The Future of the European Convention on Human Rights

Jernej Letnar Černič[*]

The European Convention on Human Rights (hereinafter the European Convention) has been one of the success stories of regional human rights systems since its adoption in 1950. None of the drafters envisaged that, after 75 years, the European Convention would become such a strong legal instrument for the protection of human rights on the European continent. The European Convention has no parallels in other regional systems with regional human rights treaties. The supervisory mechanisms, in terms of commissions and courts on the other continents, have been deliberately kept very weak, with difficulties for applicants in bringing cases to the commissions and the courts, and even greater difficulties in supervising the execution of judgments and decisions. The European Court of Human Rights (hereinafter the European Court), as the main supervisory body, has, for 75 years, struggled with financial and human resources constraints. However, none of these challenges is comparable to those faced by the Inter-American or African Court on Human Rights. The European Convention, indeed, after 75 years, has not only become a living instrument but also the backbone of strong human rights protection on the European continent, particularly due to the strength of its supervisory mechanism, with the European Court at its fore-

[*] Professor of Human Right Law, New University. The author acknowledges the financial support from the Slovenian Research and Innovation Agency (project "Corporate accountability, human rights, and climate change: Towards coherent and just Slovenian and international legal order", ID JP-50171").

front. The European Convention has established itself as a benchmark for any attempts to develop similar mechanisms in other regional or international settings.

To overcome geopolitical and constitutional challenges in states parties, the European Court has developed the doctrine of the margin of appreciation, which, to varying degrees, allows member states or state parties to implement the European Convention in accordance with their culture, traditions, and customs. In this way, the European Court has remained committed to one of the main principles of the European Convention, namely subsidiarity – that the rights and freedoms in the are best protected at home, where violations occur. The European Court has always started from the principle of giving the benefit of the doubt to national authorities, assuming that they are able to respect, protect, and fulfil the rights and freedoms in the European Convention. The European Court has, in this way, adapted the implementation of the European Convention to circumstances on the ground and has consistently argued for a bottom-up approach to the protection of human rights, in contrast to top-down approaches. These approaches have enabled the European Court to reinforce its legitimacy and credibility and also to gain support among state parties.

The success of the European Court has also been reflected in the membership of the Council of Europe and in the accession of state parties to the European Convention, which has increased over the decades. Since the Central and Eastern European states joined the European Convention in 1990s, it has remained in the high 40s in terms of ratifications. This is not an easy or self-explanatory situation and should not be taken for granted. The European Court, together with the Council of Europe, has invested considerable effort in ensuring that state parties remain within the system, and threats of withdrawal have so far remained empty. The bottom-up approach has therefore enabled the survival of the European Court and ensured that individuals from European states

have access to individual complaint procedures, in which a regional court can assess whether the state parties have complied with their obligations under the European Convention to protect rights and freedoms. Such a bottom-up approach has been heavily, but unjustifiably, criticized in academia, where scholars, from their ideological points of view, have often argued that the European Court should adopt a top-down approach to enforce human rights and fundamental freedoms such as the right to abortion, the right to same-sex marriage, and the prohibition of hate speech and other controversial topics.

Across the entire territory of the European Convention, from Lisbon to Baku, from Helsinki to Athens, however, such commentators often forget that such an approach would probably have resulted in several withdrawals, if not in the undermining of its whole supervisory system. The doctrine of the margin of appreciation, conditioned by the proportionality test and the concept of European consensus, has nevertheless enabled the European Court to listen to the applicants — the victims of human rights violations — and to the representatives of states and their concerns, which often involve protecting customs, traditions, and cultures in their own national environments. The European Court has allowed a margin of appreciation to be applied to those rights which underpin societal and political pluralism. It has not agreed to negotiate on rights such as freedom from torture, freedom from forced labour, and freedom of expression, assembly, and association. At the same time, it has enabled states to voice their own expectations, concerns, and arguments regarding family traditions, customs, and cultures as essential considerations in interpreting the European Convention. Since the accession of Central and Eastern European states, the European Court has conducted industrious work in the field of the rule of law and rights and freedoms, grounded in strong institutions of democratic states, constitutional democracy, and the prohibition of the abuse of rights.

The European Court has, in many respects, become almost a national court in at least some states of Central, Eastern, and Southern Europe, when state authorities are unable or unwilling to protect the rights and freedoms of individuals against the arbitrary practices of incumbent governments and interest groups associated with them. It has established a strong standard of the rule of law, grounded in several rights and freedoms. It has emphasized the importance of strong institutions, of individuals with integrity holding public office, and of clarity and transparency in the processes of the judiciary and other democratic institutions. For all these reasons, the European Court has been a success story. However, what does the future hold for the European Convention in times when the interests of its state parties are becoming ever more prominent? The European Court has, in the past, demonstrated its ability to navigate between state interests and individual rights. It would be a mistake not to consider the views of the state parties; however, the European Court should also avoid undermining its existing case law.

It should not surrender the principles of human rights law, such as non-regression, meaning that it is prohibited to undermine existing rule of law and human rights standards. Therefore, the statement by a majority of states concerning the need to revise the European Court's case law under Article 3 (Joint statement, 2025) should be carefully studied, without undermining the European Court of Human Rights' well-established case law on concerning non-refoulement and the obligation to provide access to individual procedures in asylum cases (see also Forde, Donald, 2025). One should note that the European Court's remarkable success so far has been due to the manoeuvring of previous judges and Council officials in persuading states to accept the European Convention. Therefore, in the future, the European Court must bear in mind that this is an international system of 46 states, and that if a majority of states issue a declaration, it should be given due weight in accordance with the

doctrines already established in the European Court's case law. The margin of appreciation, European consensus, and the principle of subsidiarity should be reaffirmed as fundamental principles that emphasize that human rights are best respected in national environments, where national authorities are best placed to respect, protect, and fulfil them.

For the European Court and the European Convention to survive for at least another 25 years, they must remain institutions of integrity, independence, and impartiality. In this regard, other institutions of the Council of Europe, such as those overseeing the execution of judgments, should work with the European Court and state parties to ensure the proper implementation of the European Convention. Nonetheless, despite the challenges the European Convention will face in the coming years, the European Court should persist in its objectives and mission: to curb the arbitrary power of states when interfering with civil, political, and socio-economic rights and to ensure strong institutions, rules and processes of constitutional democracy (Pavli 2025). The European Court recalled the importance of strong institutions for the system of the European Convention in the recent judgement in *Anti-Corruption Foundation (FBG) and others v Russia* (ECtHR, no. 13505/20, 2025). It noted: "In recent years, the political system in Russia has undergone a profound transformation, marked by the progressive dismantling of independent institutions, the suppression of dissenting voices and the erosion of fundamental democratic safeguards, further aggravated by the full-scale military aggression against Ukraine in February 2022" (para. 145). It added that "... the authorities have increasingly restricted the functioning of democratic institutions and political opposition, have gradually eliminated the remaining structures of civil society, and have imposed far-reaching limitations on freedom of expression ..." (ibid.). As a result, the best recipe for the European Convention's future lies in its past 75 years of existence and success, which have secured its credibility

and legitimacy, illustrating that the European Court can also overcome the challenges that have always been present. The future lies in strong institutions, rules and processes of constitutional democracy of every member state.

Therefore, the answer to what the future of the European Convention will be lies in its past — if the European Court remains committed to the rule of law, human rights, and fundamental freedoms while also listening to the interests of states, then the future of the European Court will be as successful as its past 75 years.

LITERATURE AND SOURCES

ECtHR, *Anti-Corruption Foundation (FBG) and others v Russia*, no. 13505/20 and 138 other applications, 16 December 2025.

Forde, A., Donald, A. (2025), Countdown to Chișinău: The Risk of Politicising the ECHR over Migration, EJIL:Talk! Blog of the European Journal of International Law, Available at: https://www.ejiltalk.org/countdown-to-chisinau-the-risk-of-politicising-the-echr-over-migration/. (Accessed: 20 December 2025).

Joint Statement delivered to the Conference of Ministers of Justice of the Council of Europe, 10 December 2025, Ministry of Foreign Affairs of Finland, Available at: https://um.fi/statements/-/asset_publisher/6zHpMjnolHgl/content/joint-statement-delivered-to-the-conference-of-ministers-of-justice-of-the-council-of-europe-10-december-2025-1/35732 (Accessed: 20 December 2025).

Pavli, D. (2025). Human Rights Courts as Guardians of Democracy: The Challenges of the Original Promise, European Convention on Human Rights Law Review, 6, pp. 281–290.