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EUROPEAN HUMAN RIGHTS PROTECTION SYSTEM

In Europe, the principal judicial and quasi-judicial organs responsible for defining and overseeing States' compliance with their regional human rights obligations are the European Court of Human Rights and European Committee of Social Rights, both created under the auspices of the Council of Europe. In addition, the Council of Europe Commissioner for Human Rights serves as an independent monitor, highlighting issues of concern in the region.

The Council of Europe is an intergovernmental organization with 47 Member States; its connection to the European Union is that the European Union itself, its 28 EU Member States, and candidates for EU membership are required to ratify the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights (ECHR)). *See* Treaty of the European Union, art. 6.

EUROPEAN COURT OF HUMAN RIGHTS

Seat: Strasbourg, France **Instrument:** European Convention on Human Rights **Operating Since:** 1959



History

The European Court of Human Rights (ECtHR) is a regional human rights judicial body based in Strasbourg, France, created under the auspices of the Council of Europe. The Court began operating in 1959 and has delivered more than 10,000 judgments regarding alleged violations of the European Convention on Human Rights.

In 1998, the European human rights system was reformed to eliminate the European Commission of Human Rights, which previously decided the admissibility of complaints, oversaw friendly settlements, and referred some cases to the Court – in a manner similar to the current Inter-American System. Now, individual victims may submit their complaints directly to the European Court of Human Rights.

The European Court, or “Strasbourg Court” as it is often called, serves a complementary role to that of the European Committee of Social Rights, which oversees European States’ respect for social and economic rights.

Jurisdiction

The Court has jurisdiction to decide complaints (“applications”) submitted by individuals and States concerning violations of the Convention for the Protection of Human Rights and Fundamental Freedoms (commonly referred to as the “European Convention on Human Rights”), which principally concerns civil and political rights. It cannot take up a case on its own initiative. Notably, the person, group or non-governmental organization submitting the complaint (“the applicant”) does not have to be a citizen of a State party.

However, complaints submitted to the Court must concern violations of the Convention allegedly committed by a State party to the Convention and that directly and significantly affected the applicant. As of November 2018, there are 47 State parties to the Convention; these include the Member States of the Council of Europe and of the European Union. Some of these

States have also ratified one or more of the Additional Protocols to the Convention, which protect additional rights.

As of August 1, 2018, the Court also has advisory jurisdiction. Under Protocol 16 to the European Convention, which entered into force on August 1, the highest domestic courts in the States that are a party to the Protocol may request European Court advisory opinions on questions of interpretation of the European Convention and its protocols. The questions must arise out of cases pending before the domestic court. [IJRC]

Structure

In order to resolve many cases simultaneously, the ECtHR is organized into five sections, or administrative entities, which each have a judicial chamber. Each section has a President, Vice President, and a number of judges. The Court's 47 judges are selected by the Parliamentary Assembly of the Council of Europe from a list of applicants proposed by the Member States.

Within the Court, the judges work in four different kinds of groups, or "judicial formations." Applications received by the Court will be allocated to one of these formations:

1. **Single Judge:** only rules on the admissibility of applications that are clearly inadmissible based on the material submitted by the applicant.
2. **Committee:** composed of 3 judges, committees rule on the admissibility of cases as well as the merits when the case concerns an issue covered by well-developed case law (the decision must be unanimous).
3. **Chamber:** composed of 7 judges, chambers primarily rule on admissibility and merits for cases that raise issues that have not been ruled on repeatedly (a decision may be made by a majority). Each chamber includes the Section President and the "national judge" (the judge with the nationality of the State against which the application is lodged).
4. **Grand Chamber:** composed of 17 judges, the Grand Chamber hears a small, select number of cases that have been either referred to it (on appeal from a Chamber decision) or relinquished by a Chamber, usually when the case involves an important or novel question. Applications never go directly to the Grand Chamber. The Grand Chamber always includes the President and Vice-President of the Court, the five Section presidents, and the national judge.

Submitting an Application

Applications to the European Court of Human Rights must comply with the requirements described in Article 47 of the Rules of Court. Applicants should be aware that the Court periodically modifies its rules and procedures; in 2014, it began applying stricter requirements for individual applications.

To submit an application, applicants should use the application form, which is available online and must be filled out in its entirety. Copies of all relevant documents must be included along with the application, which must be submitted by postal mail.

A substantial majority of the applications submitted to the Court are struck from the list or declared inadmissible because they fail to meet one or more of the admissibility criteria. Please read the notes for filling in the application form and Your Application to the ECHR before beginning an application. The Court may choose not to examine an application that does not fulfill all of the requirements.

Proceedings before the Court are conducted primarily in writing; public hearings are rare.

There is no cost associated with submitting an application and the applicant may apply for legal aid to cover expenses that arise later in the proceeding.

While a lawyer is not necessary to lodge a complaint, applicants should have representation after the case is declared admissible, and must be represented by a lawyer in any hearing before the Court.

Applications to the ECtHR go through two phases: **admissibility** and **merits**. The specific nature of the case will dictate the speed and course of the proceedings. However, it may be months or years before an applicant receives a decision or judgment.

Admissibility

When the Court receives an application, the Court must determine if it meets all of the admissibility requirements. An admissibility decision may be made by a single judge, a three-judge committee, or a seven-judge chamber. To be declared admissible, an application must meet the following criteria:

1. Exhaustion of domestic remedies
2. Six-month application deadline (from the final domestic judicial decision)
3. Complaint against a State party to the European Convention on Human Rights
4. Applicant suffered a significant disadvantage

If an application fails to meet any of these requirements, it will be declared inadmissible and cannot proceed any further. There is no appeal from a decision of inadmissibility.

Applicants may use the ECHR's [Online Admissibility Checklist](#) to determine if their complaint satisfies the requirements. Additionally, the Court has created a short video on [Admissibility Conditions](#).

Merits

If an application is not struck from the list or declared inadmissible at an earlier stage, it will be assigned to one of the ECtHR's five sections and the State will be notified of the complaint. At this time, both parties will have the opportunity to submit observations to the Court. These observations may contain specific information requested by the Chamber or President of the Section, or any other material that the parties decide is relevant. The Chamber has the option to consider admissibility and merits separately or concurrently, but it must notify the parties if it plans to consider admissibility and merits together.

When a Chamber issues a judgment on the merits, there is a three-month period before the decision becomes final. During this period, either or both of the parties may request that the application be referred to the Grand Chamber. However, the Grand Chamber only hears a limited number of exceptional cases.

If the Court ultimately decides a case in favor of the applicant, it may award **just satisfaction** (monetary compensation for the damages suffered) and require the State to cover the cost of bringing the case. If the Court finds that there has been no violation, then the applicant is not liable for the State's legal expenses.

The **Committee of Ministers** of the Council of Europe is responsible for enforcing the Court's judgments. States are bound by the decisions of the Court and must execute them accordingly. Often this means amending legislation to ensure that the violation does not continue to occur. However, the Court does not have the authority to overrule a national decision or annul national laws.

Friendly Settlement

Prior to a decision on the merits, the Court will try to facilitate the arrangement of a **friendly settlement**. If a friendly settlement cannot be reached, the Court will then deliver a judgment on the merits. In instances where the Chamber hearing the case decides to issue an admissibility decision in conjunction with a judgment on the merits, the parties may include information about friendly settlements in the observation they submit to the Court.

Interim Measures

In exceptional cases, the Court may grant applicants "interim measures," which are designed to protect the applicant from further harm while the case proceeds before the Court. Requests for interim measures are only granted when there is an imminent risk of irreparable harm such as death or torture. They are most often granted in extradition and deportation cases.

EUROPEAN COMMITTEE OF SOCIAL RIGHTS

Seat: Strasbourg, France **Instrument:** European Social Charter **Operating Since:** 1965

The European Committee of Social Rights (previously, the Committee of Independent Experts on the European Social Charter) is a regional human rights body that oversees the protection of certain economic and social rights in most of Europe.

The European Committee of Social Rights was established under the auspices of the Council of Europe, pursuant to articles 24 and 25 of the 1961 European Social Charter. The Committee monitors implementation of the 1961 Charter, the 1988 Additional Protocol, and the 1996 Revised European Social Charter. It is unique among regional human rights mechanisms for its collective (as opposed to individual) complaint mechanism, and the flexibility it allows States in deciding which provisions of the Charter to accept.

Mandate

The Committee is designed to complement the European Court of Human Rights, which oversees compliance with the civil and political rights-centered European Convention on Human Rights. The Committee, for its part, oversees compliance with the economic and social rights-centered Social Charter. It does this by managing a State reporting system and a collective complaints procedure.

Unlike the European Convention on Human Rights, ratification of the European Social Charter is not required as a condition of membership in the Council of Europe. As a result, of the 47 Member States of the Council of Europe, 9 have ratified the 1961 Charter and an additional 34 have ratified the 1996 Revised Charter. The Committee reviews compliance with the Social Charter by these 43 States, with notable exceptions.

The Charter itself allows States to submit article-specific reservations, limiting the Charter provisions by which the State is bound, and to decide whether or not to participate in the innovative collective complaints procedure.

Structure

The 15 independent and impartial Committee members serve for six-year, renewable terms of office, as set out in the Rules of the Committee. It conducts approximately seven sessions per year with each session lasting three to five days.

The Bureau of the Committee directs the work of the Committee. It is composed of the President, one or more Vice-Presidents, and a General Rapporteur. Members of the Bureau serve for two-year periods and are eligible for reelection. The members of the Committee elect the members of the Bureau by secret ballot.

The President of the Bureau directs the work and chairs the meetings of the Committee. The Vice-President carries out duties delegated by the President. The General Rapporteur is responsible for ensuring that the Committee's conclusions and decisions are consistent and for informing the Committee about relevant case law.

Rights Contained in Social Charter

The 1961 European Social Charter enumerates 19 rights and principles which States parties accept as the "aim" of their respective national policies. The majority of these rights and principles can be characterized as labor rights. They relate to, among other things, the right to safe and healthy working conditions, the right to freely associate in organizations to protect one's economic and social interests, the right to bargain collectively, the right to fair pay, and the right to special protection in the case of maternity.

Social welfare rights comprise the remainder of the rights under the 1961 Charter. They relate, for example, to the right to benefit from social welfare services, the right of mothers and children to social and economic protection, and the right of workers and their dependents to social security.

The Revised Charter includes 12 new rights and principles, bringing the total number of rights-containing articles to 31. For the most part, the added rights relate to labor conditions, such as the right to dignity at work, the right to be informed and consulted in collective redundancy procedures, and the right to protection in the case of termination. The Revised Charter also provides for the right to equal opportunities and treatment in employment without discrimination based on sex, the right to protection against poverty, and the right to housing.

The European Social Charter is unique in that it permits States to select which articles by which they will consider themselves bound. Under the 1961 Charter, States are required to consider themselves bound by at least five of the following articles:

- Article 1 (Right to earn a living in an occupation freely entered upon)
- Article 5 (Right to freely associate in national or international organizations for the protection of one's economic and social interests)
- Article 6 (Right to collectively bargain)
- Article 12 (Right to social security)
- Article 13 (Right of those without adequate resources to social and medical assistance)
- Article 16 (Right of the family to appropriate social, legal, and economic protection)
- Article 19 (Right of migrant workers to protection and assistance)

Additionally, States parties to the 1961 Charter must select no less than 10 articles or 45 numbered sub-paragraphs in total by which to consider themselves bound.

Under the Revised Charter, States are required to consider themselves bound by at least six of the following articles:

- Article 1 (Right to earn a living in an occupation freely entered upon)
- Article 5 (Right to freely associate in national or international organizations for the protection of one's economic and social interests)
- Article 6 (Right to collectively bargain)
- Article 7 (Right of children and young persons to special protection against physical and moral hazards)
- Article 12 (Right to social security)
- Article 13 (Right of those without adequate resources to social and medical assistance)
- Article 16 (Right of the family to appropriate social, legal, and economic protection)
- Article 19 (Right of migrant workers to protection and assistance)
- Article 20 (Right to equal opportunities and equal treatment in matters of employment without sex-based discrimination)

Additionally, States parties to the Revised Charter must select no fewer than 16 articles or 63 numbered sub-paragraphs in total by which to consider themselves bound.

States that are party to the 1961 Charter or 1988 Additional Protocol may not ratify the 1996 Revised Charter without considering themselves bound by at least those provisions in the Revised Charter that correspond to the provisions by which they were bound under the earlier treaties.

National Reporting System

Each year, States parties to the European Social Charter submit a national report describing how they are implementing specific provisions of the Charter. The Charter provisions have been divided into four thematic groups and States report on one group each year, with the result being that a review of all of the provisions is accomplished for each State every four years.

The four thematic groups are:

- employment, training, and equal opportunities
- health, social security, and social protection
- labor rights
- children, families, and migrants

The Committee evaluates the reports and publishes conclusions about whether each State is in conformity with the Charter. Moreover, if a State does not act in response to the Committee's decision as part of the collective complaints procedure, and if, as a result, the State is not in compliance with the Charter, the Committee will also issue a recommendation to the State.

Following the conclusion of the national reporting procedure, the Council of Europe's Committee of Ministers adopts resolutions to close the supervision cycle and issues recommendations to the States calling on them to conform their activities to the Charter. Since the Committee of Ministers comprises government representatives from all Council of Europe Member States, this practice forms a method of enforcement of the Charter.

In April 2014, the Committee of Ministers altered the national reporting system so that it is easier for States that have accepted the collective complaints procedure to participate in the national reporting system. Since States that have accepted the collective complaints procedure have additional compliance and reporting obligations, the Committee of Ministers deemed the new reporting system necessary to create a more manageable system over time. This new arrangement is also intended to streamline and improve the European Committee of Social Rights' reporting and monitoring efforts.

Under the new reporting system, States that have accepted the collective complaints procedure will submit a simplified report every two years on average, rather than every year. Those States have been divided into two groups: Group A (France, Greece, Portugal, Italy, Belgium, Bulgaria, Ireland, and Finland) and Group B (Netherlands, Sweden, Croatia, Norway, Slovenia, Cyprus, and Czech Republic). States that have not accepted the collective complaints procedure submit normal reports regularly. The system's operation schedule is as follows:

The simplified reports should focus on the Committee's conclusions of non-conformity from the previous reporting cycle and comment on any questions that were raised. The Committee of Ministers also resolved to require States submitting simplified reports, i.e., States from Group A and Group B, to describe the steps taken to implement the Committee of Social Rights' decisions on collective complaints.

Collective Complaints Procedure

The Committee is also empowered to hear collective – not individual – complaints against States that have accepted this procedure. The Committee issues decisions regarding these collective complaints. So far, 15 States have accepted the jurisdiction of the Committee to hear complaints.

In 1995, the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints (Additional Protocol Providing for a Collective Complaints System) opened for signature, with the aim of improving the “effective enforcement of the social rights guaranteed by the Charter” through the creation of a collective complaints procedure. This agreement entered into force in 1998.

Under the Additional Protocol, several types of organizations are entitled to lodge complaints to the Committee regarding States' noncompliance with the Charter. They include:

- international employer organizations and trade unions, such as the European Trade Union Confederation (ETUC), Business Europe, and the International Organisation of Employers;
- certain international nongovernmental organizations; and
- national employer organizations and trade unions.

States may also give permission to national nongovernmental organizations (NGOs) to lodge complaints before the Committee; however, Finland is the only State to have done so.

Since 1998, the Committee has received over 100 complaints. Search the Committee's decisions by State, keyword, date and other criteria through its database.

Submitting an Application

Complaints submitted to the Committee must be in writing and addressed to the Secretary General, who then submits the complaint to the Committee. The complaint must contain the following information:

1. the name and contact information of the submitting organization
2. proof that the person submitting and signing the complaint is empowered to represent the organization
3. the State against which the complaint is filed
4. alleged victim(s) of the violation(s)
5. a statement indicating that the organization or trade union has standing to submit collective complaints under Article 1 of the Additional Protocol Providing for a Collective Complaints System (*standing*)
6. a statement indicating that the alleged violation(s) occurred after the date on which Additional Protocol Providing for a Collective Complaints System entered into force for the State (*ratione temporis*)
7. identification of the Charter provision(s) alleged to have been violated (Additional Protocol Providing for a Collective Complaints System, Article 4) (*ratione materiae*)
8. facts and arguments surrounding the alleged violation (Additional Protocol Providing for a Collective Complaints System, Article 4)

Additionally, complaints submitted by international or national NGOs should describe the organization's "particular competence" regarding the matters covered in the complaint, according to Article 3 of the Additional Protocol Providing for a Collective Complaints System.

Admissibility

After receiving a complaint, the Committee may request information and observations on admissibility from the complainants and the State, according to Article 6 of the Additional Protocol Providing for a Collective Complaints System. If the Committee determines that the formal requirements of a complaint have been met, then it declares the complaint admissible.

Merits

Once the Committee determines that a complaint is admissible, there is an exchange of "relevant written explanations or information" between the complainants and the State. The Committee may also hold a public hearing.

Following this process, the Committee prepares a report outlining its conclusions about whether or not the State has satisfactorily implemented the Charter. It forwards its decision to the complainants, the State, and the Committee of Ministers. The report is made public within four months of being forwarded.

Implementation

Implementation of the Committee's decisions does not end with the Committee itself. Rather, following a decision on the merits, the Committee of Ministers considers the report and adopts a resolution by a majority of voting States. If the Committee of Social Rights finds that the Charter has not been applied "in a satisfactory way," the Committee of Ministers may issue,

by a two-thirds vote among States parties to the Charter, a recommendation to the offending State.

After the Committee of Social Rights has issued its decision on the merits of the complaint, the State concerned must annually provide information about the steps it has taken to implement the Committee's recommendations to the Secretary General of the Council of Europe.

Originally, States were required to submit reports every two years, according to Article 10 of the Additional Protocol Providing for a Collective Complaints System, Article 21 of the 1961 Charter, and Article C of the 1996 Revised Treaty. In 2006, the States parties to the 1961 Charter and the Revised Treaty agreed instead to present annual reports on one of four thematic groups, a reporting process which is described in greater detail above.

If the Committee of Social Rights "raises new issues," the State concerned may also request that the Committee of Ministers take a vote to consult the Governmental Committee, a body of representatives of States parties that considers decisions of non-compliance by the Committee of Social Rights. *See* Additional Protocol Providing for a Collective Complaints System, art. 9. There must be a two-thirds majority among States parties to the Charter in order for the Committee of Ministers to consult the Governmental Committee about the new issues.

COUNCIL OF EUROPE COMMISSIONER FOR HUMAN RIGHTS

Seat: Strasbourg, France **Operating Since:** 1999

Part of the: European Human Rights System

The Council of Europe Commissioner for Human Rights is responsible for promoting respect for human rights in the 47 Council of Europe Member States through reports, dialogue, and recommendations to States. The Commissioner is intended to be an independent and impartial entity, led by an individual human rights expert. The office of the Commissioner for Human Rights began operating in 1999, having been established in a resolution adopted by the Council of Europe Committee of Ministers on May 7, 1999.

The Commissioner's responsibilities include assisting Member States in implementing regional human rights standards, promoting understanding and awareness of human rights in the region, identifying gaps in protection, facilitating the activities of National Human Rights Institutions and similar actors, and providing advice and information on human rights protection in Europe. The Commissioner carries out country visits, engages in dialogue with States and civil society, prepares thematic reports and advice, and engages in a range of awareness-raising activities.

Notably, the Commissioner is not authorized to decide individual complaints. While the Commissioner may receive information related to specific violations, the office is not a judicial body and cannot make any decisions with respect to such allegations. To learn about the

regional human rights complaints mechanisms in Europe, visit the pages on the [European Court of Human Rights](#) and [European Committee of Social Rights](#).

The current mandate holder is [Dunja Mijatović](#), the first woman to hold the position. [IJRC] Her predecessors are [Nils Muižnieks](#) (2012-2018), [Thomas Hammarberg](#) (2006-2012), and [Álvaro Gil-Robles](#) (1999-2006). Each Commissioner is elected by the Council of Europe Parliamentary Assembly (PACE) from a list of three candidates prepared by the Committee of Ministers. The Commissioner serves a non-renewable term of six years.

