| Chapter 2 |

The Protection of Human Rights in the Council of Europe – The European Convention on Human Rights in General Terms

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'The dark shadow we seem to see in the distance is not really a mountain ahead, but the shadow of the mountain behind – a shadow from the past thrown forward into our future.'
David Trimble[1]

ABSTRACT

The Council of Europe (CoE) mission is to keep the peace in Europe and protect human rights and freedoms. It tackles, systematically, the root causes of tensions and disputes before they erupt into conflicts. The consequences of the Second World War (WWII) on the European continent were one of the main reasons for establishing the CoE, as human rights were under serious threat. After WWII and the Holocaust, there was a need to protect people from the State, ensure that the atrocities would never be repeated and safeguard fundamental rights. Furthermore, there were discussions about transforming relationships in international law, so that individuals could protect their rights internationally as well. The CoE declared its peace orientation, based on justice and international cooperation, as a vital element for the preservation of human society and civilisation. According to Article 1, paragraph 1, of the Council's Statute, 'The aim of the Council of Europe is to achieve a greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and facilitating their economic and social progress'. However, greater unity cannot be achieved without peace and human rights protection.

In the new European era, the issue of human rights has grown into a key topic. The CoE is part of the European architecture and its role should not be seen in cooperation with other international organisations and states. The ideals and principles of the CoE have been codified in more than 200 treaties drawn up by the CoE over 75 years. These documents, coupled with the judgments of the European Court of Human Rights (known as the Strasbourg Court; ECtHR), the recommendations and resolutions of the Committee of Ministers, the Parliamentary Assembly and the Congress of Local and Regional Authorities, and the recommendations of the Venice Commission and other CoE's monitoring and advisory bodies, including the Commissioner for Human Rights, are the cornerstones of a

1 Trimble, 1998.

Tanja Karakamisheva-Jovanovska (2026) 'The Protection of Human Rights in the Council of Europe – The European Convention on Human Rights in General Terms' in Paczolay, P. (ed.) *The European Convention on Human Rights A Central and Eastern European Perspective.* Miskolc–Budapest: Central European Academic Publishing, pp. 27–56. https://doi.org/10.71009/2026.pp.tecohr_2

unique system that protects the fundamental rights of more than 700 million people in 46 Member States.[2]

KEYWORDS
CoE, human rights, fundamental freedoms, peace, human dignity, rule of law, democracy

1. Introduction

The establishment of the Council of Europe (CoE) in 1949 represents one of the earliest and most significant institutional manifestations of the European peace project that emerged in the aftermath of the Second World War (WWII). Conceived as a forum for dialogue, cooperation and the promotion of shared values among European states, the CoE laid the foundations for a new continental order based on the principles of human rights, democracy and the rule of law. Its creation was the culmination of a long intellectual and political evolution rooted in centuries of philosophical reflection on the idea of a united Europe. Thinkers and statesmen alike, ranging from Richard Coudenhove-Kalergi and Aristide Briand to Winston Churchill and Ernest Bevin, contributed to shaping the conceptual and political groundwork for European unity, advocating for cooperation that could prevent the recurrence of war and totalitarianism. Within this historical and ideological framework, the CoE emerged as the first pan-European political organisation with a mandate to achieve closer unity among its members through common action in the pursuit of peace, justice and international cooperation.

The CoE's founding statute, signed in London on 5 May 1949, explicitly reaffirmed the commitment of its Member States to the 'spiritual and moral values' constituting Europe's shared heritage, values seen as the true source of individual freedom, political liberty and democracy. This foundational vision positioned the CoE as a moral and institutional response to the devastation of war and the emerging ideological divide of the Cold War, aspiring to rebuild Europe through economic reconstruction and a renewed commitment to democratic governance and human dignity. Over the following decades, the CoE evolved into a complex intergovernmental organisation, encompassing a range of institutional mechanisms designed to uphold these objectives. Through its Parliamentary Assembly, Committee of Ministers, and the establishment of the European Court of Human Rights (ECtHR), the CoE developed a distinctive model of supranational governance that combined legal enforcement with political deliberation and cooperation. Its expanding membership (including nearly all European states) reflects its continuing relevance as the continent's primary guardian of human rights and democratic standards. Hence, the CoE has become more than a post-war political experiment; it stands as Europe's 'School of Democracy', shaping the legal and institutional culture of an entire region.

2 High-Level Reflection Group of the Council of Europe, 2022.

The following analysis explores the historical development, institutional architecture and normative significance of the CoE. It examines its foundation as a peace project, its organisational structure and its principal organs, particularly the Parliamentary Assembly, the Committee of Ministers, and the ECtHR, and its broader impact on European integration, human rights protection and democratic consolidation. By tracing the CoE's evolution and functions, the discussion illuminates how it has redefined the political, legal and ethical landscape of post-war Europe, providing the normative backbone of what is understood as the European democratic order.

2. The Establishment of the CoE as a Peace Project – Its Mandate and Relevance

The CoE is considered the first European political organisation built to achieve closer unity and cooperation among European states.[3] The idea of a united Europe was analysed by eminent philosophers for centuries. As early as the Enlightenment, Immanuel Kant's seminal essay Perpetual Peace (1795)[4] articulated the vision of a federation of free states, governed by law and reason, to secure lasting peace on the continent. In the 19th century, Italian philosopher Carlo Cattaneo used the term "United States of Europe" to express his aspiration for a federation grounded in liberty and civic autonomy.[5] Simultaneously, Victor Hugo, in his famous speech at the Paris Peace Congress of 1849,[6] imagined a Europe reconciled under the banner of fraternity, where wars between nations would give way to the unity of people.

These early intellectual blueprints shaped the European imagination, providing the moral and philosophical scaffolding for later political projects of integration. In the turbulent decades that followed the First World War, this ideal was revived by visionaries, such as Richard Coudenhove-Kalergi, whose *Pan-Europa* movement called for a continental federation to secure peace and resist totalitarianism,[7] and Aristide Briand, who in 1929 presented his famous proposal for a "federal link" among European states before the League of Nations.[8] Together, these initiatives transformed the idea of European unity from a philosophical aspiration into a concrete political agenda, paving the way for institutional developments after WWII.

French statesman Aristide Briand, who served 11 times as the prime minister of France during the Third French Republic, in a Memorandum on European Federal Union, proposed to the League of Nations a "federal link" between the European people. His ideas of "European Federation" primarily focused on economic matters

3 Bates, 2010; See, Duranti, 2017.
4 Kant, 1795.
5 Arban, 2018.
6 European Society, 2019.
7 He was a politician, philosopher and the Count of Coudenhove-Kalergi. As a pioneer of European integration, he served as the founding president of the Pan-European Union for 49 years.
8 Roobol, 2002.

without encroaching upon national sovereignty. However, the memorandum was not welcomed in France or anywhere in the world. The idea of a full economic European union was rejected and the mention of "federal link" as a political aspect of the project awakened suspicion. Nevertheless, in 1946, in his famous speech in Zurich, Winston Churchill used the term "United States of Europe". Similarly, in a speech to the House of Commons on 22 January 1948, the British Foreign Secretary Ernest Bevin declared that British foreign policy aimed to create a Western European "spiritual union" based on respect for human rights. This was a reaction to the Union of Soviet Socialist Republics' attempts to force occupied Eastern and Central European countries into a military, economic and political alliances.[9]

The movement in favour of European unity took place at the Hague Congress of Europe in May 1948, attended by 660 delegates, including 20 prime ministers and former prime ministers. It called for a United Europe, the protection of free movement of persons, ideas and goods, a Charter of Human Rights, a Court of Justice and a European Assembly. These ideas were further developed in a political resolution, proposing an economic and political union in which the European nations would transfer and merge certain sovereign rights. The proposals were taken up by the foreign ministers of France, the UK and the Benelux countries. On 5 May 1949, the CoE was founded in London when 10 European countries (Belgium, Denmark, Ireland, Italy, France, Luxembourg, the Netherlands, Sweden, Norway, and the UK) signed the CoE's statute known as the Treaty of London. This treaty defined the CoE as an international organisation open to all European states devoted to 'the pursuit of peace based on justice and international cooperation'.

The CoE is a part of the European architecture. In the opinion of Robert Schuman, the Council of Europe was, first and foremost, a testing ground for ideas. Paul-Henri Spaak was the first President of the Assembly, whose members included eminent political personalities in Western Europe. The Assembly raised hopes because various visions of a united Europe were discussed openly. Its representatives were not tied by electoral concerns in their home countries or partisan voting instructions. Hence,

9 Polakiewicz, 2019. In a speech in 1929, French Foreign Minister Aristide Briand floated the idea of an organisation, which would gather European nations together in a "federal union" to resolve common problems. However, it was Britain's wartime leader, Sir Winston Churchill, who first publicly suggested the creation of a "Council of Europe" in a BBC radio broadcast on 21 March 1943, while WWII was still raging. In his words, he tried to 'peer through the mists of the future to the end of the war' and think about how to re-build and maintain peace on a shattered continent. Given that Europe had been at the origin of two world wars, the creation of such a body would be, he suggested, "a stupendous business". He returned to the idea in a well-known speech at the University of Zurich on 19 September 1946, throwing the full weight of his post-war prestige behind it. However, there were several statesmen and politicians across the continent, many of them members of the European Movement, who were quietly working towards the creation of the council. Some regarded it as a guarantee that the horrors of war could never again be visited on the continent, others came to see it as a "club of democracies", built around a set of common values that could stand as a bulwark against totalitarian states belonging to the Eastern Bloc. Others saw it as a nascent "United States of Europe", the resonant phrase that Churchill had reached for at Zurich in 1946. Churchill, 1946.

the CoE became a forum for dialogue, cooperation and drafting framework texts on matters concerning the European identity. In the Preamble of the CoE's statute, the countries emphasised the motive of association, 'reaffirming their devotion to the spiritual and moral values which are the common heritage of their peoples and the true source of individual freedom, political liberty and the rule of law, principles which form the basis of all genuine democracy'. The Member States believed that, for the maintenance and further realisation of these ideals and in the interests of economic and social progress, there was a need for a closer unity between like-minded European countries. Hence, it was necessary to create an organisation which would bring European States into closer association.[10]

The most important political and sociological fact of the post-war world was the ideological and military conflict between the East, socialist block of countries and the West, led by the US. This conflict was manifested in various crises, such as the Korean War (1950–53) and the Soviet intervention to crush the uprising in Hungary in 1956.[11] By the 1950s, the Soviet Union had largely given up its opposition to international law in favour of a pragmatic acceptance of international law as a form of peaceful coexistence, creating a wide network of procedural rules to regulate inter-block relationships. However, US lawyers began to consider international law as a technique for pursuing American values and foreign policy goals.

The CoE's main objectives are to ensure pluralistic democracy within its Member States, protect human rights and the rule of law. Apart from these primary goals, the CoE, as the oldest European organisation, promotes and stimulates the development of the European cultural identity and diversity; attempts to find solutions to the problems facing European society, such as discrimination of minorities, xenophobia, intolerance, human cloning, terrorism, human trafficking, organised crime and corruption, internet crime, protection of the human environment, drug addiction, violence against children; and consolidate democratic stability in Europe by supporting political, legislative and constitutional reforms. The CoE has developed policies and practices in all spheres of political society related to human rights and the maintenance of peace and stability, except defence policies, which are considered an exclusively national issue.[12] Hence, the CoE is an international organisation that deals with four key areas: legal affairs, human rights, social cohesion, and education and culture, organised in four general directorates, with several secretariats and departments.

The key functions of the CoE are effective supervision and protection of fundamental rights and freedoms, identifying new threats to human rights and dignity, develop public awareness about the importance of human rights and promote human rights education and professional training. Its statute states that serious violations of human rights and fundamental freedoms are grounds for suspension or exclusion

10 Council of Europe, 2015.
11 Koskenniemi, 2011.
12 Council of Europe, 1949, Chapter 1, Art.1.

of a Member State from the organisation.[13] The CoE is often called Europe's "human rights watchdog". The establishment of democratic structures based on the rule of law and its political culture is a time-consuming process, which requires patience. It takes more than a single generation to familiarise people thoroughly with the values behind these structures and the behavioural patterns which sustain them.[14]

3. Organisational and Institutional Structure of the CoE

The CoE is the oldest European intergovernmental organisation. Its founding states were convinced of their common heritage of political traditions, ideals, rights, freedoms and the rule of law. They agreed that fundamental freedoms were the foundation of justice and peace. Hence, they created the European Convention on Human Rights (ECHR) with twofold objectives. The ECHR was set up to prevent atrocities like the ones committed during WWII from repeating, achieve a greater unity between the Member States, promote the development of democracy in Europe and bring lasting peace to the continent.[15]

The CoE has 46 Member States, representing over 700 million Europeans. Of these, 27 are European Union (EU) members. Any European country that supports the rule of law, human rights and democracy can join the CoE. Six countries – the US, Canada, Japan, Mexico, the Vatican and Israel – have observer status. Membership is voluntary and countries can leave anytime by notifying the General Secretary. However, if a member violates CoE principles, it can be suspended or removed.

The CoE has several key bodies. The Parliamentary Assembly discusses European social and political issues. The Committee of Ministers is the main decision-making body, made up of foreign ministers or diplomats. The Congress of Local and Regional Authorities supports local and regional democracy. The Conference of International NGOs connects policymakers with citizens. The Commissioner for Human Rights promotes human rights awareness and protection. The Secretariat includes a staff of about 1,000 people supporting CoE operations. The Secretary General leads the CoE, managing strategy, activities and the budget, with help from the Deputy Secretary General.

3.1. Parliamentary Assembly

The CoE's Parliamentary Assembly is the oldest international parliamentary body composed of democratically elected members. In 1974, its name changed from "Consultative Assembly" to "Parliamentary Assembly" to better reflect its role. According to Article 22 of the CoE's statute, the Assembly serves as the Council's deliberative body, discussing relevant matters and presenting recommendations to the Committee

13 Article 8 of the Statute.
14 Europe's Human Rights Watchdog, n.d.a.
15 Council of Europe, 1950.

of Ministers. National delegations vary in size based on the country's population, with major states like France, Germany, Italy, Turkey and the UK having 18 representatives, while the smallest states, such as Andorra, Liechtenstein, Monaco and San Marino, have two. In total, the Assembly consists of 612 members – 306 representatives and 306 substitutes – appointed or elected by their national parliaments.

Delegations must reflect the political balance of the country's national legislatures, including members from both ruling and opposition parties. The Assembly operates with European political groups, including Socialists, Christian Democrats, Liberals, European Democrats, the Unified Left, Free Democrats and independents. Gender balance is required in delegations and participation may be suspended if this requirement is not met or if a country fails to uphold democracy, human rights and the rule of law.

As a driving force, the Parliamentary Assembly discusses and makes recommendations to the Committee of Ministers on relevant issues, either on its own or at the Committee's request. It adopts resolutions that do not require ministerial approval. Additionally, it elects key CoE officials, including the Secretary General, the Deputy Secretary General, its own Secretary General, judges of the European Court of Human Rights (ECtHR) and the Human Rights Commissioner. The Assembly meets four times a year for five-day sessions, during which parliamentarians debate Europe's most pressing socio-political issues. They can adopt three types of texts: recommendations (proposals for the Committee of Ministers), resolutions (decisions the Assembly can implement independently) and opinions (responses to questions from the Committee of Ministers).

The Assembly has nine general committees, each focusing on specific topics, with some having sub-committees. Furthermore, ad hoc committees may be created when needed. The general committees include:

Committee on Political Affairs and Democracy – Handles political matters (includes sub-committees on the Middle East, External Relations and the Western Balkans); Committee on Legal Affairs and Human Rights – Covers legal and human rights issues (includes sub-committees on human rights, artificial intelligence (AI) and human rights and ECtHR judgments); Committee on Social Affairs, Health and Sustainable Development – Focuses on social policies, public health and sustainability (includes sub-committees on the European Social Charter, Children, Public Health and the European Prize); Committee on Culture, Science, Education and Media – Deals with cultural, educational and media issues (includes sub-committees on culture and democratic values, youth and the future and media and information society); Committee on Migration, Refugees and Displaced Persons – Handles migration and refugee issues (includes sub-committees on migrant children, diasporas and human trafficking); Committee on Equality and Non-Discrimination – Promotes equality (includes sub-committees on gender equality, minority rights and disability); Committee on Rules of Procedure, Immunities and Institutional Affairs; Committee on Election of Judges to the European Court of Human Rights; Committee on Monitoring of Member States' Obligations.

These committees meet regularly, sometimes in different Member States. Public debates in the Assembly address major European issues, often with government leaders and ministers participating. The Assembly operates independently, monitoring compliance through the Monitoring Committee and participating in international election observations. It issues resolutions, that is, statements on key issues directed at national parliaments, and recommendations, that is, policy proposals for the Committee of Ministers, requiring a two-thirds majority to pass (resolutions need only a simple majority). The Bureau, the Assembly's steering body, meets thrice a year between sessions to maintain continuity. The Assembly defends human rights, democracy and the rule of law. It holds governments accountable, monitors human rights violations, ensures compliance with democratic standards and recommends sanctions when necessary.

3.2. Committee of Ministers

The Committee of Ministers is the decision-making organ of the CoE. Its first meeting took place on 8 August 1949 at Strasbourg Town Hall, under the leadership of the then French Foreign Minister Robert Schuman. The Committee of Ministers consists of the Foreign Affairs Ministers of 46 Member States. The Holy Sea, Japan, Mexico and the US have an observer status. The Committee meets at ministerial level annually for a plenary session. During the *Ministerial Conference*, pre-negotiated decisions are formally adopted and become operative. The presidency is held by Member States on a rotating six-month basis, in accordance with the alphabetical order of their English names, consistent with the general institutional practice of the Council of Europe. The Committee of Ministers performs three main roles. As the voice of the governments, it enables foreign ministers to express their national approaches to the actual European problems. As a collective forum, it is a platform where European responses to these problems are presented. As a watchdog, with the Parliamentary Assembly, it represents the CoE's values.[16] Its work includes political dialogue and communication with the Parliamentary Assembly and with the CoE Congress of Local and Regional Authorities. Furthermore, it has the authority to invite European countries to become CoE members (Articles 4, 5 and 6 of the statute) and can suspend or terminate countries' membership. The process of admission begins when the Committee of Ministers receives an official application for membership, followed by consultations with the Parliamentary Assembly, which finally adopts an opinion.

Permanent CoE representatives meet weekly. To prepare all aspects for the forthcoming CoE's session, the delegates and the diplomats under their authority meet regularly within the framework of the following seven rapporteur groups:[17] Rapporteur Group on Legal Co-operation, on Education, Culture, Sport, Youth and Environment, on Social and Health Organisations, on Programme, Budget and Administration, on Democracy, on Human Rights and on External Relations. The Committee of Ministers

16 Ministry of Foreign Affairs and International Cooperation.
17 Europe's Human Rights Watchdog, n.d.b.

is composed of the Ministers of Foreign Affairs of the Member States. It determines the CoE's priorities and adopts recommendations, conventions, and agreements, as well as the CoE's budget and staff regulations. Its recommendations are commonly described as *soft law,* as they are not legally binding on Member States. Accordingly, Member States are under no legal obligation either to implement these recommendations or, initially, to sign the ECHR. A Member State may choose not to engage with the ECHR at all, treating it as irrelevant or inapplicable to its national context; in such a case, it is not bound by its provisions. A State may also sign the ECHR, thereby expressing political commitment to its values, but signature alone does not create binding legal obligations. Only once a State has both signed and ratified the ECHR does it become legally bound under international law to implement its provisions domestically. At that point, the State becomes a party to the ECHR and must ensure respect for its rights throughout its territory. Most of the CoE's conventions are not directly applicable within a Member State. However, they are implemented through an appropriate national legislation or by adapting the domestic law to correspond with the Convention's rules.[18]

The conventions and recommendations are drafted by government experts who report to the Committee of Ministers. They only have a legal status after the Committee of Ministers adopts them. The conventions focus on current political issues, formulate the priorities of the organisation and supervise the intergovernmental work of numerous expert committees and the execution of the ECtHR's judgments. Decisions regarding the suspension of the rights of representation, withdrawal or exclusion of a Member State are under the Committee of Ministers. Under Statutory Resolution Res (51) 30, it must consult the Parliamentary Assembly before inviting a Member State to withdraw from the CoE. Furthermore, according to Article 20 (d) of the Statute, for most decisions, including the adoption of conventions and agreements, two-third majority is needed. In practice, consensus is required on major decisions, which favours the adoption of resolutions reflecting the lowest common denominator. The Committee of Ministers may accept, reject or modify the Parliamentary Assembly's proposals or take *a priori* decisions on the proposal of one or several governments or of one of the intergovernmental committees. Article 17 of the CoE's statute empowers the Committee of Ministers to set up advisory and technical committees or commissions for specific purposes. In 2018, there were more some 20 steering committees or other bodies implementing the CoE's programme of activities. Apart from governmental experts, representatives of international non-governmental organisations may participate as observers. Around 300 non-governmental organisations currently have participatory status with the CoE.

3.3. The European Court of Human Rights (ECtHR)

The ECtHR was established in 1959 under the ECHR. It enjoys all the prerogatives of an independent international tribunal. The ECtHR is a regional human rights judicial

18 De Leeuw, 2005.

body in Strasbourg. Till date, it has delivered more than 10,000 judgments regarding violations of the ECHR provisions. In 1998, the European human rights system was reformed to eliminate the now-former European Commission of Human Rights, which decided on the admissibility of complaints, oversaw friendly settlements and referred some cases to the Court. Individual victims may submit their complaints directly to the ECtHR.[19] Applications submitted by individuals and States concern civil and political rights violations, and the Court cannot take up a case on its own initiative. An individual, group or non-governmental organisation submitting a complaint does not have to be a citizen of a Member State. However, they must refer to violations of the Convention allegedly committed by a Member State, which directly and significantly affected the applicant.

The ECtHR is organised into five sections, each with a judicial chamber and a President, Vice-President and several judges. The Court's 46 judges are selected by the Parliamentary Assembly from a list of applicants proposed by the Member States. The judges work in four judicial formations:

Single judge – One judge who rules on the admissibility of the applications that are inadmissible based on the material submitted by the applicant.

Committee – Composed of three judges, the Committee rules on the admissibility of cases and the merits when a case concerns an issue covered by existing case law. Its decision must be unanimous.

Chamber – Composed of seven judges, the Chambers primarily rule on the admissibility and merits of cases that raise issues that have not been ruled on repeatedly. A decision is made by majority of votes. Each Chamber includes a President and a judge with nationality from the State against which the application is lodged.

Grand Chamber – Composed of 17 judges and at least three substitute judges, the Grand Chamber is composed of the President and Vice-Presidents of the Court and the Presidents of the different sections. Any Vice-President of the Court or President of a section, who is not a member of the Grand Chamber, is replaced by the Vice-President of the relevant section. The Grand Chamber works on a small, selected number of cases that are either referred to it or when the case involves an important issue.[20]

If the Court finds a Member State guilty of violating the human rights as defined in the ECHR, the offending party has to pay material damage to the applicant in accordance with the Court's orders, eliminate the consequences of the violation, take the necessary steps to ensure that the same violation is not repeated and publish the judgement in relevant national legal journals. The Court's decisions are public, final and legally binding.[21] Privileges and immunities of the ECtHR and its judges, and their conditions of service, are governed by the CoE's instruments, such as the Sixth Protocol to the General Agreement on Privileges and Immunities of the Council of Europe (1996) and the Resolution CM/Res (2009) 5 on the Status and Conditions of

19 Northeastern University, n.d.
20 Northeastern University, n.d.
21 Europe's Human Rights Watchdog, n.d.c.

Service of Judges of the European Court of Human Rights and of the Commissioner for Human Rights.

Regarding staff matters, the ECtHR has administrative autonomy. Article 25 of the ECHR states that 'The Court shall have a Registry, the functions and organisation of which shall be laid down in the Rules of Court'.[22] The Registry provides legal and administrative support to the Court in exercising its judicial functions. Therefore, it is composed of lawyers, administrative and technical staff and translators.[23] Its main function is to process and prepare for adjudication applications submitted by individuals to the Court. The Registry's lawyers are divided into 31 case-processing sections, each of which is assisted by an administrative team. The lawyers prepare the files and the analytical notes for the Judges. They communicate with the parties on procedural matters. However, they do not decide on the cases. The cases are assigned to different divisions based on the knowledge of the language and the legal system concerned. The documents prepared by the Registry for the Court are all drafted in one of its two official languages – English and French.[24] Furthermore, the Registry is divided into groups working on information technology, case-law information and publications, research and library, just satisfaction, press and public relations, language and internal administration.

The ECtHR has grown into a legal factory for producing laws with legislative and political authority for Europe. It is a legislative authority because it has the power to make state parties modify their national laws in accordance with its views about the laws a democracy ought to have. Its case-law influences the development of human rights law that goes beyond Europe. It has initiated numerous legislative and administrative reforms and changes in the case-law of numerous national courts. Historically, from the late 1960s, the now former Commission found 54 applications admissible, of which the ECtHR examined the merits of only ten cases. However, by the end of the 1980s, the number of ratifications matched the number of states that consented to the optional provisions of the right to individual application and the Court's jurisdiction.

With the introduction of Protocol 11 in 1998, the ECtHR became a permanent and full-time body, while the Commission was abolished. Until the 1970s, the constraints on the effective functioning of the system were not limited to the optional provisions. The Convention bodies contributed to them with their strategies. To describe their cautious moves in this early period, Mikael Rask Madsen used the concept of "legal diplomacy".[25] He indicated that while the Commission was busy with preventing applications from reaching the ECtHR by qualifying them as "manifestly ill-founded", the ECtHR found violations only in a small number of cases throughout this period. Based on the early performance of the ECtHR and the Commission, Madsen noted that the

22 European Court of Human Rights, n.d.

23 There are currently around 640 staff members of the Registry, 270 lawyers and 370 support staff.

24 Council of Europe Office in Georgia, n.d.

25 Kay and Bradley, 2008, p. 21.

tension between the 'European integration through law' and the national sovereignty 'was hardly a settled issue'. For the sake of argument, it remains difficult.

The ECtHR is a progressive force in human rights law, especially in civil and political rights. Its universal link with other treaties is an increasingly significant element for the Court's work. When J. G. Merrills[26] wrote his analysis of the Court's role in the development of international law, he found that, in Strasbourg, other treaties were used for three types of interpretation: 1) strengthening the Convention, 2) indicating omissions and 3) providing evidence of new developments. Years after Merrills' contribution to the academic discourse, the legal experiences highlight a network of international human rights courts, with references to different national jurisprudence. There are several examples of this cooperation between the human rights instruments and their supervisory mechanisms.[27]

Another important question is the concept of the European consensus, which refers to the level of uniformity in the legal system of the CoE Member States on a particular topic. The Court uses this principle to justify a broad spectrum of appreciation given to the Member States in the absence of a consensus and impose new standards, where a trend exists in most states to advance the interpretation of the Convention. The margin of appreciation refers to the operating space, which the national authorities enjoy in fulfilling their obligations under the Convention. The narrower the degree of consensus, the greater the margin of appreciation left to the States.[28] The Court often conducts a comparative analysis to support its arguments in the interpretation of the Convention. It is developed through case law and is defined as the result of an analysis of cases where it has been used. A general remark is that the Court has never explicitly clarified what this concept of comparative analysis means. It is usually analysed in relation to the margin of appreciation; however, this approach is not thorough. As a relative concept, like the margin of appreciation, its scope and underlying factors included in the Court's reasoning can vary considerably.[29]

26 Merrills, 1993, pp. 218–226.

27 Viljanen, 2008. The Court has often linked its analysis with wider trends of international human rights law, as in the prohibition of the death penalty in *Öcalan v. Turkey* (2005). Regarding forced disappearances *Kurt v. Turkey* (1998), the Court followed the interpretative line chosen by the Inter-American Court of Human Rights and the UN Human Rights Committee. The protection of the rights of sexual minorities has been a theme where the Court has spoken about international trends and its support for their reasoning. The change of interpretation regarding the rights of transsexuals was based partly on the international argumentation exemplified in *Christine Goodwin v. the United Kingdom* (2002). The less discussed fields in which development of international human rights law is taking small steps are environmental rights *Lopez Ostra & Guerra v. Spain* (1994), minority rights *D.H. and Others v. the Czech Republic* (2007), and the economic, social and cultural rights and the right to health *D. v. the United Kingdom* (1997).

28 For example, *Lautsi v. Italy* (GC), 18 March 2011.

29 Council of Europe, n.d.a.

3.4. Congress of Local and Regional Authorities

The Congress of Local and Regional Authorities of Europe was established in 1994 under the Committee of Ministers' Resolution (94) 3 and was revised with Resolution (2000). Unlike the 1957 Conference of Local Authorities, the Congress is a *de facto* CoE body. It is composed of local and regional elected representatives and consists of two chambers: Chamber of local authorities and Chamber of regions, representing over 200,000 European municipalities and regions. In 2007, the Committee of Ministers adopted a new Charter of the Congress, which underlined the importance of close cooperation with national associations, which represent local and regional authorities within the EU Committee of the Regions.

The Congress serves as a forum for dialogue where representatives of local and regional authorities discuss common problems, share experiences and propose action to the national governments. It implements the principles set forth in the European Charter of Local Self-Government. Furthermore, it is in charge of the local and regional election monitoring and assists new Member States in their legislative reforms.

3.5. Commissioner for Human Rights

By Resolution (99) 50, the Committee of Ministers established the CoE`s Commissioner for Human Rights as a non-judicial institution mandated to promote education, awareness, and respect for human rights as embodied in the Council of Europe's human rights instruments. The Commissioner is elected by the Parliamentary Assembly of the CoE for a non-renewable six-year term. The Commissioner conducts country visits to all Member States in order to assess and evaluate the human rights situation on the ground. In doing so, the Commissioner identifies possible shortcomings in law and practice relating to compliance with CoE`s human rights standards, promotes their effective implementation, and provides advice and assistance to Member States in addressing such shortcomings.[30] *The Commissioner cannot take up individual complaints* and draw conclusions for human rights violations in individual cases. Part of their mandate is to engage with the Human Rights Defenders in the Member States, meet with a broad range of defenders during their country visits and publicly report on the situation with the human rights defenders. The Commissioner publishes opinions, reports on country visits and thematic and annual reports regarding the human rights situation in the CoE Member States.

3.6. Conference of International Nongovernmental Organisations

The Conference of International Non-Governmental Organisations is composed of 400 civil society organisations (CSOs), holding participatory status with the CoE. It brings together federations of national and local associations in each of the 46 Member States, and from the other parts of the world, covering a range of sectors (humanitarian, social, educational, legal, trade, etc). The CSOs combine all players

30 Conscientious Objection, n.d.

and governance levels, both public and private, as a forum for participatory democracy. Their role is vital in guarantying freedom of expression and association and transparency and accountability of democratic governments. Hence, they form the real link between the European political institutions and its 800 million citizens.[31]

3.6.1. Secretariat and Secretary General

The CoE Secretariat is composed of:

Office of the Secretary General and the Deputy Secretary General who advise, assist and report to the Secretary General and the Deputy Secretary General in all matters relating to their office.

Secretariat of the Committee of Ministers, which ensures the proper functioning of the Committee of Ministers as a CoE decision-making organ.

Secretariat of the Parliamentary Assembly, which assists the Assembly in its proper functioning and the fulfilment of its political mandate.

European Court of Human Rights Registry, which assists the Court and the judges to fulfil the Court's role under the Convention, that is, ensuring the observance of the engagements undertaken by the contracting states.

Secretariat of the Congress of Local and Regional Authorities, which ensures the functioning of the Congress and its organs and supports it in the pursuit of its main goals, as defined in Article 2 of Statutory Resolution (2007).

Office of the Commissioner for Human Rights ensures the functioning of the Commissioner for Human Rights and supports them in their pursuit of the objectives, as defined in the original terms of reference (Resolution (99) 50 of the Committee of Ministers) and subsequent texts related to the institution.

Directorate of the Coordination Programme contributes to the development and implementation of the CoE's strategic objectives and priorities of the Programme and the Budget, in close coordination with other relevant services. Particularly, it coordinates the CoE`s cooperation dimension, including its field offices.

Directorate General Human Rights and Rule of Law is responsible for the development and implementation of the human rights and the rule of law standards of the CoE, including promotion of democracy through law, implementation of relevant treaties and related monitoring mechanisms and the development and implementation of activities in these fields.

Directorate General of Democracy and Human Dignity supports the implementation of the CoE's action promoting democratic governance, participation, diversity, gender equality, safeguarding individuals against threats to their dignity and integrity (trafficking, violence, etc.) and protection of children's rights.

Directorate General of Administration assists the Secretary General in defining the CoE's strategic objectives and priorities and provides the Organisation with the administrative and general services needed to carry out its activities concerning innovation, client-orientation and cost-efficiency.

31 Council of Europe 2013.

Protocol office advises and assists the Organisation as a whole, along with the representatives of Member States, observers and candidate States on matters related to protocol, privileges and immunities, official events and relations with host countries.

Directorate of Communications provides clear and accurate information about the CoE's work and promotes its values, positions and decisions.

Directorate of Political Affairs and External Relations assists and advises the Secretary General, the Deputy Secretary General, the statutory organs and other bodies and major administrative entities of the Secretariat on specific political matters affecting the member and applicant states. Furthermore, it advises them about institutional and political relationships with other international organisations and institutions, particularly the EU, OSCE and UN, and relationships with non-Member States, including observer states and states in the neighbouring regions.

Directorate of Programme and Budget assists the Secretary General, Deputy Secretary General, the Committee of Ministers and other bodies and major administrative entities on programme and budgetary questions.

Directorate of Legal Advice and Public International Law enables the Secretary General to fulfil its role as the depositary of the CoE treaties, Head of the Secretariat and representative of the legal personality of the Organisation in conformity with the General Agreement on Privileges and Immunities.

Directorate of Internal Oversight provides independent oversight, objective assurance and consulting services to add value to and improve the Organisation's operations.

European Directorate for Quality of Medicines & Healthcare protects the public health by enabling development, implementation and monitoring of applications.[32]

4. Significant Conventions Adopted Under the CoE Other Than the ECHR

The CoE is home to key European conventions, resolutions, declarations, conclusions and agreements that protect various areas of human rights. The crown of this work and its great achievement is the ECHR.[33] However, over the years, the protection of human rights has been extended by numerous other legal instruments, some of which have set up independent human rights monitoring mechanisms:[34]

European Social Charter (1961) protects fundamental labour and social rights. Its monitoring procedure is based on national reports submitted by States and a collective complaints procedure. The developments in labour law and social policies led to revisions in the Charter, which entered into force in 1999.

32 Council of Europe, n.d.b.
33 Council of Europe, n.d.c.
34 Polakiewicz, 2019.

Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (1981) and its Additional Protocol (2001) were revised and merged into a single treaty, Convention 108+, through an amending protocol, which was opened for signature on 10 October 2018.

European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1987) set up a preventive mechanism to protect persons deprived of their liberty, based on a system of visits by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

European Charter for Regional or Minority Languages (1992) protects regional or minority languages as part of Europe's cultural wealth. It protects linguistic rights and the committee of independent experts pursues a human rights approach in its monitoring activity.

European Commission against Racism and Intolerance (1993) was established by the first summit of heads of State and government in Vienna. It combats racism, xenophobia, antisemitism and intolerance for the protection of human rights. It regularly monitors the situation in all Member States and adopts general policy recommendations.

Framework Convention for the Protection of National Minorities (1995) involves country visits and country-specific opinions by an advisory committee of independent experts, which form the basis for the Committee of Ministers' targeted conclusions and recommendations.

European Convention on Realisation of Children's Rights (1996) aims to ensure that children can effectively exercise their rights in judicial proceedings that affect them. It focuses on procedural guarantees rather than creating new substantive rights, requiring States to enable children to be informed, heard, and consulted in accordance with their age and maturity. By strengthening children's participation and access to justice, the Convention gives practical effect to the principle of the best interests of the child within domestic legal systems.

Convention on Human Rights and Biomedicine (1997) is complemented by four protocols.

Convention on Action against Trafficking in Human Beings (2005) established a monitoring mechanism consisting of the Group of Experts on Action against Trafficking in Human Beings (GRETA), a multidisciplinary panel of 15 independent experts, and the Committee of the Parties to the Convention. GRETA draws up country evaluation reports, with an analysis of the implementation of the Convention by each party and proposals for further action. Based on GRETA's reports, the Committee of the Parties may adopt recommendations concerning the measures to be taken to implement GRETA's conclusions.[35]

Notably, only the ECHR provides a judicial process following submitted applications (complaints) by individuals or by Member States. It sets a minimum standard in the preservation of human rights and enables them to use an independent judicial

35 Haule, 2006.

system for their protection. The ECHR is the first international human rights instrument that protects civil and political rights and freedoms in the form of a treaty that legally binds signatory states. It establishes a national system of control over the application of rights. The ECHR's validity starts with its ratification as a necessary condition for the admission of states to the CoE. By ratifying the ECHR, the state guarantees to all persons under its jurisdiction that it will ensure the fulfilment of the rights and freedoms established by the Convention and its protocols. The expression "to all persons" emphasises the universal nature of the rights, as it protects the rights of citizens, foreigners and stateless persons.

5. The ECHR in General Terms

The ECHR is an international treaty of the CoE, adopted on 4 November 1950 in Rome, which entered into force in September 1953. Taking the UN Universal Declaration of Human Rights from 1948 as an inspiration, the creators of the Convention established its principles as the goals of the Council through the realisation and strengthening of human rights and fundamental freedoms. The Convention grew into the European Charter of Rights, while the ECtHR is similar to the constitutional courts in federal and republican legal systems.[36] By its legal nature, the ECHR is a multilateral international agreement, with legal consequences only for the states that have ratified it. As a product of intergovernmental cooperation, together with its protocols, it represents a source of international law. This legal status is confirmed by Article 38, para. 1a of the Statute of the International Court of Justice of the UN in The Hague.[37]

The ECHR was prepared in accordance with the rules of the 1969 Vienna Convention on the Law of Treaties, which refer to its entry into force, the rules for the interpretation of treaties, reservations, cancellations, etc.[38] The Vienna Convention directed the ECtHR to consider the ordinary meaning of the ECHR's terms, its object and purpose as an instrument for the protection of certain human rights, the subsequent practice of the contracting parties and any relevant rules of international law.[39] The ECtHR has developed the principles of autonomous interpretation, evolutive interpretation and the margin of appreciation doctrine. Autonomous interpretation explains that the ECtHR defines certain Convention terms, instead of the national laws of the States parties. Evolutive interpretation reflects the Court's understanding that the Convention is a 'living instrument', which must be interpreted in the light of present conditions. The margin of appreciation doctrine permits States a certain measure of discretion in the interpretation of the Convention.[40] Hence, the ECHR,

36 Campbell, 2017.
37 Carić, 2008, p. 85.
38 Carić, 2008, p. 85.
39 Wheatley, 2024, pp. 1–23.
40 McGoldrick, 2016, p. 22.

with its additional protocols and interpretations, forms the 'European constitution of public law in the field of human rights'.[41]

The ECHR is composed of a preamble, a normative part consisting of 59 articles and a total of 16 Protocols. The preamble emphasises that the preservation and development of basic human rights and freedoms are one of the ways to create greater unity among the CoE Member States. Its main goal is to take the first step towards a common realisation of the rights specified in the UN Universal Declaration of Human Rights. However, the ECHR only assumes certain rights from the Universal Declaration, precisely, only those that it can effectively realise and protect through general formulations. Furthermore, the ECHR, as a legal instrument, supervises its implementation.[42]

The normative part has 59 articles, with legal matters of a different nature – substantive legal provisions, procedural provisions and provisions related to general issues dedicated to the practical application of the Convention. The substantive legal provisions include the part of the Convention that follows the preamble (Articles 2–13) and the legal norms for exercising or limiting rights, freedom from discrimination (Article 14), the permitted modality for derogation of rights during war and other forms of general danger threatening the life of the nation (Article 15), along with Articles 16-18 that prescribe other types of restrictions on the Convention's rights. The procedural provisions regulate the ECtHR's organisation and competences, the procedure following an appeal filed before the Court, the criteria for evaluating the admissibility of the appeal, the course of the procedure and the participation of third parties interested in the procedure (Articles 19–51). The general provisions are regulated in Articles 52–59, including the territorial application of the ECHR, the exclusion of other ways of resolving disputes, the right to make reservations regarding the ECHR's text and the possibility of its cancellation.[43]

Protocols, which are an integral part of the convention, can be divided into two types: Protocols that regulate issues of a material-legal nature and a procedural-legal nature. The material-legal rights are located in Protocols 1, 4, 6, 7, 12 ad 13, while the procedural-legal rights are located in Protocols 2, 3, 5, 8, 9, 10, 11, 14, 15 and 16. Most of these protocols lost their legal validity after the entry into force of Protocol 11 in 1999. It conferred a stronger Court capacity for its role as overseer of the European public order in human rights, since its procedural action was strengthened by a more coherent set of remedies and admissibility tests. The Court's role is only referred to in the pan-European system of human rights protection. However, this institutional position of the Court sidestepped the increased difficulties that the ECHR had to face after Eastern European enlargement and the overwhelming number of applications it was called upon to decide.[44]

41 Wheatley, 2019, pp. 175–180.
42 Caca-Nikolovska, 2009, str. 182.
43 Vikćević and Ćupić, 2013.
44 Repetto, 2013.

The legal environment during the ECHR's adoption and the interest of national governments to protect a certain corpus of rights caused the creators of this multilateral legal instrument to consider the protection of civil and political rights. At the time of the ECHR's adoption, these rights were in an established legal form based on the natural law founded in the 18th century. Therefore, the ECHR is not an international protective mechanism for social, economic and cultural rights as these rights appeared on the legal scene in the 20th century. Hence, if it were incorporated in the ECHR, it could become a reason for its non-acceptance by certain states. Therefore, the creators opted for a more cautious approach, in contrast to the Universal Declaration of the UN, whose content covers economic and social rights. The ECHR rights are divided into two categories: affirmative rights, whose exercise is not in question, and rights that are imposed on the state as a positive and negative obligation. The negative obligation requires the state to refrain from interfering and respect the established human rights and freedoms. The positive obligation is where the state must take actions for ensuring the human rights, and 'mainly have financial implications'.[45]

The ECHR's system of human rights protection puts the individual and their rights at the centre, unlike other similar treaties that are more concerned with systemic and mass violations of rights. Human rights have long been the exclusive domain of states and any attempt to internationalise this issue has been perceived as a violation of the sovereign rights of the state. The ECHR is one of the first documents based on objective standards and the right of the individual to seek protection against the abuse of rights and freedoms by state authorities. In principle, the ECHR distinguishes several basic legal principles and doctrines that shape the ECtHR's operations. The principle of subsidiarity protects human rights with an identical character as the one prescribed by the national level for the constitutional courts. The principle of subsidiarity implies that the system of protection established in the ECHR has an additional character concerning the national system of human rights protection. It allows each state to prevent human rights violation before the procedure is initiated in the ECtHR. Hence, the applicant must exhaust all effective national legal mechanisms before turning to the ECtHR.

45 Repetto, 2013.

This basic principle is followed by the doctrine of the fourth instance[46], according to which the Court does not examine whether the law in the specific case has been correctly applied. Instead, it determines whether a certain act or action by a state authority violated the right protected by the ECHR. This doctrine implies that the Court, when evaluating the submitted application, is not bound by the national court's case facts. According to the doctrine of freedom in decision-making, the Court respects the right of each state to an autonomous judicial, administrative or legislative authority regarding the content of the values.

Another important principle is proportionality, according to which the Court determines the fair balance between the general interest of the community and the protection of individual rights when evaluating each case. The Court can refer to other sources of international law. These sources include relevant CoE instruments and the instruments of other international organisations from the specific field. The principles of efficient, consistent and autonomous interpretation of the Convention, within its effective and practical applicability, are of great importance for the Court. These principles reduce the theoretical or illusory applicability of the ECHR. When the Court considers the submitted application, it is not guided by the national definitions of titles and principles in criminal, administrative or civil proceedings, and gives an autonomous meaning in accordance with the normative text of the ECHR. According to the interpretive doctrine, the ECHR is a living document. The meaning of its norms is determined according to the time when the interpretation was made, instead of according to the meaning of the norms at the time of adoption.

Each Member State has the right to put a reservation on some of the conventional provisions, shaping the action of the Court. The stated reservation must be clear, precise and concise. It must not be provisional, indefinite, general and imaginary, expressed by a state that does not exist at the time of its publication. The importance of this legal document is confirmed by the States' signatures as a necessary condition for full CoE membership. The ratification procedure was opened for signature by the then 15 Member States in 1950. The ECHR is significant for three reasons: the rights and freedoms of everyone are guaranteed by the "contracting states" according to the regulations of international law, it is the first adopted international agreement on

46 The doctrine of the fourth instance expresses the ECtHR' understanding of its own role within the Convention system. The Court consistently emphasises that it is not a further level of appeal above national courts and does not function as a supreme or cassation court for domestic legal systems. Its task is therefore not to verify whether national courts have correctly established the facts of a case or properly interpreted and applied domestic law. Instead, the Court limits its review to assessing whether the effects of a national decision or the conduct of public authorities are compatible with the rights guaranteed by the ECHR. Even if a national court has made errors of fact or law, such errors do not automatically engage the responsibility of the State under the ECHR. The Court will intervene only where those errors result in arbitrariness, manifest unreasonableness, or procedural unfairness of such gravity that a ECHR right is impaired. By adhering to this doctrine, the Court respects the principle of subsidiarity and the autonomy of national judicial systems, while preserving its own function as a guardian of Convention rights rather than a "fourth-instance" appellate body.

human rights with a concrete protection mechanism, and parliaments and judicial bodies have a solid human rights reference point that helps them enact and interpret laws.

From the 1950s to the end of the 1980s, the ECHR was applied only in Western European countries. With the collapse of communism in Central and Eastern European countries, the CoE decided to accept these countries and entered a new phase. The ECHR began its "second" life, playing a key role in connecting the European East and West. Accession to the ECHR and CoE membership was extremely important for countries with a former socialist orientation. Historically, the CoE is the oldest regional international organisation formed by Western European states whose legal visibility in international law was acquired in London. Article 3 of the CoE statute obliges the ECHR signatory states to respect the rule of law, which implies that the Member States should enable the full and unhindered exercise of human rights and fundamental freedoms within their legal systems. The basic guarantee in the Convention was supplemented by additional rights stipulated in Protocols 1, 4, 6, 7, 11, 12, 13 and 14. However, with Protocol 14, which entered into force on 1 July 2010, the ECtHR's procedure and organisation changed. The procedural reform was continued with Protocols 15 and 16. On 2 October 2013, Protocol 16 was opened for signature by the CoE Member States.

6. Relevance of the ECHR

The ECHR's relevance should be analysed doctrinally and practically. A doctrinal analysis includes the theoretical premises enshrined in the alternative between dualism and monism of domestic law *vis-a-vis* international law, the ECHR's impact on national legal orders and its constitutional status in domestic legal order. This analysis follows the implementation of the ECtHR jurisprudence in the domestic legal order and the interactions between different legal practices at international and national levels. In some states, the ECHR is not subject to *lex posteriori derogat legi priori*; however, it takes precedence over all conflicting constitutional norms. Per the monist-dualist theory, the status of these systems towards the ECHR can be characterised as strongly monist (Austria, Belgium, the Netherlands, Spain and Switzerland). However, the formal distinctions between systemic monism and dualism *ex ante* does not determine the ECHR's status in national law *ex post*. What matters are if and how the ECHR is incorporated. For example, under Article 55 of the French Constitution, France is a monist country. However, for decades, this article was overridden by the prohibition of judicial review of laws. Similarly, Belgium is a dualist state; however, its courts, on their own and without constitutional authorisation, embraced a sophisticated monism concerning the ECHR (and EU law).[47] Moreover, a doctrinal analysis refers to the formal understanding of the ECHR's reception process,

47 Greer, 2006.

as a first step in explaining its impact on national legal systems. This addresses the ranking that the legal system assigns to the ECHR in the national hierarchy of norms and the Convention's guarantees directly binding on public authority. However, can these guarantees be pleaded before national courts and can judges directly enforce them against conflicting national norms, including statute? This remains the most frequently asked question regarding the relationship between the ECHR and the national legal system.

The practical analysis of the ECHR's relevance requires a closer examination of specific cases regarding their (non) implementation by the national constitutional and regular courts in the Member States. Comparative inquiries share the view that CoE's law is, in several cases, marked by a "conflict of laws". However, there is an increasing compliance with the ECtHR's judgments in traditionally dualistic countries. Hence, scholars state that the dualistic or monistic approach of a legal order is no longer relevant to the ECHR's impact. Nonetheless, there is a trend of reconciliation of the traditional image of the ECtHR to intervene subsidiarily in human rights violation cases, that is, after domestic remedies have been exhausted. The recent practice of pilot judgments operated as *a priori* judgment regarding an unpredictable number of cases entailing a systematic violation of a certain right. In these cases, the national legal systems faced the complexity of the ECHR's impact by expanding the channels of interaction, from Parliaments to constitutional or regular courts judges. Furthermore, articulating judicial discourse regarding the ECHR, as a form of internal dialogue between judicial actors, is very important.

The ECHR has constitutional relevance in domestic law, which stems from an internal process of contestation and continuous reassessment of competences and boundaries,[48] influencing the ways in which national fundamental rights are protected and enhanced. This influence is not synonymous with better and/or higher protection of national rights although the subsidiarity imperative limits the ECHR's action to protecting a minimum standard of rights. The commitment to subsidiarity has legitimised the Court before national courts and institutions, as it has respected the basic features of national identities. However, it has not prevented its case law from questioning some basic assumptions of constitutional models by endorsing a constitutional scenario in which the state and the individuals are often deemed to be in conflict. Hence, the "living instrument" Court doctrine and the evolutive method of interpretation created the ECHR's doctrinal position in the CoE's legal space and the national legal systems. To borrow from a former President of the Court, Sir Humphrey Waldock, 'The meaning and content of the provisions of the Convention will be understood as intended to evolve in response to changes in legal or social concepts'.[49]

48 Keller and Stone-Sweet, 2008, p. 686: 'The assumption that dualistic States have, a priori, an unfriendly attitude towards international law, and will, therefore, generate a relatively poorer rights record, is untenable.'.
49 Waldock, 1981, p. 547.

The ECHR established a pan-European constitutional order in human rights. It is closely related to the construction of an ordered pluralism, with different constituencies entitled to concur with the Court, particularly, for rights that do not embody a clear-cut preference for individual protection over public interest. The ECHR's constitutional agency is not discussed when the ECtHR is called upon to ascertain the violations of Article 3 of the Convention, as the European consensus on the values enshrined therein is widely shared. However, the more its judicial action is contested due to the lack of consideration for basic national interests, the better its 'constitutional relevance' can be understood, starting from the consideration the Court gives to national claims and interests. Thus, the focus on margin of appreciation regarding the Member States and the changing interactions with the EU represents a key element for such an inquiry.

7. The European Social Charter

The European Social Charter represents one of the principal instruments for the protection of social and economic rights within the European human rights framework. Adopted in 1961 and revised in 1996,[50] the Charter complements the ECHR by addressing a broader spectrum of rights related to labour, social protection and human security, ensuring a dignified and decent standard of living. While the Convention primarily focuses on civil and political rights, the Charter affirms the importance of economic and social dimensions of human dignity within community life. At its core lies the commitment to safeguard economic and social democracy, underpinned by the principles of social justice and human well-being.

The Charter is a significant legal instrument that enshrines the right to work under fair and equitable conditions, the right to just remuneration, access to social security, protection against poverty and social exclusion, the right to housing and specific rights for children, older persons and individuals with disabilities. Furthermore, it guarantees trade union freedoms, including the right to form and join trade unions,

50 Council of Europe, 1996. All workers have the right to safe and healthy working conditions. – All workers have the right to a fair remuneration sufficient for a decent standard of living for themselves and their families. - All workers and employers have the right to freedom of association in national or international organisations for the protection of their economic and social interests. – All workers and employers have the right to bargain collectively. – Children and young persons have the right to a special protection against the physical and moral hazards to which they are exposed. – Employed women, in case of maternity, have the right to a special protection. – Everyone has the right to appropriate facilities for vocational guidance with a view to helping him choose an occupation suited to his personal aptitude and interests. – Everyone has the right to appropriate facilities for vocational training. – Everyone has the right to benefit from any measures enabling him to enjoy the highest possible standard of health attainable. – All workers and their dependents have the right to social security. – Anyone without adequate resources has the right to social and medical assistance. – Everyone has the right to benefit from social welfare services, etc.

collective bargaining and strike. These provisions reflect a vision wherein individual welfare and social cohesion are prioritised. The 1996 Revised Charter expanded and modernised these protections by incorporating new rights, such as protection against poverty, the right to housing, the rights of elderly persons and the promotion of gender equality in working life, adapting the Charter to emerging societal challenges, including the rise of precarious employment and the demand for gender equity.

As a legally non-binding yet normatively powerful document, the Revised Charter functions as a key mechanism for the promotion and monitoring of social rights across Europe. It comprises 31 substantive rights, particularly emphasising the right to work, just conditions of employment, fair remuneration, freedom of association, social security, protection from poverty and exclusion and the right to housing. Unlike several human rights instruments that articulate abstract guarantees, the Charter imposes specific and concrete obligations on state parties, enabling the effective evaluation of national social policy frameworks. The oversight of the Charter's implementation is entrusted to the European Committee of Social Rights (ECSR), an independent body composed of legal experts.[51] Member States must submit periodic reports, following a rotating schedule, detailing their compliance with Charter provisions. The ECSR issues legal assessments in the form of conclusions, which, although not legally binding, carry significant political and moral authority. Moreover, the 1995 Additional Protocol introduced the Collective Complaints Procedure, empowering international NGOs, trade unions and certain national institutions to lodge complaints regarding violations of the Charter. While the outcomes of these procedures are non-binding, they have had a demonstrable influence on states to amend national laws and policies.

Beyond its monitoring function, the Charter has evolved into a key normative reference point in European legal and policy discourse. Its interpretative authority, as developed by the ECSR, has informed constitutional debates and judicial reasoning in several Member States, particularly those with monist legal systems. Although the EU is not a party to the Charter, the instrument has influenced EU legal developments.[52] For instance, the EU Charter of Fundamental Rights incorporates several provisions inspired by the European Social Charter, particularly regarding social protection, labour rights and the right to strike. During the 2008 global financial crisis and subsequent austerity measures, civil society actors and legal scholars invoked the Charter to challenge the erosion of social protections. Notably, the ECSR concluded that certain austerity policies adopted by Greece violated the Charter, affirming that fiscal consolidation must be balanced with the obligation to protect vulnerable populations.

Nevertheless, the Charter's effectiveness remains circumscribed by several structural limitations. Not all CoE Member States have ratified the Revised Charter or

51 The ECSR was created by Article 25 of the European Social Charter to monitor States' compliance with the rights contained in the Charter. Child Rights International Network, 2018.
52 De Schutter, 2016.

accepted all its provisions. The non-binding nature of the ECSR's findings limits their enforceability, as implementation depends on the political will of national authorities. Furthermore, national courts are not formally obligated to follow the ECSR's interpretations, although some, particularly France, Italy and Sweden, have cited the Charter in their jurisprudence.[53]

An ongoing debate persists regarding the legal status and justiciability of international social rights, enforceable entitlements, restricting individuals' access to legal remedies for violations. The lack of universal ratification, the limited legal enforceability of the ECSR's conclusions and the heterogeneous commitment to social rights across Europe reflect enduring tensions between economic imperatives and social justice. Despite these challenges, the European Social Charter remains an indispensable normative instrument for advancing human dignity and promoting equitable and inclusive societies. It constitutes a cornerstone of the European human rights architecture and offers a framework of guarantees for social justice and a set of standards and mechanisms for the realisation of economic and social rights. As European societies confront complex transformations, including demographic change, digitalisation and climate challenges, the Charter serves as a vital guide for policy-making that prioritises human well-being and reinforces the foundational values of solidarity, equality and dignity.

8. Conclusion

Even though the post-WWII period increased the commitment to the principle of sovereignty, most Western European states were ready to sacrifice a degree of their hard-won sovereignty to CoE as an intergovernmental body charged with maintaining peace and security. These two incompatible post-war needs overlap with the paradox inherent in the principle of sovereignty, shown in Arendt's quote.[54] In the aftermath of WWII and in the face of the Cold War, Western European countries needed to rebuild the so-called international community in Europe. The CoE's establishment was a way of strengthen the states' unity to protect their sovereignty from the "threats" that might stem from other states' acts and policies. In the face of fears of another war and the challenge of communism, European recovery, prosperity and security required new political and legal arrangements, including a regional human rights regime. The

53 Spangolo, 2023.

54 It had been hidden throughout the history of national sovereignty that sovereignties of neighbouring countries could come into deadly conflict in the extreme case of war and in peace. It became clear that full national sovereignty was possible only as long as the comity of European nations existed; it was this spirit of unorganised solidarity and agreement that prevented any government's exercise of its full sovereign power. Theoretically, in international law, it had always been true that sovereignty is nowhere more absolute than in matters of 'emigration, naturalization, nationality, and expulsion'. However, practical consideration and the silent acknowledgement of common interests restrained national sovereignty until the rise of totalitarian regimes. See: Arendt, 1976, p. 278.

preservation of Europe was tied to human rights, the rule of law and democracy and the preservation of sovereignty, which became the ECHR's interdependent goals. The CoE has produced several important conventions, agreements and protocols. The most important is the ECHR, concluded on 4 November 1950, which has been supplemented by 16 Protocols. All these documents are prepared and negotiated within the CoE's institutional framework.

The CoE has been at the forefront of establishing and protecting human rights through binding treaties, non-treaty-based mechanisms and institutions. In most cases, when the European system of human rights protection is mentioned, it refers to the ECHR and the ECtHR. Some authors consider this system as the most successful, effective and well-known international system of human rights protection.55 While it is going through an increasingly difficult period, its success in the previous decades inspires some optimism about its future. The CoE is seen as a mechanism of pan-European cooperation for preserving and promoting human rights, democracy and rule of law. Its cooperation in legal and human rights fields, where common European standards are developed and monitored and assistance is provided for the implementation of these standards, and the results of such monitoring, is an essential contribution to the rule of law in Europe. The Parliamentary Assembly's documents are an important driving force for state's legal systems and greater coherence between them for justice. It gives rise to common legal standards, which reflect rule of law principles, building a common European legal space.

The ECHR contains several rule-of-law-related provisions and Court judgments, which underline its relevance. Referring to the preamble, the Court stated that 'one of the reasons why the signatory Governments decided to take the first steps for the collective enforcement of certain of the rights stated in the Universal Declaration of Human Rights was their profound belief in the rule of law'. Several subsequent judgments have confirmed that principles, such as rule of law, legality, efficiency, effectiveness, proportionality and subsidiarity, are the most important mechanisms for the ECHR's application and interpretation. The ECtHR case law has clarified that all these principles inspire the ECHR and is inherent in all its articles. Based on this case law, it is possible to list several requirements and sub-principles that form the CoE`s law. The adherence of all CoE Member States to the ECHR and their being subject to the ECtHR's jurisdiction was highly instrumental in creating a common European core of legal requirements, which is still under development.

55 Dikov and Chernishova, 2023.

Bibliography

Arban, E. (2018) 'Carlo Cattaneo and Gaetano Salvemini: The Modernity of Their Federalism'. [Online]. Available at: https://ssrn.com/abstract=3122094 or http://dx.doi.org/10.2139/ssrn.3122094 (Accessed: 3 November 2025).

Arendt, H. (1976) *The Origins of Totalitarianism*. New York: Harcourt Brace Jovanovich.

Bates, E. (2010) *The Evolution of the European Convention on Human Rights: From its inception to the creation of a permanent court of human rights*. Oxford: Oxford University Press. doi:10.1093/acprof:oso/9780199207992.001.0001.

Caca-Nikolovska, M. (2009) 'The European Convention on Human Rights – an international and national legal norm in the field of the protection of human rights and freedoms', *Macedonian Academy of Sciences and Arts,* p. 182.

Campbell, T. (2017) 'Human rights morality and human rights practice: an interactive approach', in T. Campbell and K. Bourne (eds.) *Political and Legal Approaches to Human Rights*. London: Routledge, p. 25. https://doi.org/10.4324/9781315179711.

Carić, S. (2008) 'Uticaj Evropske konvencije o ljudskim pravima na međunarodno pravo i pravo Srbije', *Zbornik radova Pravnog fakulteta u Nišu,* pp. 85–104.

Child Rights International Network (2018) European Committee of Social Rights' [Online]. Available at: https://archive.crin.org/en/guides/un-international-system/regional-mechanisms/european-committee-social-rights.html (Accessed: 27 January 2026).

Churchill, W. (1946) *Speech delivered at the University of Zurich, 19 September 1946* [Online]. Available at: https://rm.coe.int/16806981f3 (Accessed: 18 June 2024).

Council of Europe (1949) *Statute of the Council of Europe*, London, 5 May. ETS No. 1 [Online]. Available at: https://rm.coe.int/1680306052 (Accessed: 27 January 2026).

Council of Europe (1950) *Convention for the Protection of Human Rights and Fundamental Freedoms* [Online]. Available at: https://www.echr.coe.int/documents/convention_eng.pdf (Accessed: 27 January 2026).

Council of Europe (1996) *European Social Charter (Revised)*, Strasbourg, 3 May. CETS No. 163 [Online]. Available at: https://rm.coe.int/168007cf93 (Accessed: 27 January 2026).

Council of Europe (2013) The Council of Europe and international non-governmental organisations (INGOs) [Online]. Available at: https://edoc.coe.int/en/conference-of-ingos/5704-the-council-of-europe-and-international-non-governmental-organisations-ingos.html (Accessed: 27 January 2026).

Council of Europe (2015) *Statute of the Council of Europe*. [Online]. Available at: https://assembly.coe.int/nw/xml/rop/statut_ce_2015-en.pdf (Accessed: 6 June 2024).

Council of Europe (n.d.a) *Article 14 case-law*. [Online]. Available at: https://www.coe.int/en/web/help/article-echr-case-law (Accessed: 11 July 2024).

Council of Europe (n.d.b) 'Organisation and mandates of the Secretariat' [Online]. Available at: https://www.coe.int/en/web/organisation/organisation-and-mandates-of-the-secretariat (Accessed: 27 January 2026).

Council of Europe (n.d.c) *Full list: Chart of signatures and ratifications of Council of Europe Treaties*. [Online]. Available at: http://conventions.coe.int/Treaty/Commun/ListeTraites.asp?CM=8&CL=ENG (Accessed: 2 June 2024).

Council of Europe: Commissioner for Human Rights [Online]. Available at: https://co-guide.org/mechanism/council-europe-commissioner-human-rights (Accessed 1 June 2024).

Council of Europe Office in Georgia (n.d.) *European Court of Human Rights*. [Online]. Available at: https://www.coe.int/en/web/tbilisi/europeancourtofhumanrights (Accessed: 17 June 2024).

de Leeuw, W. (2005) 'The Council of Europe: What Is It?', in *The Development of Science-based Guidelines for Laboratory Animal Care*. [Online]. Available at: https://www.ncbi.nlm.nih.gov/books/NBK25399/#a2000b24cddd00025 (Accessed: 19 June 2024).

De Schutter, O. (2016) *The European Social Charter in the context of implementation of the EU Charter of Fundamental Rights* European Parliament, Directorate-General for Internal Policies, Policy Department C: Citizens' Rights and Constitutional Affairs. [Online]. Available at: https://www.europarl.europa.eu/RegData/etudes/STUD/2016/536488/IPOL_STU(2016)536488_EN.pdf (Accessed: 27 January 2026).

Dikov, G., Chernishova, O. (2023) 'The European Human Rights System', GlobaLex, Hauser Global Law School Program, New York University School of Law, July/August. [Online]. Available at: https://www.nyulawglobal.org/globalex/european_human_rights_system1.html (Accessed: 16 July 2024).

Duranti, M. (2017) *The Conservative Human Rights Revolution: European identity, transnational politics, and the origins of the European Convention*. New York: Oxford University Press. https://doi.org/10.1093/acprof:oso/9780199811380.001.0001.

Europe's Human Rights Watchdog (n.d.a) Council of Europe. [Online]. Available at: https://www.europewatchdog.info/en/council-of-europe/ (Accessed: 21 June 2024).

Europe's Human Rights Watchdog (n.d.b) *Council of Europe: Committee of Ministers*. [Online]. Available at: https://www.europewatchdog.info/en/structure/committee-of-ministers/ (Accessed: 16 June 2024).

Europe's Human Rights Watchdog (n.d.c) *Court*. [Online]. Available at: https://www.europewatchdog.info/en/court/ (Accessed: 21 June 2024).

European Society (2019) '170 years since Victor Hugo's speech about the "United States of Europe"' [Online]. Available at: https://www.thenewfederalist.eu/170-years-since-victor-hugo-s-speech-about-the-united-states-of-europe?lang=fr (Accessed: 27 January 2026).

European Court of Human Rights (n.d.) *Rules of Court*. [Online]. Available at: https://www.echr.coe.int/documents/d/echr/Rules_Court_ENG (Accessed: 22 June 2024).

Greer, S. (2006) *The European Convention on Human Rights: Achievements, Problems and Prospects*. Cambridge: Cambridge University Press. https://doi.org/10.1017/CBO9780511494963.

Haule, R.R. (2006) 'Some reflections on the foundation of human rights – are human rights an alternative to moral values?', *Max Planck Yearbook of United Nations Law*, 10(1), pp. 367–395. https://doi.org/10.1163/138946306783559913.

High-Level Reflection Group of the Council of Europe (2022) Report of the High-Level Reflection Group of the Council of Europe [Online]. Council of Europe. Available at: https://rm.coe.int/report-of-the-high-level-reflection-group-of-the-council-of-europe-/1680a85cf1 (Accessed: 27 January 2026).

Janis, M.W., Kay, R.S., Bradley, A.W. (2008) *European Human Rights Law: Text and Materials*. 3rd edn. Oxford: Oxford University Press.

Kant, I. (1795) *Perpetual peace; a philosophical essay* [Online]. Translated by M. Campbell Smith. London: Swan Sonnenschein & Co. Available at: https://dn790007.ca.archive.org/0/items/perpetualpeaceph00kant/perpetualpeaceph00kant.pdf (Accessed: 27 January 2026).

Koskenniemi, M. (2011) 'History of International Law, since World War II', *Max Planck Encyclopedia of Public International Law*. Oxford Public International Law. [Online]. Available at: https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e714 (Accessed: 27 January 2026).

McGoldrick, D. (2016) 'A defence of the margin of appreciation and an argument for its application by the Human Rights Committee', *International & Comparative Law Quarterly*, 65(1), pp. 21–60. https://doi.org/10.1017/S0020589315000457.

Merrills, J.G. (1993) *The Development of International Law by the European Court of Human Rights*. 2nd edn. Manchester: Manchester University Press.

Ministry of Foreign Affairs and International Cooperation (Italy) (n.d.) *Committee of Ministers*. [Online]. Available at: https://rpcoe.esteri.it/en/litalia-e-il-coe/il-consiglio-deuropa/committee-of-ministers/ (Accessed: 19 June 2024).

Northeastern University (n.d.) *European Court of Human Rights*. [Online]. Available at: https://ijrcenter.org/european-court-of-human-rights/ (Accessed: 20 June 2024).

Polakiewicz, J. (2019) 'Council of Europe (COE)', *Max Planck Encyclopedia of Public International Law.* Oxford Public International Law. [Online]. Available at: https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e607 (Accessed: 27 January 2026).

Repetto, G. (ed.) (2013) *The Constitutional Relevance of the ECHR in Domestic and European Law: An Italian Perspective*. Cambridge: Intersentia. [Online]. Available at: https://www.corteidh.or.cr/tablas/28469-1.pdf (Accessed: 29 June 2024).

Roobol, W. (2002) 'Aristide Briand's Plan: The Seed of European Unification', in Spiering, M. and Wintle, M. (eds) *Ideas of Europe since 1914*. London: Palgrave Macmillan, pp. 32–46. https://doi.org/10.1057/9781403918437_3.

Sulyok, G. (2022) 'Treaties, Historical Origins', *Max Planck Encyclopedia of Public International Law.* [Online]. Available at: https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e607 (Accessed: 5 June 2024).

Trimble, D. (1998) *David Trimble – Nobel Lecture*. NobelPrize.org, 10 December. [Online]. Available at: https://www.nobelprize.org/prizes/peace/1998/trimble/lecture/ (Accessed: 16 July 2024).

Viljanen, J. (2008) 'The role of the European Court of Human Rights as a developer of international human rights law', *Cuadernos Constitucionales de la Cátedra Fadrique Furió Ceriol*, (62), pp. 249–265.

Waldock, H. (1981) 'The evolution of human rights concepts and the application of the European Convention on Human Rights', in *Mélanges offerts à Paul Reuter: le droit international: unité et diversité*. Paris: Pedone, pp. 535–547.

Wheatley, S. (2019) *The Idea of International Human Rights Law*. Oxford: Oxford University Press. https://doi.org/10.1093/oso/9780198749844.001.0001.

Wheatley, S. (2024). Interpreting the ECHR in light of the increasingly high standards being required by human rights: Insights from social ontology. *Human Rights Law Review, 24*(1), Article ngad031. pp. 1–23. https://doi.org/10.1093/hrlr/ngad031.