Human Rights Monitoring Mechanisms of the Council of Europe

Edited by
Gauthier de Beco

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Human Rights Monitoring Mechanisms of the Council of Europe

The book studies the human rights monitoring mechanisms of the Council of Europe. It provides an in-depth examination of six such mechanisms: the Commissioner for Human Rights, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (the CPT), the European Committee of Social Rights (the ECSR), the Advisory Committee on the Framework Convention for the Protection of National Minorities (the ACFC), the European Commission against Racism and Intolerance (ECRI) and the Committee of Experts of the European Charter for Regional or Minority Languages (the CECL).

The human rights monitoring mechanisms of the Council of Europe seek to establish a permanent dialogue with governments in order to encourage them to better implement human rights treaties. They function principally through the use of national reports, on which basis they make recommendations, and also visit or question states directly. The book looks at each mechanism in turn, discussing their mandate, composition and powers and evolutions therein, as well as their relationship with other actors. It includes both a general discussion of the role of European human rights monitoring mechanisms as well as a comparative analysis of these mechanisms. The book aims to provide a clear understanding of the underlying approach of European human rights monitoring mechanisms and the challenges faced by them in terms of effectiveness. It will be useful for practitioners and students alike, especially those following courses in human rights or related fields.

Gauthier de Beco is an Associate Researcher at the Centre for Philosophy of Law at the University of Louvain, Belgium.

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Preface

A number of human rights monitoring mechanisms have been established since the Universal Declaration of Human Rights was adopted in 1948, within the United Nations and also on a regional level, including in Europe. This reflects an official recognition that human rights standards are indeed an international concern and that multilateral co-operation on their implementation is desirable.

We have learnt that monitoring and implementation mechanisms are more effective when their *independence* is recognised and respected, which is generally the case for those created within the Council of Europe framework. The protection of this independence requires care in the appointment of committee members and other office holders and an impartial system of funding of the mechanisms.

Those acting on behalf of these bodies also have a responsibility for ensuring the integrity of procedures. They should themselves avoid any country stereotyping and always stand above party political struggles. Governments must be prepared to listen to well-founded criticism even when these messages could be utilised by the opposition. They should accept that the international representatives are in touch with and listen to non-governmental groups.

Another lesson is that the various human rights bodies must co-operate with one another and co-ordinate their activities. Some governments have genuine problems in coping with the many human rights visitors and the reporting requirements and in integrating the recommendations into concrete policies.

This underlines the need for information sharing, rational division of labour and co-ordinated actions between the international actors. Confusing overlaps should be avoided and a principle of subsidiarity be established. It is absolutely essential that the various mechanisms avoid giving conflicting messages.

The key aspect in any analysis of international human rights bodies has to be whether they have a real impact and genuinely protect and improve the concrete situation of people. This is what it is all about. This requires a clear mandate, necessary resources and an approach that is strategic – recognising the enormous difficulty of the task and its political sensitivity.

There is a need for a broader evaluation of ways of improving and strengthening the international human rights system. This book, therefore, is very welcome and timely. It fills a gap in the literature about European human rights monitoring mechanisms. It provides an in-depth examination of human rights monitoring

mechanisms established in the Council of Europe by reviewing their composition, functions and working methods as well as their historical evolution.

Written by experts who have practical experience of the monitoring mechanisms concerned, the volume also discusses the underlying approach of these mechanisms through an insightful comparative analysis. While it highlights the achievements of European human rights monitoring mechanisms, it is not afraid to criticise or point at weaknesses when appropriate.

Many people are directly concerned with European human rights monitoring mechanisms. Civil servants, activists and students alike should find the book interesting. It will help people to better understand the role of these mechanisms and the advantages and means of strengthening the mechanisms.

Indeed, there are no grounds for complacency. We should constantly remind ourselves about the enormous responsibility that comes with the fact that so many people all over the world have put their trust into our serious efforts. International human rights bodies should regularly review their working methods and strive to become more efficient and relevant. Real impact in the long run must remain the ultimate benchmark for making governments accountable for their human rights performance.

Thomas Hammarberg
Commissioner for Human Rights
of the Council of Europe

Author biographies

Gauthier de Beco holds an LLM (Master of Laws) degree from the University of Nottingham and a PhD in Law from the University of Louvain. In addition to being Associate Researcher at the Centre for Philosophy of Law of the University of Louvain, he is currently working as a Legal Adviser at the Human Rights Unit of the Belgian Ministry of Justice, where he is focusing on the human rights monitoring mechanisms of the Council of Europe. Previously he was working as a research fellow at the Centre for Philosophy of Law of the University of Louvain for four years. He is also a consultant to the Office of the UN High Commissioner for Human Rights (OHCHR) and several international NGOs.

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Lauri Sivonen is adviser to the Council of Europe Commissioner for Human Rights and acts as thematic co-ordinator in the Commissioner's Office. His specific fields of expertise include non-discrimination and systematic work for implementing human rights. Lauri Sivonen holds university degrees in international law, political history and social anthropology.

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Introduction

The role of European human rights monitoring mechanisms

Gauthier de Beco

I.1 Introduction

This book deals with the human rights monitoring mechanisms of the Council of Europe (which will also be referred to as European human rights monitoring mechanisms or, usually in the singular, monitoring mechanism). These mechanisms have proliferated during the last two decades and today their activities represent a substantial proportion of those of the organisation, involving many people both in the public administration of member States and civil society organisations, not to mention the personnel in Strasbourg. However, European human rights monitoring mechanisms have received less attention than the European Court of Human Rights, which is the Council of Europe's judicial mechanism. While their work is considerable, these mechanisms remain largely unknown. With the exception of the civil servants and activists involved, the majority of the population seems unaware of their existence.

This book studies the following six human rights monitoring mechanisms of the Council of Europe: the Commissioner for Human Rights, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (the CPT), the European Committee of Social Rights (the ECSR), the Advisory Committee on the Framework Convention for the Protection of National Minorities (the FCNM) (the ACFC), the European Commission against Racism and Intolerance (ECRI) and the Committee of Experts of the European Charter for Regional or Minority Languages (the ECRML) (the CECL).

There is a gap in the literature on the human rights monitoring mechanisms of the Council of Europe. The underlying approach of these mechanisms has not been examined in-depth and is therefore not widely understood. This is a missed opportunity, especially since the European Court of Human Rights is experiencing a crisis, despite the entering into force of Protocol No. 14 to the European Convention on Human Rights. European human rights monitoring mechanisms therefore deserve more attention.

Furthermore, the existing literature on European human rights monitoring mechanisms is more concerned with the treaties that created these mechanisms than with these mechanisms themselves. Moreover, the few studies relating to

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