitive justice system and the erosion of social rights, the prospect of Britain leaving the ECHR should concern us all.

The ECHR is effective precisely because it encompasses almost all of Europe, with every country accepting that it be bound by the same rules and standards. If a significant member state like the United Kingdom were to withdraw, it would send a clear message to states like Russia and Turkey that respect for human rights and inter-state cooperation is optional. Seventy years of progress could very easily be unpicked, leaving governments to violate the rights of their citizens with impunity.

Now more than ever, we should commit to these institutions.

1 ECHR Annual Report 2016, p.5.

Measuring performance

To give some sense of how the Council of Europe’s member states “perform” in terms of their obligations under the ECHR, we have created a ranking which scores all the countries concerned. Many of the positions are not particularly surprising, but some countries score higher or lower than one might have expected – particularly the case with some EU members.

The ranking is based on a very specific variable, namely cases brought against countries in which the Court ruled that a violation of human rights had taken place. Human rights as defined by the ECHR are very broad, and a violation does not necessarily mean that something brutal or cruel has taken place – such a ruling can involve something as innocuous as over-zealous data collection. As such, this ranking should not necessarily be taken as an indicator of standard of living, nor of quality of governance, in a particular country.

Methodology

The ranking was reached by scoring each member state’s rate of Convention violations according to several factors, and then taking an average. Comparing countries simply according to **number of violations** is not an effective measure because not all countries joined the CoE at the same time, meaning older members will have generally committed more violations simply by virtue of time elapsed.

To counter this variable, the rate of **violations as a percentage of cases** brought against each country were also ranked, to measure overall performance regardless of time. However, this does not take into account potential improvements or deteriorations in performance, nor does it account for fluke performances in a particular year. As such, countries were also ranked by the **general trend in their rate of violations**, as determined by a sample five years out of the past ten.

It was these three factors which produced the overall ranking. While no methodology can perfectly determine how well a country adheres to the ECHR, this ranking system consistently produced rational results and has been determined reliable enough to serve as a general indicator.

The data which contributed to this ranking was collected from 1959 to 2016, the most recent year for which data was available at the time of publication. If you would like to explore statistics related to the Court in more detail, you can access a wealth of information on the ECHR’s website — www.echr.coe.int

Ranking

RANK	COUNTRY	SCORE*
1	ANDORRA	9
2	DENMARK *	16
3	SWEDEN *	18
4	IRELAND *	20
5	SAN MARINO	22
6	ICELAND	29
7	NETHERLANDS *	30
8	SWITZERLAND	33
9	LUXEMBOURG *	35
=	NORWAY	35
11	GERMANY *	39
12	UNITED KINGDOM *	40
13	BELGIUM *	44
14	MONACO	50
15	AUSTRIA *	52
=	LIECHTENSTEIN	52
17	SPAIN *	55
18	CYPRUS *	58
=	MALTA *	58
20	LITHUANIA *	64
21	FRANCE *	69
22	ARMENIA	71
23	ESTONIA *	72
=	FINLAND *	72

RANK	COUNTRY	SCORE*
=	LATVIA *	72
26	MONTENEGRO	73
27	CZECH REPUBLIC *	81
=	PORTUGAL *	81
29	GEORGIA	84
30	BOSNIA-HERZEGOVINA	85
31	ALBANIA	87
=	ITALY *	87
33	FYR MACEDONIA	91
34	AZERBAIJAN	99
=	CROATIA *	99
36	POLAND *	100
37	SERBIA	101
38	SLOVENIA *	105
39	ROMANIA *	112
40	SLOVAKIA *	114
41	MOLDOVA	115
=	TURKEY	115
43	GREECE *	116
44	BULGARIA *	120
45	HUNGARY *	130
46	RUSSIA	135
47	UKRAINE	139

* EU member states are indicated with a star.

* The “scores” are determined according to the measures described opposite, with points accrued according to the rate of violations per country. A higher score therefore indicates a worse adherence to the ECHR.

Case studies

The Court's judgements have had a massive influence on the European fundamental rights framework over the last sixty years. In the United Kingdom, several of its decisions have received widespread public attention – and not always in a positive way. However, many of the precedents established by the Court are things which we now take for granted.

Below are several lesser-known judgements which the Court considers to be “landmark cases.” They show not only the variety of issues under the ECHR's remit, but also the crucial role which the court has quietly played in the background of European law and politics.

Soering vs. United Kingdom (1989)

In this case the Court ruled that the ECHR's prohibition on torture would have been violated had the United Kingdom extradited Jens Soering, a German national, to the US state of Virginia where he was charged with double murder. The application of the death penalty in Virginia meant that Soering was liable to spend 6-8 years on death row, without knowing when he would be executed. The Court concluded that this in itself would constitute inhuman and degrading treatment. It is the first judgment in which the Court ruled on the wait in death row and also the first ruling which sought to prevent a "potential violation" from taking place.

Bayatyan vs. Armenia (2011)

In a case which is of historic interest to Quakers, this ruling concerned the conviction in 2003 of a conscientious objector - a Jehovah's Witness - for his refusal to perform military service. He was imprisoned despite Armenia's undertaking, when joining the Council of Europe, to introduce civilian service as an alternative to compulsory military service within three years and to pardon all conscientious objectors sentenced to imprisonment. The Court found a violation of the applicant's freedom of conscience and religion.

Schwabe and M.G. vs. Germany (2011)

The case concerned the detention of two men for more than five days in June 2007 to prevent them from participating in demonstrations against the G8 summit. The Court found that the men's right to liberty had been infringed, as well as their right to take part in a peaceful protest.

S. and Marper vs. United Kingdom (2008)

The case concerned the retention by the authorities of fingerprints and DNA samples taken from the applicants during criminal proceedings against them which did not result in their conviction. The Court found that the applicants' right to a private life had been infringed by the actions of the police. The case was one of the first to deal with DNA and "genetic privacy," ensuring that human rights laws remain relevant even in cases which were unimaginable when the ECHR was drafted. Such rulings are more important than ever given the rise in mass surveillance currently experienced in many European countries.

Fadeyeva vs. Russia (2005)

Nadezhda Fadeyeva, a resident of Cherepovets, an important steel-producing centre 300 km northeast of Moscow, alleged that the operation of a steel plant in close proximity to her home endangered her health and well-being. The Court found a violation of her right to family life, pointing out that the authorities had offered the applicant neither an effective solution to help her move away from the dangerous area nor effective measures to end an activity contrary to the national environmental standards. The Court made clear that governments and corporations have a duty to protect us all from the harmful side-effects of industrial activity.

Sejdić and Finci vs. Bosnia-Herzegovina (2009)

This notable case in the history of European anti-discrimination law concerned two men, a Roma and a Jew, who wished to stand for election in Bosnia and Herzegovina. The country's post-war constitution, which allocated strict political quotas according to ethnic lines, excluded the two applicants from running for office because they did not belong to the three "constituent peoples" (Bosniacs, Croats and Serbs). The Court found that the men had been discriminated against, and also ruled that their right to freely take part in elections had been violated. In doing so, the Court reaffirmed that human rights apply to everyone, everywhere – even in challenging political periods or in cases of extreme sensitivity.

NB: These passages were adapted from the Council of Europe website. To read judgements in full, visit the ECHR's website — www.echr.coe.int

What we are doing

The ranking within this document was produced as part of QCEA's new human rights programme, which was launched in Spring 2017. The key aim was to identify countries who are committed to the European human rights cooperation but whose performance could nevertheless be improved. In the months and years to come, QCEA will seek to bolster political engagement with the Council of Europe among these states through advocacy work with their representatives.

In addition to this work, QCEA is currently involved in substantial research on the issue of child immigration detention in Europe. This problem is widespread yet under-reported, and the absence of reliable data means that campaigning against it is difficult. Our work is therefore a vital contribution to ending the practice of imprisoning refugee children at the European level.

How you can help

Donate to QCEA

Unlike many organisations based in Brussels, we do not seek any financial support from the European institutions. Instead, our important work relies largely on generous donations from individuals like you. We accept donations in both Pounds Sterling and Euros, and there are several ways to give easily and securely. For more information please visit www.qcea.org/donate

Write to your representatives

Respect for, and adherence to, fundamental rights cooperation is a matter for national governments. If you want to make your voice heard and speak up in favour of the ECHR, the best way to do so is to write to a member of your national parliament. QCEA can help you find the right person to contact, or provide you with a template letter – please don't hesitate to contact us.

Follow our advocacy work

QCEA's human rights advocacy work focuses on research and lobbying on pressing issues currently facing Europe, particularly the ongoing detention of child refugees. As mentioned above, we will also be working more closely on advocating adherence to the ECHR. For more information please contact sylvain.mossou@qcea.org (detention) or martin.leng@qcea.org (ECHR).

Connect with other Friends to support refugees

QCEA's Kate McNally is leading efforts to coordinate Friends across Europe who are working to welcome refugees into their communities. If you want to find out how you can contribute, please contact kate.mcnally@qcea.org

Quakers and human rights: a history

One of the founding principles of the Religious Society of Friends (Quakers) was the recognition that every person is unique and their life must be valued. This quickly led Quakers to take radical positions based on their spiritual experience, such as opposition to war and the death penalty.

These ideas led to a wide range of practical projects undertaken by members of the Society, such as the first attempt at mental health care, in the house of John Goodson in 1673, and later the first mental health hospital, *the Retreat*, which was established in 1796 and continues its work today.

Another well known example is Elizabeth Fry who led campaigns for improved detention conditions in Britain in the 19th Century. She later also advised on prison regimes in France, Germany, Italy and Russia. In recognition of the impact of her work, her image could be found on British £5 notes for many years. Today, Quakers continue to be active as prison chaplains, prison visitors and campaigners for reform of immigration detention.

Michael Bartlet, former Parliamentary Liaison Secretary for Quakers in Britain, has written, “An early conception of human rights is implicit in the seventeenth century political and religious experience of Friends. Such rights are inherent in the ‘neighbour principle’ as a source of social responsibility, common to world faiths.” Some Quakers have also been influenced by the writings of Thich Nhat Hahn who has argued that Buddhism’s focus on personal liberation through the cycle of life should today be understood as a requirement for work to bring about social liberation for all people.

Around the world, Quaker organisations are working to promote and protect human rights. This includes peacebuilding efforts by Kenyan Friends, and the Sanctuary Everywhere programme led by American Friends Service Committee in the US. The work of the Quaker United Nations Office in Geneva has also included a human rights programme for many decades, positively affecting global discussions on child soldiers, conscientious objectors to military service and the children of prisoners.

