



## **Promotion of the Human Rights under the European System: A Comparative Analysis**

Grace Malachi Brown, PhD<sup>1</sup> and Malachi Elisha Brown, LL.M, M.Sc, PhD<sup>2</sup>

<sup>1</sup>Department of history and diplomatic studies, Faculty of humanities, Rivers state university of education, P. M. B. 5047, Rumuolumeni, Port Harcourt, rivers state, Nigeria | E-MAIL: [nyetubrown@yahoo.com](mailto:nyetubrown@yahoo.com) | Tel: +234-803-313-5226

<sup>2</sup>(Chief Consultant and Head of Chambers), Alfred Chambers (Barristers, Solicitors & Arbitrators), 1<sup>ST</sup> Floor, Debo Plaza, 2-4 FGGC Road (Beside FGGC Gate), Abuloma Town, Port Harcourt, Rivers State, NIGERIA | E-mail: [talk2drbrown@gmail.com](mailto:talk2drbrown@gmail.com) | Tel: +234-803-310-4156

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**Abstract:** *This study will examine the operational mechanisms of European system with other regional systems in the promotion of Human Rights. We will make an examination of Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocol No. 11 Rome, 1950), more particularly Section 1 Articles 2-9; and also the principal organs in the European System of human rights promotion, such as the Council of Europe, Parliamentary assembly of the Council of Europe, the Committee of Ministers, the European Commission of human rights, commissioner for human rights, the role of the European court of human rights; the European bodies that promote and protect human rights. Also, this study will consider the enforcement mechanism in the human rights system and its achievements so far, including its problems. The study observed that the 1948 treaty was the foundation in which all the regional organs today in the world followed in the promotion and protection of human rights, in spite of the fact that there had been some minor review of the law to suite our present day circumstances. It concludes that the European system of human rights and its organs are more developed than all human rights organs in the world, and so other leaders in the world, including the Africa states, should emulate the European system so as to develop our law on human rights.*

**Key words:** *Principal Organs of European Human Rights, Methods of Promoting Human Rights in Europe, Role of European Court of Human Rights and Other Bodies, Problems and Prospects*

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### **1. Introduction**

The Council of Europe created a normative and institutional system for the guarantee of human rights in Europe. The Council proposed the Convention for the Protection of Human Rights and Fundamental Freedoms - the European Convention. This was signed on November 4, 1950, and entered into force in 1955. Today, states - far beyond the original geographical limits are parties

to the European Convention of Human Rights comprising almost all the countries from the Atlantic Ocean to the Ural Mountains. The convention has succeeded in bringing together a diverse cultural body to agree upon common human rights values (Online – <http://www.dca.gov>).

For the first time in history, the European Convention on Human Rights has established a supranational institutional system whose avowed aim is the protection and promotion of human rights. The convention gives individuals, as well as states, the right to petition for redress of human rights violations. Until 1988, both the Commission and the European Court of Human Rights had jurisdiction under the convention ((Online – <http://www.dca.gov>). The European Convention on Human Rights is limited to civil and political rights and freedoms. Section 1, Articles 2-9 of the Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocol No. 11 Rome, 1950) guarantees, inter alia:

- (i) The right to life
- (ii) Freedom from torture and inhuman or degrading treatment or punishment,
- (iii) Freedom from slavery or servitude,
- (iv) The right to liberty and security of persons
- (v) The right to respect for family and private life,
- (vi) Freedom of thought, conscience, and religion,
- (vii) Freedom of expression,
- (viii) The right to education to every person,
- (ix) Freedom from imprisonment for debt,
- (x) The abolition of capital punishment in times of peace,
- (xi) Due process rights for aliens being expelled,
- (xii) The equality of the rights and responsibilities of spouses,

The convention's drafting and negotiation addressed various economic and social rights. In 1965, member states to the Council adopted the European social charter. The charter and its additional protocols added many other economic and social rights, including:

- (xiii) The right to social welfare services,
- (xiv) The right to equal opportunity and equal treatment in employment without discrimination on the grounds of sex,
- (xv) The right for workers to take part in determining and improving their working conditions and working environment,
- (xvi) The right of the elderly to social protection.

The European Convention for the protection of Human Rights and Fundamental Freedom has been referred to as "the jewel in the crown" of the Council of Europe. New member states are obliged to sign on becoming members and to ratify within one year. The direct predecessor of this Convention is the Universal Declaration of Human Rights of 1948.

Other notable historical precedents include England's Magna Carta of 1215, which asserted the right to a fair trial and a just legal system; the Declaration of Independence and the Rights of Man and of the citizen, 1789 (<http://www.dac.gov>).

The principal aims of the Council of Europe in the area of human rights include: effective supervision and protection of fundamental rights and freedoms; identifying new threats to human rights and human dignity; developing public awareness of the importance of human rights; and promoting human rights education and professional training. By the end of 1994, the following states had adhered to the Convention: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Malta, Netherlands, Norway, Poland Portugal, Romania, San Marino, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, and the United Kingdom. The Convention has been amplified and amended by means of additional protocols.

## 2. Principal Organs in the European System of Human Rights Promotion

- (a) **Council of Europe:** The parent body of the European human rights system is composed of 46 member states. The council of Europe came into existence in 1940 with the signing of the Treaty of London by the ten original member states. The European Convention on Human Rights and Fundamental Freedoms followed in 1950. In 1959, the European Court of Human Rights was established under the European Convention in Strasbourg, to ensure observance of the obligations undertaken by contracting states to the convention.
- (b) **Parliamentary Assembly of the Council of Europe:** The deliberative body of the Council of Europe is the Parliamentary Assembly. This assembly is composed of 315 representatives appointed by the forty-seven (47) member states' national parliaments that represent the political forces in Europe. This organ is responsible for the preparation of candidate countries for membership and has successfully integrated the new Eastern European democracies into the Council of Europe. Canada, Israel, Mexico and United States of America (U.S.A) have Observer Status in the Parliamentary Assembly.
- (c) **Committee of Ministers:** The decision-making body of the Council of Europe is the Committee of Ministers. This committee is composed of the Foreign Affairs Ministers of the 46 member states. The committee of Ministers is the guardian of the fundamental values of the Council of Europe. This committee monitors member states' compliance with the obligations. The committee of ministers is also responsible for the enforcement of judgments of the European Court. Canada, the Holy See, Japan, Mexico and U.S.A. are Observer States to the Council of Ministers.
- (d) **European Commission of human Rights:** It is the duty of the European Commission of human Rights to examine all individual or state complains against a member sate for violations of the provisions of the European Convention on Human Rights and Fundamental Freedoms. In cases in which the parties were unable to reach a friendly settlement; the commission expressed its opinion as to whether or not there was a

violation of the convention. If the state had accepted the compulsory jurisdiction of the court, any concerned contracting state and/or the commission had three months to bring the case to the court for a final adjudication. This commission was abolished by Protocol 11 to the European Convention in 1998 which established a single permanent European Court of Human Rights.

- (e) **European Court of Human Rights:** The juridical organ of the Council of Europe established by the European Convention on Human Rights composed of one judge for each state party to the Convention. In November, 1998, the court was reformed and now receives cases directly from states or individuals and deliberates on them. This court is established under Article 19 of the Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocol No.11.

It is pertinent to note that the European Court of Human Rights created under the Council of Europe is a distinct and separate body from the European Court of Justice created under the European Union (EU) while the European Union (EU) has involved various methods of dealing with matters of human rights through European Court of Justice and other bodies. It is the Council of Europe that remains particularly focused on Human Rights. It should be noted that because of this, no state has ever joined the European Union (EU) without showing its commitment to democracy and human rights by first joining the Council of Europe.

- (f) **Commissioner for Human Rights:** The office of the Commissioner for Human Rights was established as an independent institution in 1999, following the dissolution of the Commission of Human Rights. The commissioner, elected by the Parliamentary Assembly, is charged with the promotion of effective human rights protection in member states. The European Commissioner for Human Rights presently is Mr. Nils Muiznieks, who was elected on 24<sup>th</sup> January, 2012 by the Parliamentary Assembly and assumed office on 1<sup>st</sup> April, 2012. The commissioner for Human Rights is charged with four main activities namely:

- (i) Promotion of the education and awareness of human rights;
- (ii) Encouragement of the establishment of national human rights structures and the facilitation of their activities;
- (iii) Identification of short-comings in the law and practice with regard to human rights; and
- (iv) The promotion of effective respect and full enjoyment of human rights in the member states of the Council of Europe.

- (g) The commissioner may issue recommendations, opinions, hold seminars and visit member states in order to gain an overall view of the human rights situation in a country or to examine an area or issue of particular concern. The commissioner may not take up individual complaints of violations of human rights, but can take initiatives of a general nature that are based on individual complaints. The task of deciding complaints is now left solely to the European Court of Human Rights.

### **3. Promotion of Human Rights in Europe**

All the organs of the Council of Europe enumerated above work in different ways based on the powers assigned to them to promote and protect the human rights of the people of Europe. The prominent among these organs in this respect is the European Court of Human Rights. The European Court of Human Rights came as a result of the huge backlog of cases in the European Commission of Human Rights and the old court of the European system waiting to be treated prompted the adoption of Protocol 11 to the European Convention in 1998. This led to the establishment of a single Permanent European Court of Human Rights. This court is today the most accessible and therefore the busiest international court in the world. It has the largest bench of forty-five justices. Judges of the European Courts sit as individuals rather than representatives of their home countries from which they are usually elected.

### **4. The Role Of The European Court Of Human Rights In The Promotion Of Human Rights**

Any contracting state or individual claiming to be a victim of a violation by one of the contracting state to the convention may bring a case to the European Court of Human Rights. It is noteworthy that all states party to the European Convention became parties to Protocol 11 that established the single permanent judicial body, thus allowing cases to be brought against it in the European Court. The European Court has jurisdiction to do the following things:

- (a) Hear cases from persons who feel their rights under the Convention have been violated by the contracting states to the Convention;
- (b) To give advisory opinions at the request of member states and organs of the Council of Europe;
- (c) It has jurisdiction over the territory of the Council of Europe member states. The European Court of Human Rights may order several remedies including payment of any just satisfaction (compensation); individual measures (including reopening of proceedings at the national level if that is what is required to put the victim in the position they were prior to the violation). The European Court can also issue general measures as relief and in some cases may order interim measures/usually when there is imminent risk of physical harm (<http://www.lshr.ch>).

The decisions of the European Court of Human Rights are enforced by the Council of Ministers. In effect, it is the Council of Ministers that is charged with the duty of enforcing and implementing decisions of the European Court. In particular, the Council of Ministers ensures payment of any compensation. Therefore, judgments of the court are automatically forwarded to the Committee of Ministers for enforcement. The Committee of Ministers usually enforces the decisions through constructive dialogue with the state concerned.

However, the committee is prepared to bring political and diplomatic pressure to bear in order to enforce the judgment. The success of the European Court of Human Rights is due largely to the effective monitoring of enforcement of decisions by the Committee of Ministers of the Council of Europe.

## 5. Other European Bodies Promoting and Protecting Human Rights

- (a) **European Committee for Social Rights (ECSC):** This is the monitoring body for the European Social Charter. The 27 state parties must make periodic reports to the committee on the conformity of their laws and practice with the social charter. Under the protocol to the charter (1998), organizations may lodge collective complaints with the committee; individuals are not recognized before the European committee for social Rights. The committee examines all complaints and if they meet the criteria for admissibility the committee issue its “views” on the matter (International Service for Human Rights – <http://www.echr.coe.int> or social [charter@coe.int](mailto:charter@coe.int)).
- (b) **European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (Anti-Torture Committee):** The Anti-Torture Committee was created pursuant to the European Convention for the prevention of torture and inhuman or Degrading Treatment or punishment, which came into force in 1987. This committee has been ratified by forty-six (46) member states of the Council Europe. This committee is also open to non-European states. The focus of this committee is on the prevention of torture through none judicial means. The committee may examine the treatment of persons deprived of their liberty by making country visits to places of detention, including prisons, juvenile detention centres, police stations psychiatric hospitals and holding centres for immigration detainees. Visits are arranged periodically, but can be made on an ad hoc basis as required in the circumstances (Article 7, European Convention for the Protection of Torture and Inhuman or Degradation Tretment of Punishment). The committee must notify the state party of the visits, but does not have to state when they will be. The committee has developed standards for the treatment of detained persons from the reports issued to states it has visited (<http://www.coe.int/en/docsstandards.htm>).
- (c) **Protection of National Minorities:** The Framework Convention for the Protection of National Minorities (FCNM) came into force in 1998, to supplement the inadequate non-discrimination provisions of the European Convention, which only prohibits discrimination when it interferes with the enjoyment of another right contained in the European Convention on Human Rights and Fundamental Freedoms. The Framework

Convention for the Protection of National Minorities prohibits discrimination in a much broader sense and pays particular attention to the right to use minority languages. The Advisory Committee receives reports from the 37 states party to the convention on their progress with implementation and makes country visits. The committee may issue opinions, conclusions and recommendations on its activities. States are encouraged to hold follow-up seminars in their territories to promote the Framework Convention for the Protection of National Minorities. The Advisory Committee does not receive individual complaints ([http://www.int/T/E/human rights/minorities](http://www.int/T/E/human%20rights/minorities)).

**(d) European Commission against Racism and Intolerance (ECRI):** The body established by the Vienna Declaration of 1993 to independently monitor issues related to racism and racial discrimination, and to combat racism, xenophobia, anti-Semitism and intolerance. The European Commission against Racism and Intolerance can take all necessary measures to combat violence, discrimination and prejudice encountered by persons or groups on grounds of race, colour, languages, religion, nationality and national or ethnic origin. Actions taken by the European Commission against Racism and Intolerance include making country visits, reporting on the situations in individual countries and making problems. The European Commission against Racism and Intolerance also drafts general policy recommendations and collects and disseminates examples of good practices. The commission lays heavy emphasis on the importance of publication of its reports as a key to solving issues. Input from Non Governmental Organizations (NGOs) and other institutions or individuals is welcomed by the commission, and a number of activities are pursued by the commission to foster relations with civil society (<http://www.coe.int/ecri>).

**(e) ENFORCEMENT MECHANISM IN THE EUROPEAN HUMAN RIGHTS SYSTEM**

Like the United Nations System, the European Human Rights System also includes various mechanisms to enforce the human rights provisions found in treaties, resolutions and other directives. The European System, however, consists of separate entities with distinct functions, and so it is not possible to speak about one unified European System of enforcement (<http://www.dca.gvv>).

The relationship between European Human Rights Law and Domestic Law is very specific. Virtually all Council of Europe (COE) member states have incorporated the convention for the protection of Human Rights and Fundamental Freedoms (European Convention) into national law. Therefore, the judiciary at the national level can consider the provisions of the European Convention. The Council Europe has also made clear that the European Court of Human Rights, in Strasbourg, is not a substitute for national courts, but is subsidiary to national systems that safeguard human rights. The principles of law of the European Union, known as community law, also have direct effect in national courts, as community law takes precedence over national law in European Union (EU) member states. For these reasons, individuals and groups alleging violations of human rights provisions are required to first exhaust domestic remedies before a case can be considered admissible by a European Tribunal.

The European Court of Human Rights is the pre-arbitrator of disputes concerning Non-

Compliance with human rights obligations under the Council of Europe (COE) treaties. It is also the longest standing international human rights court in the world. Both individuals and Non-Governmental Organizations (NGOs) of member states have a right to petition the European Court of Human Rights and the final judgments of the court are legally binding on the state concerned. The jurisprudence of the court has been highly influential in the development of human rights norms, even beyond the Council of Europe System. Although the court has been careful not to infringe upon the authority of national tribunals, it also examines domestic law and policies. For this reason, some consider the European Court of Human Rights to perform the function of a Constitutional Court of Europe.

In contrast, the European Court of Justice of the European Union (EU) serves a very different function. Until 1999, the jurisdiction of the European Court of Justice of the European Union did not include alleged human rights abuses. The treaty of Amsterdam, however, incorporates the European Convention into community law. The function of the court of justice, however, is not to arbitrate complaints brought by individuals against member states, but to ensure that the interpretation and application of community law is observed by European Union (EU) members. Thus, the court of justice has jurisdiction over cases brought by a member state against another member state for treaty infringement, by a European community institution against a state and by individual citizens or organizations against European community institutions.

In addition to these complaint mechanisms, the Council of Europe, the European Union and the Organization for Security and Cooperation in Europe (OSCE) all perform monitoring of the human rights situation in the region. In the Council of Europe, the European committee for the prevention of Torture and Inhuman or Degrading Treatment or Punishment and the European Committee for Social Rights have specific issues-torture and degrading treatment and economic and social rights. The European Union allows individuals and groups to submit communications to the European Commission and the European Parliament about specific incidents of human rights violations and non-compliance with community law. Although these mechanisms are described as a “complaint” or “petition”, they actually function more like a reporting mechanism.

Neither the European Commission nor the European Parliament can issue binding judgments that would provide relief for violations of individuals’ rights. Instead, these mechanisms result in increased public attention to the problem and the possibility of European Union (EU) pressure on the member states to comply. The Organization for Security and Cooperation in Europe (OSCE) carries out monitoring through in-country visits by experts. This institution specifies that when investigating human rights violations, the state will not prevent the monitoring team from receiving information from individuals and non-governmental organizations.

## **6.Achievements Recorded in the European Human Rights System**

The European Convention on Human Rights, represents, the first step for the collective enforcement of certain rights stated in the Universal Declaration. The contracting states undertake to secure to everyone within their jurisdiction a number of civil and political rights



and freedoms set out in the convention. Subsequent protocols have extended the initial list of rights, and the case-law of the European Court and European Commission of Human Rights have reinforced and developed these rights, demonstrating the dynamic and evaluative nature of the system. For instance, all the contracting states, with the exception of Ireland and Norway have incorporated the convention into their own law, enabling the domestic judiciary to take full account of its provisions when considered a grievance. Once domestic judicial remedies have been exhausted, an individual may still seek redress in Strasbourg for an alleged breach of the convention by a contracting state. The Strasbourg machinery is not a substitute for national courts, but is, in a sense, an extension of them.

Therefore, the agreement of Sovereign States to allow a supra-national court to review a judgment of the domestic judiciary, and be bound by its findings, which may implicate the state in changing laws and paying compensation, represented an historic and unprecedented step in international law. It puts into practice the theory of the fundamental nature of human rights, placing rights firmly above the laws and practice of a state. This also signifies their democratic belief that certain fundamental rights and freedoms of the individual should not be subordinated to the power or narrow political convenience of the state. A contracting state may also bring a case against another contracting state in what is known as an interstate case. The convention provides for a European Court of Human Rights to deal with individuals' petitions and interstate cases. The judges are entirely independent and are elected by the Parliamentary Assembly. Examples of states taking action as a result of findings under the European Convention on Human Rights include:

- (i) Austria which modified important sections of its code of criminal procedure, as well as its instructions concerning treatment of prisoners in hospitals and the whole system of legal aid fees for lawyers.
- (ii) Belgium amended its vagrancy legislation and adopted measures for subsidizing French-speaking schools in the Flemish area. Belgium also changed its civil code in order to give equal rights to legitimate and illegitimate children.
- (iii) Denmark amended the law on custody of illegitimate children.
- (iv) France passed a law relating to the secrecy of telephone communications.
- (v) Germany modified its code of criminal procedure on the length of pre-trial detention and took measures to expedite criminal and civil proceedings.
- (vi) Germany has also legally recognized transsexuals.
- (vii) Greece amended the law on provisional detention.
- (viii) Italy, in its code of criminal procedure adopted in 1988, included provisions making the presence of defence lawyers obligatory in judicial proceedings-including appeals in the court of cassation.
- (ix) The Netherlands amended the military criminal code and the law on detention of mental patients.
- (x) Sweden amended the law on compulsory religious instruction.

- (xi) Switzerland completely reviewed its judicial organization and criminal procedure as applied to the Federal army and amended the civil code regarding deprivation of liberty in reformatory centres.
- (xii) The United Kingdom outlawed corporal punishment in state schools<sup>31a</sup>.

It is the Committee of Ministers created under the convention that supervises the execution of the judgment of the European Court of Human Rights where a violation has been found. The committee of Ministers ensures that the state concerned takes appropriate remedial action, for example by means of new administrative procedures or by legislation (Article 54, The European Convention on Human Rights and Fundamental Freedoms).

## **7. Problems in the European System of Promotion of Human Rights**

The European Convention on Human Rights and Fundamental Freedoms provides an avenue for international enforcement of human rights after redress at the national legal system has been exhausted. Aside from the requirement of exhausting domestic remedies, the remedies available under international law may not always be advantageous to the individual victim. The European Court of Human Rights, which can redress violations of individual human rights, is currently backlogged with cases, and the process can be very slow and time-consuming. Victims of violence may have limited resources in which to invest in a lengthy procedure.

Furthermore, safety for the victim should be a paramount concern, and confidentiality of the complainant cannot always be ensured. Unlike the European Court of Human Rights, the European Union (EU) and the Organization for Security and Cooperation of Europe (OSCE) are very limited in the ability to intervene and protect individual victims of human rights violations.

## **8. Conclusion**

The promotion and protection of Human Rights has been championed by the United Nations since 1945. In 1948, the United Nations came up with the Treaty on Universal Declaration of Human Rights. This 1948 treaty is the foundation, the cornerstone and the fountain from which all regional systems follow in the promotion and protection of Human Rights. One cannot deny the fact that modern international human rights law is a post World War II phenomenon. Its development can be attributed to the monstrous violations of human rights of the Hitler era and to the belief that these violations and possibly the war itself might have been prevented if human rights existed in the days of League of Nations (The Ninth International Conference of American States in resolution xxxi). Presently, all continents in the world have vowed to defend, promote and protect human rights of its citizens. From the foregoing, it could safely be submitted that the European system of promotion of human rights is more developed and effective than all other regional systems. For instance, the European Court of Human Rights created under the European Convention on Human Rights and Fundamental Freedom is very prominent and play major role in the promotion of Human Rights. It is described as a supra-national court with jurisdiction to review the judgment of the domestic judiciary of member states. And there is agreement of the member states to be bound by its findings. Sometimes such findings may implicate the state in changing laws and paying compensation. This, in fact

placed human rights above the laws and practices of states. This also demonstrates the democratic belief that certain fundamental rights and freedoms of the individual should not be subjected to or subordinate to the power or narrow political convenience of the states. Whereas, in the Inter-American Human Rights system, the court is an equivalent of the one in the European System, which is usually termed “The Inter-American Court of Human Rights”. This Court was created in 1948 in Bogota. According to Ford (2002, it was considered that the protection of the human rights should be guaranteed by a juridical organ, in as much as no right is genuinely assured unless it is safeguarded by a competent court and where internationally recognized rights are concerned, juridical protection, to be effective, should emanate from an international organ. It was only in the organization of American States General Assembly in 1979, that the statute of the court was approved by Resolution 448 (<http://www.io.ors/public/english>).

In the African Human Rights System, African Court of Human and Peoples’ Rights has been created under the African Charter on Human and Peoples’ Rights. But this court is yet to be established because the protocol on its establishment has not been ratified by the fifteen (15) member states till date<sup>37</sup>. This court remains in the protocol only, yet to be translated into reality. This shows that the issue of promotion and protection of Human Rights is still in low ebb in this continent. Africa as a whole is still paying lip service to this important world issue. I therefore respectfully recommend for a change of attitude of African leaders in this regard. This is because mere promulgation of African Charter on Human and People’s Rights without the necessary bodies to make it function is hypocritical. The establishment of the African Court of Human and Peoples Rights under African Charter on Human and Peoples Rights is imperative. This is because the protection of the rights listed in the African Charter should be guaranteed by a juridical organ, in as much as no right is genuinely assured unless it is safeguarded by a competent court and where internationally recognized rights are concerned, juridical protection, to be effective, should emanate from an international organ.

At the same time, it is the authors’ opinion that European system of promotion of Human Rights is much more developed and effective than other regional systems in the promotion and protection of Human Rights.

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