

The establishment of the European Convention for the Protection of Human Rights

On 4 November 1950, in Rome, the representatives of the Member States of the Council of Europe signed the Convention for the Protection of Human Rights and Fundamental Freedoms, which was inspired by the work of the pro-European movements that attended the Congress of Europe in The Hague in May 1948.

In July 1949, the European Movement submitted a draft convention to the Council of Europe and in August 1949, at its first session, the Consultative Assembly of the Council of Europe adopted a Resolution on Human Rights that was quickly taken up by the Committee of Ministers and the national governments. Chaired by the British Conservative MP Sir David Maxwell Fyfe, co-rapporteur for the European Movement's Legal Committee and an active member of the Cultural Committee of the Congress of Europe in The Hague, the Committee on Legal and Administrative Questions of the Council of Europe adopted as the basis for its work the preliminary draft convention drawn up by former French Minister Pierre-Henri Teitgen, who was Chairman of the European Movement's Legal Committee. This document sought to resolve three issues:

- to list and define the rights and freedoms to be guaranteed;
- to specify the method for laying down the conditions for the exercise of these rights and freedoms;
- to specify the mechanism for the collective enforcement of these rights.

As far as the first issue was concerned, the Consultative Assembly believed that only the fundamental rights of political democracy could be guaranteed, whilst social rights would have to be dealt with at a later stage. Consequently, it approved the Committee's choice of the ten rights and freedoms derived from the Universal Declaration of Human Rights as adopted in December 1948 by the United Nations General Assembly. However, owing to a failure to reach agreement on the definition of the right to property and the right of parents to exercise a preference for the type of education that they may choose for their children, the Consultative Assembly decided to refer the paragraphs relating to these two rights to the Committee and to assign to it the task of drafting a more precise definition in time for the next session. The preliminary draft also provided for governments to undertake to hold, at reasonable intervals, at the very least in the home country of some of them, elections by universal suffrage in a free and secret ballot and to allow political criticism and opposition.

With regard to its next task of laying down the conditions for the exercise of these rights and freedoms, the Consultative Assembly established the principle according to which each member state would be responsible for making arrangements, within its own borders, for the exercise of the freedoms guaranteed by the Convention. Lastly, the Assembly unanimously acknowledged the need for a system of judicial review and recommended the establishment of a European Court of Human Rights, even though it specified that states would also be entitled to submit their disputes to the International Court of Justice in The Hague. A recommendation was made for the setting up of a European Commission of Human Rights, an investigative and conciliation body.

During debates held by the Consultative Assembly on the subject of human rights, the Belgian Catholic Senator Étienne de la Vallée Poussin, a member of the EPU, raised the issue of displaced persons. However, discussion on the subject was postponed indefinitely. But the

efforts of the Council of Europe soon brought results.

Following the call at the Hague Congress in May 1948 for the establishment of a charter for human rights and a court of justice to enforce it, on 4 November 1950 in Rome the Foreign Ministers of 12 member states of the Council of Europe signed the Convention for the Protection of Human Rights and Fundamental Freedoms, or European Convention on Human Rights. The ECHR entered into force on 3 September 1953, the date on which Luxembourg deposited the tenth instrument of ratification with the Council of Europe's Secretary General. Since its entry into force, through binding judicial procedures, it has protected the civil and political rights of individuals, including human rights (right to life, prohibition of torture, etc.), citizens' rights (freedom of thought, of expression, of association, etc.) and applicants' rights (right to a fair trial, no punishment without law, etc.).

Unlike conventional international treaties, which are based on the principle of reciprocity between contracting states, the Convention establishes objective obligations for states towards individuals, irrespective of the conduct of cosignatory states. This, in fact, is the ECHR's unique innovation: the full range of its common and foremost values are set out and enshrined in positive law through a system that provides collective safeguards and can be petitioned by both states and individuals.

The Convention thus institutes a mandatory 'international public order' from which the states party to the Convention cannot derogate in the adoption and application of domestic legal standards. This does not infringe upon states' national autonomy regarding their assessment of the Convention's provisions. Indeed, the subsidiarity principle, which states that, in the first instance, it is the duty of states to ensure that human rights are respected at national level, operates in practice under the rule on the exhaustion of local remedies.

In keeping with the main proposals of the European Movement, the Convention is supported by a two-tiered review mechanism, for it depends both on the European Commission of Human Rights and on the European Court of Human Rights. The Convention establishes a European Commission of Human Rights to consider appeals submitted by the contracting states or by natural or legal persons, which are then referred to the European Court of Human Rights. The rulings of the Court are binding and cannot be appealed. The European Commission of Human Rights held its inaugural session on 12 July 1954.

Since the 1950s, the Council of Europe has been the instigator of a whole series of international treaties through which the signatory states have undertaken to protect the human rights and fundamental freedoms of all persons within their jurisdiction.