

# Human rights – an introduction

*Moral or legal force?  
From the Universal Declaration to  
the European Convention*

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# What are human rights?

Do you regularly watch the news?

Do you sometimes read a newspaper?

Do you go online every day?

*Are you aware of human rights in your daily life?*

*Are you concerned about human rights issues .. in Italy? In Europe? In the world?*

*Is there anything you can do?*

# *Fundamental human rights include:*

- The right to life
- The right to liberty and security of person
- The right to equal treatment (freedom from discrimination)
- The right to home and family
- Freedom from torture, inhuman and degrading treatment
- Freedom from slavery
- The right to be recognised as a person before the law
- Freedom of thought, conscience and belief

## **Rights and Freedoms**

### **The right to ...**

Everyone **is entitled to** equal treatment

All human beings **have the right to** life

### **Freedom of ...**

Everyone **has the right to freedom of** opinion

### **Freedom from .....**

**No one shall be subjected to** torture

**Slavery is prohibited**

# In war, all human rights may be lost

- Human rights are:
  - Universal – every state has a duty to protect them (regardless of political, economic and cultural systems)
  - inviolable – they must not be broken
  - Inalienable – they should not be taken away (but there may be limits, e.g. imprisonment for committing a crime)
  - Indivisible – rights are interconnected

# **UNIVERSAL DECLARATION OF HUMAN RIGHTS**

## **Preamble** (1 ° recital)

- Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world ....

**Now, Therefore THE GENERAL ASSEMBLY  
proclaims THIS UNIVERSAL DECLARATION  
OF HUMAN RIGHTS** as a common standard of  
achievement for all peoples and all nations ...

# UDHR

## **Article 1.**

- All human beings are born free and equal in dignity and rights.

## **Article 2.**

- Everyone is entitled to all the rights and freedoms set forth in this Declaration without distinction of any kind, such as race, colour, sex, language, religion ...

## **Article 3.**

- Everyone has the right to life, liberty and security of person.

# UDHR

## **Article 5.**

- No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

## **Article 10.**

- Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.
- *Find and compare the equivalent articles in the European Convention on Human Rights*

# Never again.

## After the Second World War ...

- 1945 San Francisco – **states** discussed and negotiated a new **world order**
- At the **United Nations Conference on International Organization**
- The **Charter of the United Nations** was signed on 26 June 1945
- And came into force on 24 October 1945.
- The **Charter** is the **treaty** that established the UN:
  - A **treaty** is a **legally binding** agreement in writing between 2 or more states (or international organisations)
  - A treaty may be called: a treaty, convention, charter, pact, protocol
  - It is a major source of international law
- **The human rights movement** began at this time



# Human rights in the UN Charter

## ARTICLE 1

- **The Purposes of the United Nations are:**
- 1. To maintain international peace and security ...
- 2. To develop friendly relations among nations ... to strengthen universal peace;
- 3. **To achieve international co-operation** in solving international problems of an economic, social, cultural, or humanitarian character, and **in promoting and encouraging respect for human rights** and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and
- 4. To be a centre for harmonizing the actions of nations in the attainment of these common ends.

# Moral or legal force for human rights?

- HUMAN RIGHTS are mentioned in the Preamble to the UN Charter and in ART.1 and some other articles.
- But these references are 'programmatic' or 'promotional' in character:
  - 'encouraging respect for human rights'
  - 'assisting in the realisation of human rights'
  - 'promote universal respect for, and observance of, human rights'
- They do not contain clear language of obligation
- Also, in 1945 Member States decided NOT to include a BILL OF RIGHTS in the Charter

# Adopting the Universal Declaration

- A draft Human Rights bill was prepared, ready by 1948.
- The UN now had 2 choices:
  - 1) To give this document merely moral and political influence on states OR:
  - 2) To give this document legal force
- The United Nations Universal **Declaration** of Human Rights was adopted by the UN General Assembly on 10th December 1948
- 10th December is international Human Rights Day

# The Universal Declaration of Human Rights (UDHR)

- It is the single **most invoked** human rights instrument even today
- Has great **symbolic and rhetorical force**
- Has great significance in the **human rights movement**
- Is the '**parent**' document of human rights: idealistic, enthusiastic, grand

# The UDHR ...

- has contributed:
  - indirectly to the development of **international human rights law**
  - to building the international **human rights movement**
- BUT it is a **declaration**, not a treaty:
  - It is not legally binding
  - It has no direct legal force
  - There is no mechanism for enforcement of the rights declared

# UN: legally binding instruments

- 1966 - 2 principal conventions, entered into force in 1976
  - International **Covenant** on Civil and Political Rights ICCPR
  - International **Covenant** on Economic, Social and Cultural Rights ICESCR
- Many multilateral human rights treaties have grown out of the UN, protecting rights in particular areas:
  - 1948 Genocide Convention
  - 1965 Elimination of Racial Discrimination
  - 1979 Elimination of Discrimination against Women
  - 1989 Rights of the Child

# In Europe

- The Council of Europe:
  - The European Convention on Human Rights (ECHR)
  - La Convenzione europea per i diritti dell'uomo (CEDU)  
*See page 125*

Major importance in international human rights:

- 1st comprehensive human rights treaty in the world
- 1st international court for human rights
- 1st complaints procedure for individual victims
- Most developed regional system in the world
- Most extensive jurisprudence

# *Examine* the Convention text

- **Preamble:**

- The governments signatory hereto, being members of the Council of Europe
- Considering the Universal Declaration of Human Rights proclaimed by the General Assembly of the United Nations on 10th December 1948; ...

- **Article 1 – Obligation to respect human rights**

- The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.



# Section I – Rights and freedoms

## Article 2 – Right to life

## Article 3 – Prohibition of torture

- No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

## Article 5 – Right to liberty and security

1 Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

- **a)** the lawful detention of a person after conviction by a competent court;
- ...

*NB Some fundamental rights may be subject to exceptions:*

*Example: Art. 5(1)a etc.*

*Examine the Convention text and language. - do Task 8, page 125*

# Absolute rights / Qualified rights

*Which right is absolute?*

*Freedom of religion? Or freedom to manifest religion?*

*Why?*

## **Article 9 – Freedom of thought, conscience and religion**

- 1 Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
- 2 Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

# ECHR

- Some freedoms may be limited. *See*
  - Article 8 private and family life
  - Article 9 freedom to manifest religion or beliefs
  - Article 10 freedom of expression
  - Article 11 freedom of assembly and association
- Limitations based on criteria of:
  - public safety, national security
  - Health or morals
  - Rights and freedoms of others
- In the ECHR system, limitations must be:
  - Prescribed by law
  - Necessary in a democratic society

# The Strasbourg Court

## **Article 19 – Establishment of the Court**

- To ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention and the Protocols thereto, there shall be set up a **European Court of Human Rights**, hereinafter referred to as "the Court". It shall function on a permanent basis.

## **Article 27 – Committees, Chambers and Grand Chamber**

1 To consider cases brought before it, the Court shall sit in committees of three judges, in Chambers of seven judges and in a Grand Chamber of seventeen judges. ...

# The right of individual complaint

## Article 34 – Individual applications

- The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the **victim of a violation** by one of the High Contracting Parties of the rights set forth in the Convention or the protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.

# National remedies first

## **Article 35 – Admissibility criteria**

- 1 The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken.

# Case study

- *Tyrer v. United Kingdom* (ECtHR judgment of 25 April 1978)
- Facts of the case:
  - Tyrer (aged 15) beat up a boy at school → he was convicted and sentenced to judicial corporal punishment (on the Isle of Man)
- Tyrer alleged violations of Articles 3, 8, 14 - *See these articles*
- Main question before the Court: was Tyrer's punishment 'torture, inhuman or degrading treatment or punishment' contrary to Article 3 ECHR?
- Decision: it was 'degrading punishment' and a violation of his rights
- Consequence: the UK amended the law to *totally* abolish judicial corporal punishment, also in the Isle of Man
  - *See English for Law (Riley, 1990, Longman) Units 9 and 10*

# Case Study

- *Lautsi v. Italy* (ECtHR Chamber judgment of 3 November 2009)
- Facts of the case:
  - Mother of children attending state school in Abano, crucifix plainly visible in classrooms, objected. Lost her case in Italian courts →
- Strasbourg: Mrs Lautsi alleged violations of:
  - Article 9 ECHR
  - Article 2 of Protocol 1 (freedom of parents to educate their children in accordance with their convictions)
- Decision: Freedom of religion (art. 9) includes freedom not to believe in any religion; it includes symbols (the crucifix). There was a violation of Mrs Lautsi's rights – the State should not impose beliefs on individuals, especially in public education

**2010 Appeal:** Italy has appealed against the decision to the Grand Chamber of the Court (17 judges). Italian defence: The crucifix is a symbol of Italian history, culture and identity; it expresses equality, liberty and tolerance.



# Useful websites

- [www.un.org](http://www.un.org) United Nations
- [www.un.org/en/rights/](http://www.un.org/en/rights/) UN Human Rights
- [www.coe.int](http://www.coe.int) Council of Europe
- [www.echr.coe.int/echr/](http://www.echr.coe.int/echr/) European Court of Human Rights
- [www.amnesty.org/en](http://www.amnesty.org/en) Amnesty International  
(leading non-governmental human rights organisation, winner of Nobel peace prize)

# Follow-up reading

- *Legal English and the Common Law*, by Alison Riley (Cedam, Padova 2008):
  - Chapter 3 The European Dimension
  - In particular:
    - 3.1 Introduction
    - 3.2.1 The Council of Europe
    - 3.4 The European Convention on Human Rights
    - 3.5 Freedom of religion: advanced case study – the *Denbigh High School* case
    - 3.6 L'Italia e la Convenzione europea per i diritti dell'uomo (by Serena Forlati)