

HUMAN RIGHTS, PEACE & SECURITY NEXUS

The role of regional human rights institutions
in the quest for peace in Europe

POLICY BRIEF
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The European Court of Human Rights has been instrumental in providing jurisprudence regarding rights and freedoms and state responsibility in conflict and post-conflict situations. However, in order to reach longterm change and prevent conflict recurrence, more efforts should be devoted to ensure that states comply with structural parts of rulings – such as normative and procedural changes – and not only administrative measures.

Europe is not immune against armed conflict

Russia's full scale invasion of Ukraine in February 2022 is the most concurrent and visible evidence that Europe is not immune against armed conflict. Additionally, there is a number of other examples in recent years, including the 2008 Russo-Georgian war over the Russia-backed self-proclaimed republics of South Ossetia and Abkhazia, the conflict over Transnistria, and the Russian occupation of Crimea, Sevastopol, Luhansk and Donetsk in 2014. Further, when it comes to transitional

justice – truth, justice and reparations for victims of the war in former Yugoslavia still has a lot to be wished for. This also goes for transitional justice in relation to the transition to democracy in the former Soviet Union and Eastern Europe and the full implementation of the judgements of the European Court of Human Rights, for example concerning Russian crimes in Chechnya. Concluding these and other similar processes would be vital for peace building and conflict prevention.

The fulfilment of human rights is an act of conflict prevention

Policy specialists agree that we ought to spend more on prevention to avoid the higher costs full-scale armed conflicts. These costs, in the geographic area covered by this policy brief, are currently most visible in Ukraine. However, costs also spill over to neighbouring countries and have implications for people and nations around the globe. This threatens the fulfilment of basic human rights and ultimately constitutes a hazard to peace and security in places far away from Ukraine.

Human rights, including the right to vote and to be elected, are central for peace and security and the promotion, protection and fulfilment of human rights is essential for building a society resilient to conflicts. Human rights institutions cannot only contribute to processes for non-recurrence, but also to conflict prevention, as for example in the exercise of early-warning systems. In light of this, it seems reasonable to suppose that human rights institutions – including regional systems – have a role to play in this conflict prevention project. Further, when prevention fails and there is an outbreak of armed conflict, human rights institutions can play an important role in collecting evidence for and make visible the human rights violations and violations of international humanitarian law taking place within the conflict, and advocate for justice to be made. Such actions contribute to accountability and the non-recurrence of armed conflicts. Now, how is this role played by the regional intergovernmental organisations in Europe and in particular the regional institutions for human rights? Could and should the human rights system play a greater role?

Intergovernmental organisations contribute to peace and security in Europe

The Council of Europe was founded in 1949 on a common heritage and values based on human rights, democracy, and the rule of law and early on adopted the European Convention on Human Rights which entered into force in 1953. The Council also developed a framework for the follow up on states' commitments, including a complaints mechanism which today is the European Court of

Human Rights. The Organisation for Security and Cooperation in Europe (OSCE), in contrast, was founded during the Cold War and its framework of principles is based on political commitments instead of legal commitments. The European Union is somewhat a different story. However, the origins stem from a will to end a long period of conflicts after World War II, building political and economic cooperation to bolster recovery and prevent conflicts by the founding of its predecessor, the European Coal and Steel Community in 1951.

While neither of the normative frameworks of the three intergovernmental organisations provide for an explicit right to peace, they all include provisions that are important for human security, for the prevention of conflict and for the protection of human beings in the event of armed conflict. The European Convention on Human Rights includes a broad range of rights of importance both in peacetime and in times of war, including the right to life, the prohibition of torture – both non-derogable – and the right to physical liberty and security.

The OSCE works differently as it in contrast to the Council of Europe does not support itself on legally binding conventions or a complaints mechanism in the form of a court. A positive side of this modus operandi is that it allows the OSCE to react quickly to new needs. However, it should be noted that the distinction is between legal and political, and not between binding and non-binding. In essence, OSCE states have agreed that pluralistic democracy based on the rule of law is the only system of government suitable to guarantee human rights effectively. This is also why the OSCE human dimension constitutes a pan-European public order and a “community of values”.

The participating states have stressed that issues relating to human rights, fundamental freedoms, democracy, and the rule of law are of international concern, as respect for these rights and freedoms constitutes one of the foundations of the international order. Therefore, the OSCE participating states are not in a position to invoke the non-intervention principle to avoid discussions about human rights challenges and they also have a duty to assist each other in solving specific problems.

As for the EU, it would take many years before the EU formalised its work within the context of human

rights. However, the EU Charter of Fundamental Rights, the Commission's related strategies, and the EU Agency for Fundamental Rights indicate an ambition to institutionalise human rights within the organisation as well as among its member states. A proper characteristic of the EU in relation to other regional intergovernmental organisations is that it also has an impact on human rights and peace and security in other regions through its External Actions Service. Furthermore, the EU, with its full legal personality, has the possibility to accede in international human rights agreements and engage with the international human rights system.

Contributions to peace and security by the European Court of Human Rights

Even though the European Court of Human Rights was not designed to be a forum for enforcing state parties' obligations in armed conflicts and is restricted to cases related to violations of the European Convention on Human Rights presented before it, the Court has made considerable contributions in the area of peace and security. The Court has for example contributed to the interpretation of the right to life, the prohibition of torture, the right to liberty and security, and derogations in times of war or other public emergency. Furthermore, the Court has delivered numerous decisions dealing with a wide range of issues relating to transitional justice and the rule of law, including amnesties, compensation and restitution, prosecution, lustration, memory and truth. This body of jurisprudence

constitutes an important contribution to defining state responsibilities in conflict and post-conflict situations. Although the Court is a mechanism that grinds slowly and therefore not necessarily is the solution to an upcoming or ongoing armed conflict, it sets standards which have implications on peace and security.

Additionally, when cases are submitted to the Court, it may specify interim measures to the parties, provided that there is a real risk that serious violations of the European Convention could take place while it examines the case. Following the outbreak of a number of armed conflicts in the region, the Court has increasingly resorted to interim measures in inter-state cases relating to armed conflict situations. This was the case in 2008 regarding the outbreak of hostilities between Russia and Georgia, the case of the Russian occupation of Crimea in 2014, and in the case of hostilities between Armenia and Azerbaijan in 2020. The Court noted that these situations constituted a real and continuing risk that could give rise to serious violations of the European Convention. The Court therefore called upon state parties to comply with their obligations under the European Convention, specifically Articles 2 and 3, and requested state parties to inform, as soon as possible, of the measures taken to comply with their obligations.

The Court has also made important contributions as to defining the extent of the jurisdiction that the state parties exercise and within which they have the obligation to secure human rights, also in the case of effective control resulting from unlawful military action and occupation.

Ukraine has lodged complaints with the European Court of Human Rights in the framework of the conflict, three of which are included in the case regarding Crimea, declared admissible in January 2021. The Court in its decision declared and proved that the Russian argument for its actions in Crimea, namely that it was a helping hand for the will of the Crimean people by implementing the result of the 2014 "referendum", is false, as Russian forces gained effective control over those territories before the so called "referendum". Proving these facts can be important for other processes – legal as well as political.



In relation to the Russian full-scale invasion of Ukraine, already on 28 February 2022, Ukraine filed an application against Russia before the Court, and requested the Court to take interim measures. The Court acted already the following day, calling on the Russian government to refrain from military attacks against civilians and civilian objects as well as other violations of international humanitarian law.

In spite of the order of the Court and an order of the International Court of Justice to abort hostilities, Russia continued its invasion and continued committing war crimes. This follows a pattern from other cases where studies have shown that the majority of cases in which the state parties have not complied with their obligations regarding interim measures are related to conflict situations. However, even though the effectiveness of interim measures in situations of armed conflict can be questioned, evidence show that they can provide protection in some critical situations.

Looking at the hundreds of cases filed against Russia in the framework of the armed conflict in Chechnya – in the majority of cases the Court found Russia guilty. The crimes committed include unlawful executions, torture, forced disappearances and armed attacks on civilian targets. In general, Russia partially complied with rulings in paying indemnity, but failed in investigating the cases, punishing those responsible and making legal and administrative changes. The Committee of Ministers of the European Council is tasked with the follow-up of Court rulings and as such a central guarantee of the implementation of the Court's decisions. Unfortunately, the outcome in the Chechnya-cases and other cases where states fail to implement the rulings of the Court is insufficient. The lack of implementation of the rulings against Russia regarding crimes committed in Chechnya when it comes to prosecution and punishment of those responsible, as well as legal and procedural changes, paved the way for the Russian armed forces' repetition of those crimes – now committed in Ukraine.

Further reading



The role of regional human rights institutions and the quest for peace in Europe, Swedish Foundation for Human Rights, 2022.

PDF-version available [here](#)

Recommendations

In order to reach long-term change and prevent conflict recurrence, the Committee of Ministers of the European Council should devote more efforts to ensuring that states comply with structural parts of the rulings of the European Court of Human Rights – such as normative and procedural changes – and not only the administrative parts.

With the aim of putting pressure on states to prosecute perpetrators, the European Council should repeatedly observe the impunity for war crimes and grave violations of human rights.

Governments and the EU should as a routine matter raise the issue of impunity for war crimes and grave violations of human rights with concerned states.

States should devote resources to, and create conditions for the prosecution of war criminals under the figure of universal jurisdiction.

The institutions working peace and security within the EU, the European Council and the OSCE should consider a systematic use of information produced by the human rights institutions in the region and the systematic interaction with those institutions, as a permanent input to their early-warning systems.

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