

Fundamental Rights

In Europe, fundamental rights have come to be regulated by an increasing number of legal instruments, such as the European Convention on Human Rights (ECHR), the EU Charter of Fundamental Rights, and international treaties. It is not always easy to understand what requirements are set in these different instruments and how they interrelate. This textbook therefore provides an integrated and systematic overview of the requirements imposed by international and European fundamental rights law. It discusses a range of both civil/political fundamental rights (e.g. freedom of expression) and social/economic rights (e.g. right to health), for each of which it is discussed how it is protected by the ECHR, by other Council of Europe instruments, by EU law, and by international treaty instruments. Each chapter is concluded with an integration section, which explains the relations between the different systems of fundamental rights protection and discuss differences, overlap and bottlenecks.

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Fundamental Rights

The European and International Dimension

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Preface

Fundamental rights are of extraordinary importance. They allow us to make our own, autonomous choices as to the things we consider important in our lives and they are essential to guaranteeing our human dignity. Moreover, fundamental rights such as the right to vote or the freedom of expression and assembly are indispensable preconditions for a well-functioning democracy.

Fundamental rights have long been recognised and protected in national constitutions. The horrors of the Second World War made very clear, however, that national institutions alone cannot be trusted to offer full protection of fundamental rights. In light of that acute awareness of the vulnerability of national protection of fundamental rights, numerous international and regional systems were developed to allow for external control and supervision and to enhance cooperation and interdependency in the field of fundamental rights. Both on the international level and in Europe, revolutionary new mechanisms were introduced and important monitoring and judicial bodies have been created. In recent decades, also the European Union has become actively involved in the protection of fundamental rights, both in case law and, more recently, through the EU Charter of Fundamental Rights (CFR).

As a result of these developments, the protection of fundamental rights in Europe is extremely complex. Moreover, over time, national, European and international protection of fundamental rights have become increasingly intertwined and interconnected. The coexistence of national, international, EU and ECHR mechanisms raises a large number of questions, ranging from how to guarantee the coherence and consistency of the interpretation of fundamental rights in such a pluralistic system to how European or international judgments or instruments should be implemented in national law. It is clear that both international and European fundamental rights instruments have a great influence on national legislation, case law and policy, not in the least because the scope of fundamental rights has greatly increased and fundamental rights play an increasingly important role in relationships between private parties. This means that European and international fundamental rights law and its complexities are relevant to virtually every area of law, from criminal law to contract law, and from

environmental law to family law. In many European States, national legislation and case law on matters such as the freedom of expression, the right to a fair trial or the right to protection of one's personal data have been modelled on the case law of the European Court of Human Rights (ECtHR) on the European Convention on Human Rights (ECHR), or have been given shape by EU fundamental rights law. Similarly, international human rights treaties have an important impact on national law. One example out of many is the way in which the right to a minimum subsistence level and the right to collective action are strongly coloured by the Conventions that have been concluded within the framework of the International Labour Organisation (ILO).

In the light of this, it is important to understand the dynamics of the protection and regulation of fundamental rights through European and international law. It is also essential to know how the European and international monitoring bodies themselves try to deal with fundamental rights controversies and dilemmas, with the application of fundamental rights in horizontal legal relationships, with conflicts between fundamental rights, etc. At the same time, due to the complexity and fragmentation of the systems, it is not always easy to understand what requirements are set at the different levels of fundamental rights protection and how they relate to each other. Although there are many excellent handbooks and commentaries on fundamental rights instruments available, they usually focus on one single instrument, e.g. the ECHR, the EU Charter or the ICCPR. Thus, they do not always help to provide insight into the differences and similarities between the definition of standards in the various instruments or into their interactions.

The present book aims to fill this gap by providing an integrated and structured overview of the requirements imposed by international and European instruments for the protection of fundamental rights. For more than twenty rights, ranging from the prohibition on torture to the right to freedom of expression and from the right to a clean environment to fundamental rights for special groups, it offers an overview of the legal state of affairs on the European and international levels. Since the book mainly aims at readers with a particular interest in the European legal situation, the focus is on the Council of Europe (most importantly the ECHR) and the EU system. For each fundamental right, however, the most significant international instruments are introduced and explained. The book does not make a distinction between the 'traditional' civil and political rights and the more social or economic fundamental rights: both types of rights are important in practice and the dividing line between them is not always clear.

Each chapter of the book concentrates on a particular fundamental right or a group of closely related rights, such as political rights or fair trial rights. For each right, the relevant instruments and case law developed in the Council of Europe are discussed first. The ECHR and the ECtHR's case law are often central to this, but where relevant, attention is also paid to other Council of Europe treaties and instruments. Next, the protection of the relevant right within the framework of the European Union is explained. The EU Charter of Fundamental Rights is considered, as well as the case law of the Court of Justice of the EU (CJEU); where relevant, attention is also paid to primary and secondary EU law. Subsequently, each chapter briefly explains the international protection of the fundamental right, concentrating on the various UN and ILO Conventions. Wherever relevant, the interpretation of these international fundamental rights by means of General Comments or individual views by international treaty bodies, such as the UN Human Rights Committee (HRC), are set out. Each discussion of a fundamental right concludes with a short section in which the protection offered by the various instruments is compared and their interrelationship is explained.

General doctrines of fundamental rights, such as the system of limitations, horizontal effect or positive obligations, are not dealt with in this book. The reader is referred to the various handbooks that are available on this subject, in particular the handbook by Gerards on *General Principles of the European Convention on Human Rights*, 2nd ed. (Cambridge University Press 2023). In so far as the ECHR is concerned, that book can be regarded as a kind of first volume for the present book, in the sense that the present book builds on the concepts and doctrines explained in that handbook.

Furthermore, the focus of this book is on the substantive regulation and application of fundamental rights in different European and international systems. This means that no separate explanation is offered of the institutions whose regulation and administration of justice are discussed; the organisation, procedures and working methods of institutions such as the ECtHR, the CJEU and the HRC are not given specific attention. Some detail on enforcement instruments is only offered if there are particularities to report.

When writing and editing the book, an endeavour has been to make to structure all chapters of this book in a similar manner. However, since the chapters were written by different authors and the fundamental rights discussed are very different in their nature and in the way they are protected, there are sometimes different emphases. Finally, it should be noted that although the state of affairs has been presented as up-to-date as possible, the manuscript was closed on 1 April 2022. Later case law and literature have been included only exceptionally.

Abbreviations

App	Application
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UN)
CEDAW	International Covenant on the Elimination of Discrimination against Women (UN)
CERD	International Covenant on the Elimination of All Forms of Racial Discrimination (UN)
CESCR	Committee on Economic, Social and Cultural Rights
CFI	Court of First Instance (E)
CFR	Charter of Fundamental Rights of the European Union
CJEU	Court of Justice of the European Union
	Comm Communication number
CoE	Council of Europe
CoM	Commission of Ministers (CoE)
CPT	Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CoE)
CRC	Children's Rights Convention (UN)
CRPD	Convention on the Rights of Persons with Disabilities (UN)
dec	Admissibility decision (ECtHR)
DH-BIO	Steering Committee on Bioethics (CoE)
EC	European Commission
ECHR	European Convention on Human Rights
EComHR	European Committee on Human Rights
ECtHR	European Court of Human Rights
ECtHR (GC)	Grand Chamber (ECtHR)
ECJ	European Court of Justice (EU)
ECSC	European Committee on Social and Economic Rights
ECSMA	European Convention on Social and Medical Assistance
ECSS	European Code of Social Security
EDPB	European Data Protection Board (EU)
EP	European Parliament (EU)
ESC	European Social Charter
ETS	European Treaty Series
EU	European Union

GC	General Court (EU)
GDPR	General Data Processing Regulation (EU)
HRC	Human Rights Committee (UN)
ICCPR	International Covenant on Civil and Political Rights (UN)
ICESCR	International Covenant on Economic, Social and Cultural Rights (UN)
ILO	International Labour Organisation
OCSE	Organisation for Security and Co-operation in Europe
OECD	Organisation for Economic Co-operation and Development
OJ	Official Journal of Publications of the European Union
OPCAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UN)
P1	Protocol No 1 ECHR
P4	Protocol No 4 ECHR
P6	Protocol No 6 ECHR
P12	Protocol No 12 ECHR
P13	Protocol No 13 ECHR
PACE	Parliamentary Assembly (CoE)
SDGs	Sustainable Development Goals (UN)
TEU	Treaty on the European Union
TFEU	Treaty on the Functioning of the European Union
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organisation
WHO	World Health Organization