

# International human rights law: Institutions and procedures

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The system under the European Convention on Human Rights

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# Topics to be addressed

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- The ECHR system in context
  - Key features of the ECHR system
  - Interpretation of the Convention by the European Court of Human Rights
  - A success story?
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# 1. The ECHR system in context

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- The traditions from which the ECHR derive
  - The Council of Europe's other human rights systems
  - The Convention and the European Union's human rights catalogue
  - The Convention is not interpreted in a vacuum
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# The system in context (2): ECHR Traditions

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- ECHR Preamble

- The UDHR tradition:

  - individual dignity as the primary normative value

- A common European liberal heritage:

  - An effective political democracy

  - The rule of law

  - Other features of a European heritage

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# The system in context

## (3): Other instruments

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- The European Social Charter (1961)
    - The European Committee for Economic and Social Rights
  
  - The European Convention for the Prevention of Torture (1987)
    - The European Committee for the Prevention of Torture
  
  - Framework Convention for the Protection of National Minorities (1995)
    - The Advisory Committee for the Protection of National Minorities
  
  - Convention for the Protection of Human Rights and Biomedicine (1997)
  
  - European Commission against Racism and Intolerance
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# The system in context

## (4): The ECHR and the EU

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- **Treaty of the European Union (1997) Article 6**
    - 1. The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States.
    - 2. The Union shall respect fundamental rights, as **guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950** and as they result from the constitutional traditions common to the Member States, as general principles of Community law.
  - **Treaty establishing a Constitution for Europe (2004): Part II Preamble (Charter of Fundamental Rights):**
    - This Charter reaffirms, with due regard for the powers and tasks of the Union and the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the **European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Union and by the Council of Europe and the case law of the Court of Justice of the European Union and of the European Court of Human Rights.**
  - **Mutual reliance of case law**
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# The system in context (5): Not interpreted in a vacuum

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- *Al-Adsani v. United Kingdom*, Reports 2001-XI § 55:
    - The Court must next assess whether the restriction was proportionate to the aim pursued. It reiterates that the Convention has to be interpreted in the light of the rules set out in the Vienna Convention on the Law of Treaties of 23 May 1969, and that Article 31 § 3 (c) of that treaty indicates that account is to be taken of “any relevant rules of international law applicable in the relations between the parties”. The Convention, including Article 6, cannot be interpreted in a vacuum. The Court must be mindful of the Convention’s special character as a human rights treaty, and it must also take the relevant rules of international law into account (see, *mutatis mutandis*, *Loizidou v. Turkey* (merits), judgment of 18 December 1996, Reports 1996-VI, p. 2231, § 43). The Convention should so far as possible be interpreted in harmony with other rules of international law of which it forms part, including those relating to the grant of State immunity.
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## 2. Key features of the system

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- A system for the protection of civil and political rights
  - The right to individual petition
  - The binding force of the judgments of the European Court of Human Rights
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# Key features (2): Civil and political rights

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- Civil and political rights
  
  - Socio-economic aspects of civil and political rights
    - the protection of profit-making activity, *Cha'are Shalom Ve Tsedek v. France*, Reports 2000-VII; *Autronic AG v. Switzerland*, Series A 178 (1990)
    - The protection of trade union rights under Article 11, *Young, James and Webster v. UK*, Series A 44 (1981)
    - The protection of cultural property, *Beyler v. Italy*, Reports 2000-I
    - Environmental rights protection, *Guerra and Others v. Italy*, Reports 1998-I
  
  - Individual or collective rights?
    - Article 34 "any person, non-governmental organisation or group of individuals"
    - Rights with primarily individual features: Articles 3, 5, 8, etc.
    - Rights with collective features: Articles 9, 11, P1 Article 1, etc.
    - *Church of Scientology of Paris v. France* (1995)
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## Key features (3): The right to individual petition

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### □ Article 33: Inter-state applications

- *Cyprus v. Turkey*, Reports 2001-IV; *Ireland v. United Kingdom*, Series A 25 (1978)

### □ Article 34: Individual applications

- The groups of petitioners:
    - “person”/“personne physique”, “non-governmental organisation”, “group of individuals”
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# Key features (4): Individual petitions

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- Admissibility requirements
  - Articles 34 and 35
    - Article 34: The “victim” requirement: the applicant must be personally affected by the act or omission in issue
      - A broad interpretation when necessary for effective human rights protection
    - Article 35(1): Exhaustion of domestic remedies
      - Only effective and adequate remedies have to be exhausted
    - Article 35(1): The six months rule
    - Articles 34 and 1: The act or omission must lie within the sphere of influence of the jurisdiction of a member state
      - Extra-territorial application: *Soering v. UK*, Series A 161 (1989); *Bankovic v. Belgium and Others*, Reports 2001-XII
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# Key features (5): Binding force of judgments

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## □ **Article 41 – Just satisfaction**

- If the Court finds that there has been a violation of the Convention or the protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.
- Available remedies: 1) Declaratory judgments 2) Reimbursement of costs and expenses 3) Compensation for pecuniary or non-pecuniary damage
- Discretionary nature; claim must be filed

## □ **Article 46 – Binding force and execution of judgments**

- 1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.
  - 2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.
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# The ECHR success story

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- A sophisticated and successful human rights system
  - What makes the system successful?
    - Advanced jurisprudence
    - Binding judgments, normally complied with
  - Possible reasons for the success
    - The traditional European human rights climate
    - The binding nature of the Convention's supervisory system
    - The EU linkage; precondition for EU membership and EU relations
    - The Court's maneuvering tactics: between activism and restraint
  - The (in)surmountable problems of the supervisory system and Protocol No 14
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