CHAPTER 2

BACKGROUND OF THE COURT FROM ITS CREATION TO ITS ENLARGEMENT

In this chapter, we will look at the history of the Court and its legal force in domestic systems, ranging from individual remedy to legislative changes. The Court is a regional supervisory institution for safeguarding the rights expressed in the European Convention on Human Rights. The story of the Court is one intertwined with events in modern European history: from the horrors of the Holocaust, to the Cold War, to the European Union, to the fall of the Berlin Wall. Today its jurisdiction covers the European continent.

2.1. CREATION OF THE COURT

2.1.1. Historical and Political Embedding

In 1949, only a few years after the end of the Second World War, when Europe still strongly felt the effects of the War, ten Western European states created the Council of Europe. These ten countries were: Belgium, France, Luxembourg, the Netherlands, the United Kingdom, Ireland, Italy, Denmark, Norway and Sweden. These were all Western European countries, with common or civil law traditions. The founding states wanted to take steps towards European unity.

The two main influences pushing towards the creation of the Council of Europe were the experiences of the Second World War and the beginning of the Cold War. The founding fathers of the Council of Europe took up the fight against Nazism and Fascism, and wanted to make it impossible for the horrors and brutality to return. The French delegate Teitgen stressed in his speech during the first meeting of the preparatory commission of the Council

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71 5 May 1949, The Treaty of London, <www.coe.int/portal.asp?strScreenType=100&L=E&MM=$t/1-1-1-1//portal.asp?L=E&M=$t/001-00-00-2/02/EMB,1,0,0,2,Dates.stm>, visited 22 April 2006.
72 In the following, ‘Western’ refers to the political-historical term describing the European countries that were not members of the Communist Bloc (which I am referring to as ‘Eastern’).
73 Steiner and Alston, supra note 3, p. 790.
74 The Council of Europe is the first European supranational institution created after the Second World War, see Leuprecht, supra note 28, p. 314.
CHAPTER 2

of Europe his private experiences of having been a victim of the Nazis. He pointed out not only the threat of Fascism but also the threat of Communism. Freedom meant to him “political freedom and economic liberalism, freedom of competition, profit and money”.75

“We should need years of mutual understanding, study, and collective experiments, even to attempt after many years, with any hope of success, to formulate a complete and general definition of all the freedoms and all the rights which Europe should confer on the Europeans. Let us therefore discard for the moment this desirable maximum. Failing this, however, let us be content with the minimum which we can achieve in a very short period, and which consists in defining the seven, eight or ten fundamental freedoms that are essential for a democratic way of life and which our countries should guarantee to all their people. It should be possible to achieve a common definition of these.”76

The drafters built upon what they felt was their common heritage. Article 1(a) of the Statute of the Council of Europe reads: “The aim of the Council of Europe is to achieve a greater unity between its members for the purpose of safeguarding and realizing the ideals and principles which are their common heritage and facilitating their economic and social progress.”77 The goals were a pluralist democracy, respect for human rights and the rule of law.

The Council of Europe78 created the legal text and the institutions for monitoring human rights in Europe. The legal basis for European human rights protection is the Convention.79 On the basis of this Convention a supervisory machinery was built, which today is the Court. The Court is embedded in the institutional structure of the Council of Europe. The function of the Court is to monitor the implementation of the Convention.

76 Ibid.
78 It is important to distinguish the Council of Europe from the European Union. The Council of Europe was the first supra national institution in Europe and is primarily concerned with human rights and democracy. The EU started primarily as an economic union, which during the years gradually broadened. However, a state applying for membership to the EU must be a member of the Council of Europe and have ratified the Convention.

20