

# “Regional Arrangements for the Promotion and Protection of Human Rights – focus on Europe”



**Nives Mazur-Kumrić, Ph.D.**  
Docent/Assistant Professor  
Josip Juraj Strossmayer University in Osijek Faculty of  
Law  
Department of International Law

# Quiz





# Did you know?

- 2. **Death penalty** - The Council of Europe's 47 member states form a death-penalty-free zone. Since 1985, the abolition of the death penalty has been a requirement for membership of the Council of Europe.



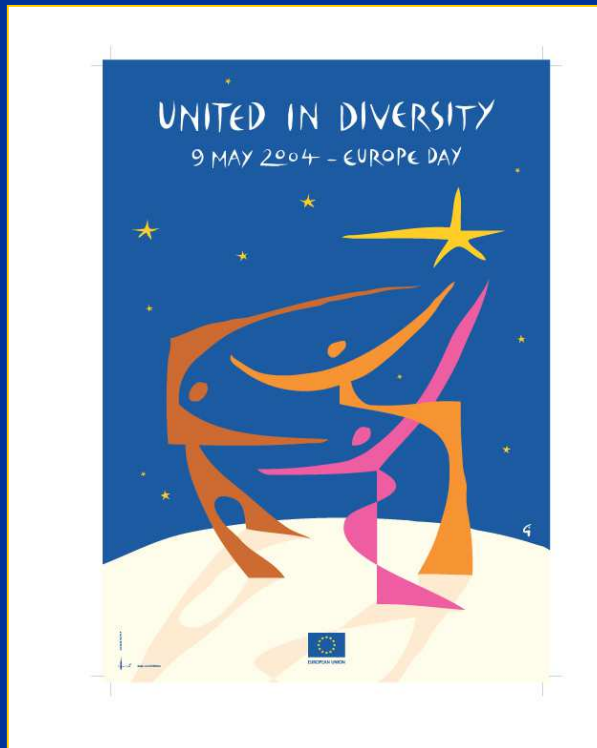
# Did you know?

- 3. **Control of medicines** - The 10 000 pharmaceutical products manufactured and sold in Europe are subject to strict controls thanks to the work of the European Directorate for the Quality of Medicines & HealthCare



# Did you know?

- 4. **Europe Day** - In 1964, the Committee of Ministers of the Council of Europe declared 5 May Europe Day.



# Did you know?

- 5. **After the fall of the Wall** - Hungary became the first former Soviet-bloc country to join the Council of Europe in November 1990.



# Did you know?

- **6. Local and regional democracy** - The Congress of Local and Regional Authorities is a political assembly whose members represent over 200 000 local and regional authorities throughout Europe.



# Did you know?

- 7. **Bioethics and cloning** - In 1996, the Committee of Ministers adopted the first binding international instrument in the field of bioethics: the Convention on Human Rights and Biomedicine. Since 1998, an additional protocol has banned human cloning.



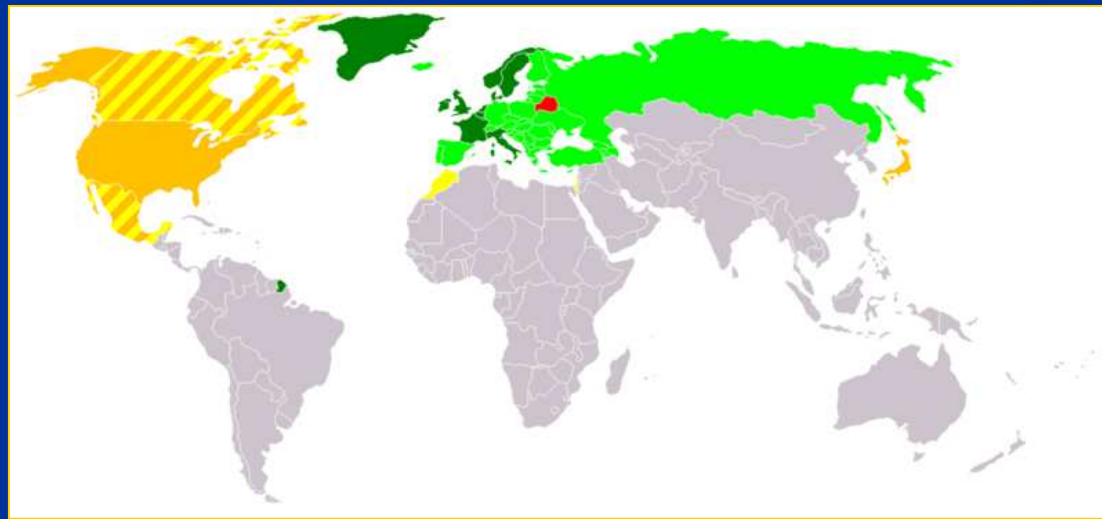
# Did you know?

- 8. **European Social Charter** - Workers' and employers' organisations can appeal to the European Committee of Social Rights if rights enshrined in the European Social Charter are not respected by member countries which have accepted the complaints procedure.



# Did you know?

- 9. **47 member states** - The Council of Europe is a separate organisation from the 27-member EU. No country has joined the EU without first joining the Council of Europe.



# Did you know?

- 10. **Commissioner for Human Rights** - Since 1999, the Commissioner for Human Rights, acting as an independent institution, has had the task of promoting awareness of and respect for human rights in all Council of Europe member states.



- **Nils Muiznieks** (since 1st April 2012)

- the third Commissioner, succeeding Thomas Hammarberg (2006-2012) and Alvaro Gil-Robles (1999-2006).

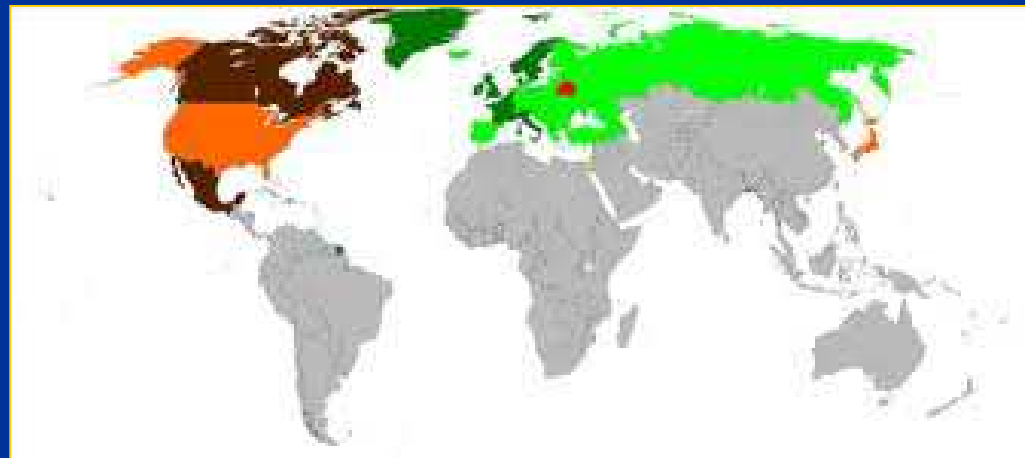
# Did you know?

- 11. **Fight against doping** - The Council of Europe Anti-Doping Convention adopted in 1989 is the only international legal instrument in this area to date.



# Did you know?

- 12. **Five observer states** - Five countries have observer status with the Council of Europe: the Holy See, the United States, Canada, Japan and Mexico.



# Did you know?

- 13. **Budget** - In 2012, the Council of Europe's budget amounts to 240 016 900 euros.



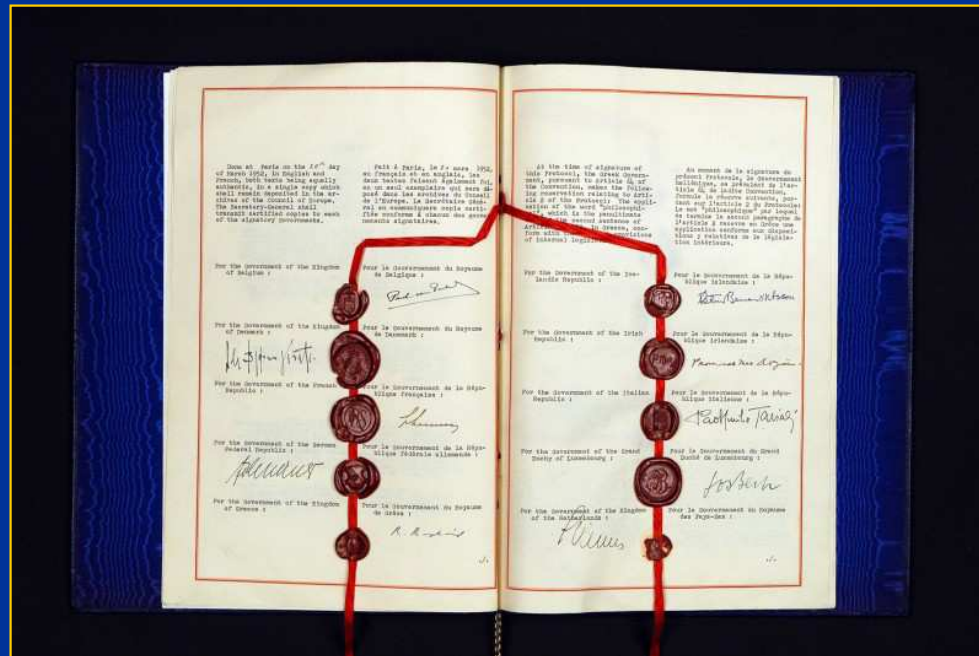
# Did you know?

- 14. **Two official languages** - English and French are the official languages of the Council of Europe. German, Italian and Russian are used as working languages.



# Did you know?

- 15. **European Convention on Human Rights** - Since 1950, the European Convention on Human Rights has been the leading international legal instrument protecting human rights.



# Did you know?

- 16. **European Court of Human Rights** - All residents in Council of Europe member states may bring cases before the European Court of Human Rights against states which have breached their commitments under the European Convention on Human Rights.



# Did you know?

- 17. **European Flag** - The European flag with 12 gold stars in a circle on a blue background was chosen by the Council of Europe in 1955. The number of stars does not change, twelve symbolising perfection. In 1986, the same flag became the emblem of the European Community, which is now the European Union.



# Did you know?

- 18. **Democratic conscience of Europe** - The parliamentarians who make up the Parliamentary Assembly of the Council of Europe come from the national parliaments of the Council's 47 member states. They speak on behalf of the 800 million Europeans who elected them.



# Did you know?

- 19. **Committee of Ministers** - The Committee of Ministers is the Council of Europe's decision-making body. It is made up of the Foreign Ministers of all member states or their permanent representatives in Strasbourg.



# Did you know?

- 20. **European languages** - The number of indigenous languages in Europe is put at between 200 and 300, the exact figure probably being around 220 to 230. Basque is believed to be the oldest European language spoken today.



# Did you know?

- 21. **Legal co-operation** - The Council of Europe has produced over 200 treaties and conventions in many areas, including conventions on banning human cloning and the suppression of terrorism.



# Did you know?

- 22. **Environmental protection** - The Council of Europe drew up one of the most effective nature conservation instruments: the Bern Convention. Its purpose is to conserve wildlife and natural habitats in Europe and in some countries in Africa.



# Did you know?

- 23. **Regional and minority languages** - The European Charter for Regional or Minority Languages provides for the protection and promotion of these languages so as to maintain and expand Europe's cultural traditions and heritage.



# Council of Europe in brief

- Founded in **Strasbourg** in **1949** by **ten** West European liberal democracies: Belgium, France and the UK, Denmark, Ireland, Italy, Norway and Sweden, Luxembourg and the Netherlands
- A Cold War initiative which promotes
  - Interdependance
  - Common identity
  - Collective security



# Origins of the Council of Europe

- **In the 19th and the 20th c.** – formation of nation-states and their struggles between competing conceptions of their own identity: liberal or authoritarian
  
- **Three main lessons** learned by the end of the 20th c.:
  1. Competitive European nationalism, unrestrained by effective international institutions, is likely to result in massively destructive international armed conflict
  2. The attempt after the WWI to protect national minorities and to secure European peace by establishing a collective complaints procedure to the League of Nations had failed
  3. Liberal democracies with regulated capitalist economies committed to the rule of law and constitutional rights are essential for national prosperity, justice and international peace.



# Origins of the Council of Europe

## ■ 4 main objectives at the CoE foundation:

1. To contribute to the prevention of another war between West European states
2. To provide a statement of common values contrasting with Soviet-style communism, hence the almost exclusive emphasis on civil and political rights in the ECHR
3. To re-enforce a sense of common identity
4. To establish an early-warning device by which a drift towards authoritarianism in any member state could be detected and dealt with by complaints from other states to an independent transnational judicial tribunal.



# Origins of the Council of Europe

- **Several core principles of the founding Statute:**
  - Spiritual and moral values such as the cumulative influence of Greek philosophy, Roman law, the Western Christian Church, the humanism of the Renaissance and the French Revolution → common heritage; true source of individual freedom, political liberty and the rule of law; basis of all genuine democracy
  - Closer unity
  - Economic and social progress



# Key institutions of the Council of Europe

- Committee of Ministers
- Parliamentary Assembly
- European Court of Human Rights
- Secretariat
- European Commissioner for Human Rights
- Congress of Regional and Local Authorities
- Conference of International NGO's



# Key institutions of the Council of Europe

## ■ Committee of Ministers

- The executive and formal policy-making body
- Consists of the foreign ministers of member states who usually meet twice a year at ministerial level, and for several days a month at the level of Deputies (their Permanent Representatives in Strasbourg)
- Promulgates the CoE's 200-plus treaties
- Supervises execution of judgements of the European Court of Human Rights



# Key institutions of the Council of Europe

## ■ **Parliamentary Assembly (PACE)**

- Has 318 members (+ 318 substitutes) elected on a proportional basis by, and from, national parliaments
- Meets 4 times a year in Strasbourg's Palais de l'Europe (which it shares with the European Parliament, the parliamentary body of the EU)
- Makes recommendations, passes resolutions, and expresses opinions about the CoE's policy
- Monitors state compliance with the above-mentioned
- Elects the European Commissioner for Human Rights, the Secretary General and Deputy Secretary General, judges to the European Court of Human Rights from the list of 3 candidates presented by member States



# Key institutions of the Council of Europe

## ■ Secretary General

- Presides over the Secretariat, the CoE's bureaucracy
- Has some monitoring responsibilities with respect to the ECHR
- Has the overall responsibility for the strategic management of the CoE's work programme and budget
- Oversees the day-to-day running of the CoE and Secretariat
- Elected by the PACE for a period of five years



**Thorbjørn Jagland** (since 1 October 2009)

# Key institutions of the Council of Europe

## ■ **European Commissioner for Human Rights**

- NOT to be confused with the now defunct European Commissioner on Human Rights
- Created in 2000 to promote education and awareness of human rights in member states inc. collaborating with national and international human rights institutions and ombudspersons, identifying human rights shortcomings in the law and practice of member states, and promoting effective observance of all CoE human rights instruments
- Can receive individual complaints but can neither adjudicate them nor present them before any national or international court, except the European Court on Human Rights → it's able to submit written comments to the Court, and to take part in Chamber and Grand Chamber hearings, although not to initiate litigation (Protocol No 14)

# Key institutions of the Council of Europe

- **Congress of Local and Regional Authorities**
  - 318 members (+ 318 substitutes) drawn from local and regional representatives
  - Advises the Committee of Ministers, PACE, and member states on a wide range of local and regional issues



# Key institutions of the Council of Europe

- ~ 400 NGO's with participatory status at the CoE
  - Meet 3-4 times a year at the Conference of International Non-governmental Organisations
  - Constitutes civil society's contribution to the CoE's quadrilogue (with the Committee of Ministers, PACE, and the Congress of Local and Regional Authorities)



# Key institutions of the Council of Europe

- **Which institution is the most influential in policy formation and human rights protection?**
- Different views:
  - Specific states or particular individuals
  - Various committees of the Secretariat
  - PACE (as it consists of representatives of national legislatures)
  - European Commissioner for Human Rights (in identifying priorities)



# Key instruments of the Council of Europe

- Convention for the Protection of Human Rights and Fundamental Freedoms (1950) – the CoE's principal achievement
- European Social Charter (1961, 1996)
- European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1987)
- Framework Convention for the Protection of National Minorities (1995)



# Key instruments of the Council of Europe

- **European Social Charter (1961, revised in 1996)**
- **5 differences between ECHR and ESC:**
  1. ECHR contains mostly civil and political rights, while ESC contains social and economic rights (relating to housing, health, education, and work)
  2. Accession to the ESC is not a condition of CoE membership (to date, 43 ratifications)
  3. ESC has no judicial complaints process
  4. ESC has no right of individual complaint
  5. Compliance with the ESC is monitored in 2 ways by the 15 independent and impartial members of the European Committee of Social Rights (ECSR)



# Key instruments of the Council of Europe

## ■ European Social Charter

### Ad 5)

1. The Committee can make reports on complaints received from employer's organisations, trade unions, and NGO's, which may provide the basis for recommendations by the CoM.
  2. The Committee publishes its conclusions every year based on annual state self-assessment reports.
- If the Committee decides that States have not responded to its conclusions on previous reports appropriately, the CoM, guided by a Governmental Committee (representatives of states parties to the ESC + observers from employers' organisations and trade unions) can make appropriate resolutions and recommendations.

# Key instruments of the Council of Europe

- **European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1987, amended as from March 2002)**
  - Aims to strengthen by non-judicial means of a preventive nature, the right of everyone detained by a public authority in a member state not to be subjected to torture or to inhuman or degrading treatment or punishment
  - Provides an enforcement regime based on unannounced visits to places of detention by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
  - A condition of CoE membership!!!



# Key instruments of the Council of Europe

## ■ **The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment**

- Is obliged to inform states of its intention to conduct a visit but not of the precise locations chosen for inspection
- All states are subject to periodic visits, in principle once every 4 years
- The purpose of visits is to open up a dialogue with the state
- It prepares a state report; although formally confidential, publication of reports has become the rule rather than the exception. They are also submitted to the CoM.
- It is empowered to make a “public statement” if a state fails to cooperate



# Key instruments of the Council of Europe

- **Framework Convention for the Protection of National Minorities (1995)**
  - Reaction to the shock of interethnic violence that afflicted Eastern Europe with the unfreezing of the Cold War
  - “Framework” = the principles it contains are not directly applicable in the domestic legal systems of member states but require implementation through national legislation and public policy
  - To date, 39 ratifications



# Key instruments of the Council of Europe

## ■ Framework Convention for the Protection of National Minorities (1995)

- Aims to insure that states respect the rights of national minorities and develop their culture and identity
- States are required to combat discrimination, promote equality, guarantee freedoms in relation to access to the media, minority languages and education, and encourage participation of national minorities in public life.



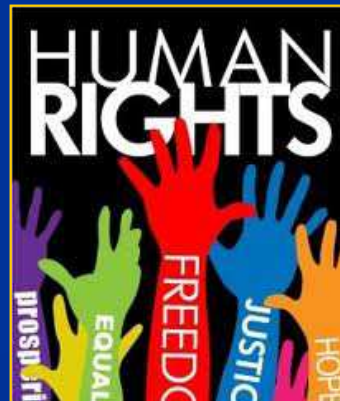
# Key instruments of the Council of Europe

- **Framework Convention for the Protection of National Minorities (1995)**
  - The CoM monitors national compliance with the assistance of an Advisory Committee of independent and impartial experts (18/4 yr.)
  - The Committee examines the reports states are required to submit at five-yearly intervals or when the CoM so requests
  - The Committee gives *opinions*, while CoM makes its *final decision* (“conclusion”) and *recommendations* concerning the adequacy of measures taken by any state party to implement the FC. They are made public!



# Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)

- Drafted in 1950 and entered into force in 1953
- Its ratification has been a condition of membership of the CoE since the beginning
- **The central objective** = to provide an independent judicial process at Strasbourg which can authoritatively determine whether the ECHR's right has been violated by a member state







# ECHR – Substantive Rights

- **14 protocols:**
  - a) Added further rights (1, 4, 6, 7, 12, 13)
  - b) Instigated procedural reforms (2, 3, 5, 8, 9, 10, 11, 14)
    - **No. 1** – rights to education, the peaceful enjoyment of possessions, free elections
    - **No. 4** – right not to be imprisoned for debt, right to freedom of movement, right of nationals not to be expelled from the state to which they belong, right of aliens not to be collectively expelled
    - **No. 6** – abolition of death penalty except in time of war
    - **No. 7** – procedural safeguards regarding the expulsion of aliens, the right of appeal in criminal proceedings, the right to compensation for wrongful conviction, right not to be tried and punished twice for the same offence, equal right of spouses under the law
    - **No. 12** – general prohibition of discrimination
    - **No. 13** – outlaws the death penalty even in time of war

# ECHR – Institutional and Procedural Background

- **Until 1998:** European Commission of Human Rights + European Court of Human Rights + CoM
- **Since 1998:** European Court of Human Rights + CoM
- In 2010 approximately 119,300 applications were pending before the Court. More than half of these applications had been lodged against one of four countries: Russia, Turkey, Ukraine or Romania.



# ECHR – Institutional and Procedural Background

## Key dates

### ■ 21 January 1959

- First members of the European Court of Human Rights elected by the Consultative Assembly of the Council of Europe

### ■ 23-28 February 1959

- The Court's first session

### ■ 14 November 1960

- The Court delivers its first judgment: *Lawless v. Ireland*



# ECHR – Institutional and Procedural Background

## ■ 1 November 1998

- Entry into force of Protocol No. 11 to the Convention, instituting “the new Court”

## ■ 13 May 2004

- Opening for signature of Protocol No. 14, amending the Convention’s supervisory system

## ■ 18 September 2008

- The Court delivers its 10,000th judgment

## ■ 1 June 2010

- Entry into force of Protocol No. 14, which aims to improve the capacity of the Court to process the increasing number of applications before it



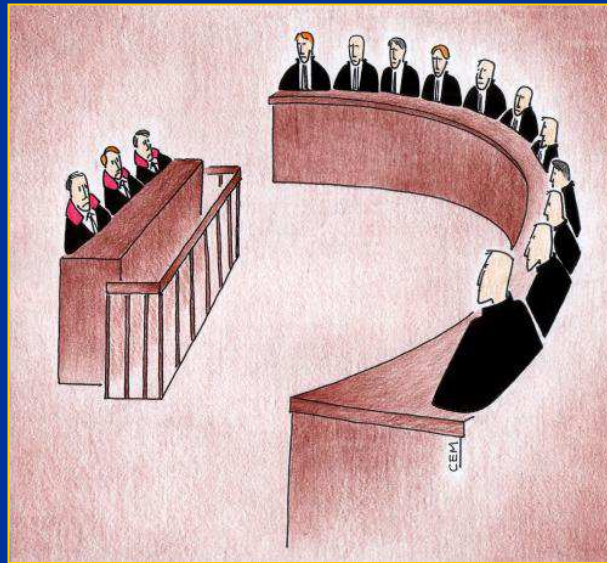
# ECHR – Composition

- Consists of a number of judges equal to that of the High Contracting Parties.
- The judges shall be elected by the Parliamentary Assembly by a majority of votes cast from a list of three candidates nominated by the High Contracting Party
- The judges shall be elected for a period of nine years. They may not be re-elected
- Single-judge formation, committees (3), Chambers (7) and Grand Chamber (17)



# ECHR – Complaints procedures

- Inter-state applications
- Individual applications



# ECHR – Complaints procedures

## ■ **Inter-state applications**

- Not frequently used, and less than a resounding success in correcting alleged violations → symbolic significance
- Applicant states lodge complaints against respondent states with the Registry of the Court, which then informs the Court's President who notifies the respondent state and allocates the complaint to one of the five Court's sections



# ECHR – Complaints procedures

- **Individual applications**
  - Changes introduced by Protocol 14 related to new tasks of single-judge formations and the new three-judge committee procedure should enhance the Court's efficiency by 20-50%



# ECHR – Resolution of complaints

1. Friendly settlement – at any stage of the proceedings
2. Adjudication on the merits



# ECHR – Supervision of the execution of judgements

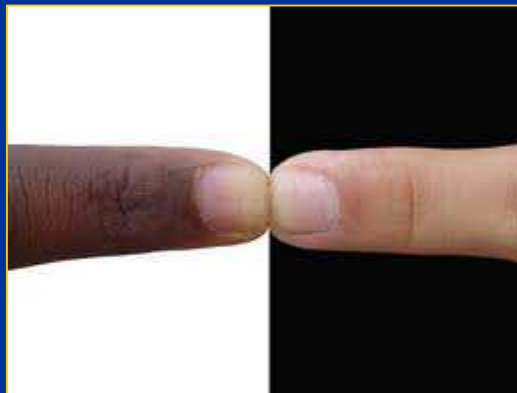
- Once a judgement finding a violation has been delivered, supervision of its execution passes to the CoM which considers whether the obligation to abide by the final judgement of the Court has been discharged by the respondent state
- The CoE can do very little with a state persistently in violation



# Recent Topics

## ■ HUMAN RIGHTS

- Reform of the European Court of Human Rights
- European Convention on Human Rights
- European prison reform
- Death penalty
- Prevention of torture
- Racism



# Recent Topics

- **HUMAN DIGNITY**
  - Children's rights
  - Sexual exploitation of children
  - Corporal punishment
  - Gender Equality
  - Violence against women and domestic violence
  - Trafficking in human beings



# Recent Topics

- **MINORITIES RIGHTS**
  - National minorities
  - Minority languages
  - Roma and Travellers
  - LGBT
  - People with disabilities



# Recent Topics

## ■ LAW

- Organised crime
- Corruption
- Money laundering
- Personal data
- Terrorism
- Efficiency of justice



# Recent Topics

## ■ **DEMOCRACY**

- Democracy Through Law
- Forum for the Future of Democracy
- Civil society
- Elections and democracy
- The Council of Europe and the Arab Spring
- Schools of political studies



# Recent Topics

- **INTERNET, MEDIA**
  - Internet
  - Children and the Internet
  - Media freedom
  - Cybercrime



# Recent Topics

- **CULTURE, CULTURAL HERITAGE, NATURE**
  - Cinema and audiovisual
  - European Cultural Convention
  - Intercultural and interreligious dialogue
  - Biological diversity - Bern Convention (1979)
  - Sustainable development
  - Climate change



# Recent Topics

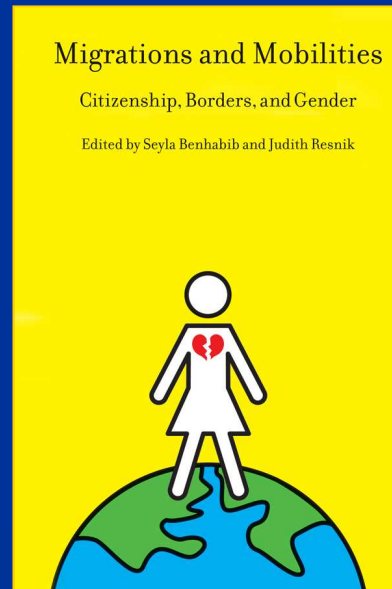
- **EDUCATION, LANGUAGES, SPORT, YOUTH**
  - Citizenship
  - Violence at school
  - Teaching History
  - Sport for all
  - Doping
  - Violence in sport
  - The Council of Europe and young people



# Recent Topics

## ■ SOCIETY

- Living Together - Diversity and Freedom in Europe
- European Social Charter
- Migration
- Council of Europe Development Bank



# Recent Topics

- **HEALTH**
  - Bioethics
  - Drugs
  - Pharmaceutical and healthcare Europe
  - Health protection



# Recent Topics

## ■ COUNCIL OF EUROPE AND EU

- Council of Europe and European Union: different roles, shared values
- EU accession to the European Convention on Human Rights



# Organisation for Security and Cooperation in Europe (OSCE)

- With **56 States** from Europe, Central Asia and North America, the OSCE is the world's largest regional security organization, founded in 1975.
- Offers a forum for political negotiations and decision-making in the fields of early warning, conflict prevention, crisis management and post-conflict rehabilitation, and puts the political will of its participating States into practice through its unique network of field missions
- It addresses a wide range of security-related concerns, including arms control, confidence- and security-building measures, human rights, national minorities, democratization, policing strategies, counter-terrorism and economic and environmental activities.



# Organisation for Security and Cooperation in Europe (OSCE)

## ■ The High Commissioner on National Minorities

- is the principal response of the OSCE to the threat of further ethnic conflict within the region, founded in 1992 for a 3-year term
- Adopted: the 1995 Hague Recommendations Regarding the Education Rights of National Minorities, the 1998 Oslo Recommendations on the Linguistic Rights of National Minorities, and the 1999 Lund Recommendations on the Effective Participation of National Minorities in Public Life.



Knut Vollebaek

# The advantages of regional systems

- Drafting and adopting texts
- Accessibility
- Enforceability