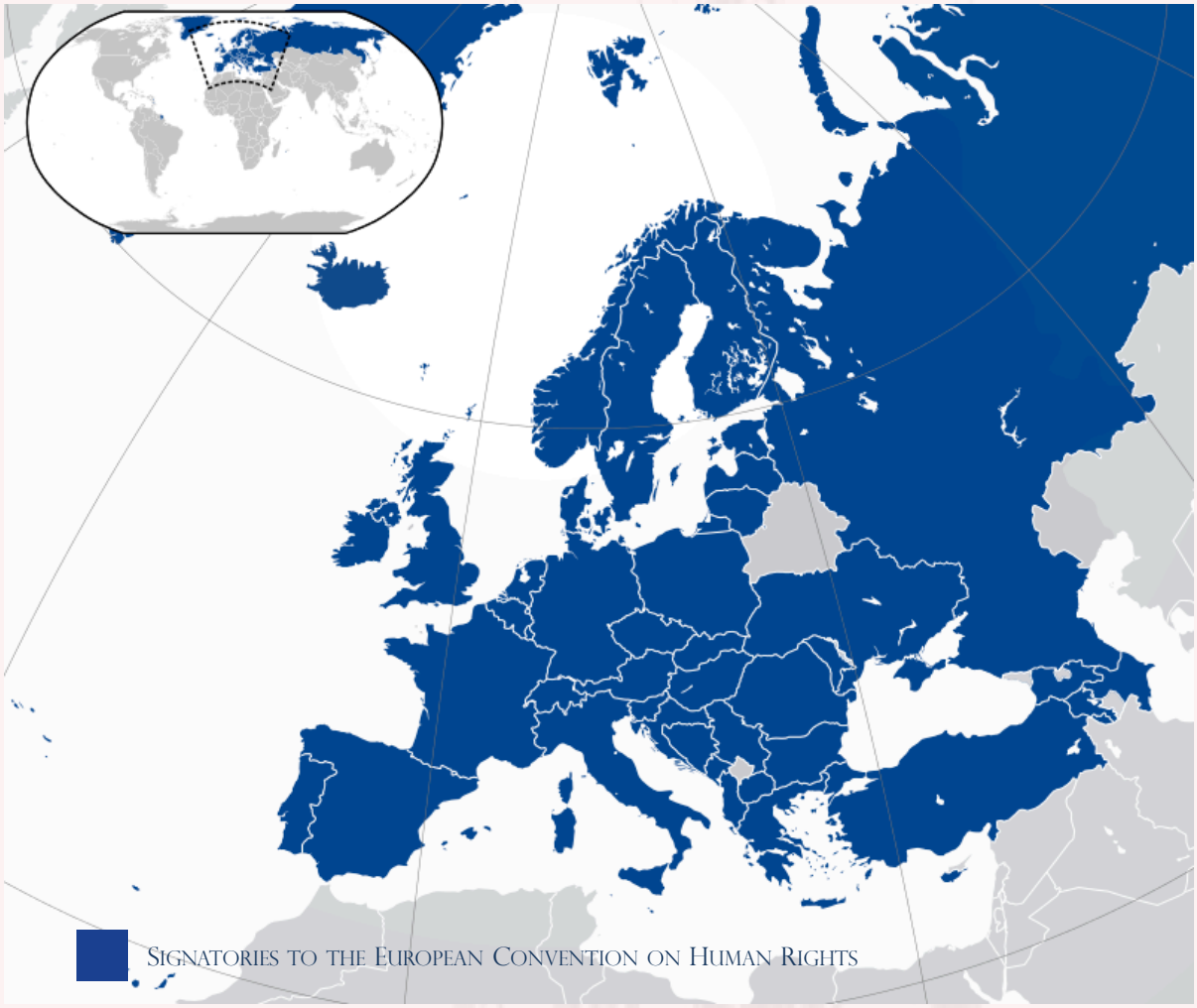
ELECTROMAGNETIC HYPERSENSITIVITY & HUMAN RIGHTS

COMMENTARY TO THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE



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Biosustainable Design

by
Isaac Jamieson PhD DIC RIBA ARB DipAAS BSc(Hons) Arch MInstP
http://biosustainabledesign.org/

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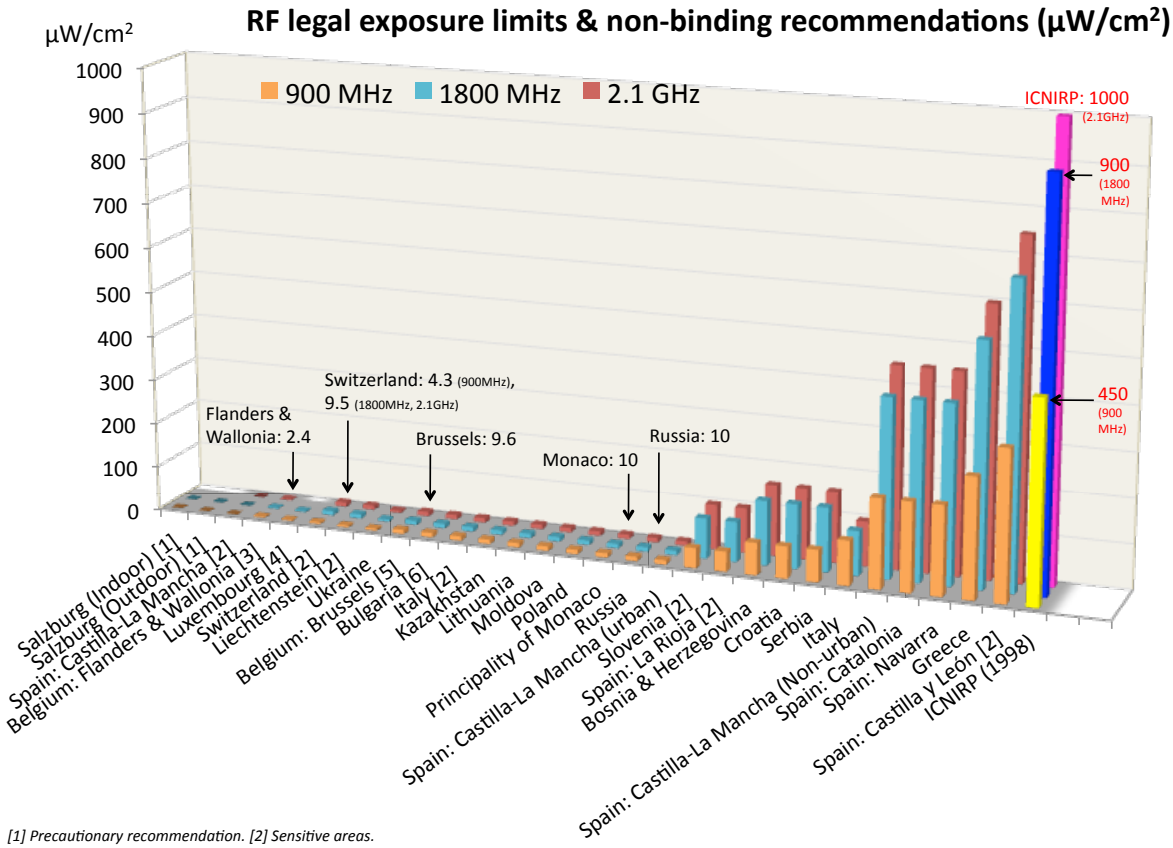

[1] Precautionary recommendation. [2] Sensitive areas.
[3] Maximum threshold per antennae. [4] Maximum per operator & per antennae system.
[5] For all antennas taken together. [6] Periodical & short stay areas.

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A number of signatories to the European Convention of Human Rights already have exposure guidelines and non-binding recommendations more rigorous than ICNIRP within their countries.

> *"There are many examples of the failure to use the precautionary principle …, which have resulted in serious and often irreversible damage to health and environments. Appropriate, … actions taken now* to avoid plausible and potentially serious threats to health from EMF are likely to be seen as prudent and wise …,"* Professor Jacqueline McGlade, Executive Director of the European Environment Agency (2003-2013) (EEA 2007).

*There are already new techniques that can cut mobile network energy use by 90% (GSMA 2013).

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ELECTROMAGNETIC HYPERSENSITIVITY & HUMAN RIGHTS

Commentary to the European Economic and Social Committee on the European Convention on Human Rights

The following is brief commentary on Human Rights, as related to electromagnetic hypersensitivity (EHS) and other conditions that may be affected as a result of exposure to manmade electromagnetic fields (EMFs). In this present work, relevant sections of the convention are indicated in the text below and their implications discussed.

It is intended that this commentary will be of benefit to policy makers, industry and members of the general public.

European Convention on Human Rights: Convention for the Protection of Human Rights and Fundamental Freedoms

"… the aim of the Council of Europe is the achievement of greater unity between its members and that one of the methods by which that aim is to be pursued is the maintenance and further realisation of Human Rights and Fundamental Freedoms;" …

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."

It is should be additionally noted that in Article 1 of the Charter of Fundamental Rights of the European Union (The European Parliament, the Council and the Commission 2010) it is declared that "***Human dignity is inviolable. It must be respected and protected***."

Similar is stated in the Universal Declaration of Human Rights ***"The Declaration is based on the "inherent dignity" of all people and affirms the equal rights of all men and women, in addition to their right to freedom. The Declaration gives human rights precedence over the power of the state. While states are permitted to regulate rights, they are prohibited from violating them,"*** (UNAC 2012).

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SECTION I: RIGHTS AND FREEDOMS

ARTICLE 2: Right to life

1. "*Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law*."

This basic human right is also declared in many other documents including: The International Covenant on Civil and Political Rights (OHCHR 2007), The International Covenant on Economic, Social and Cultural Rights (OHCHR 1976) and The UN Convention on the Rights of the Child (United Nations 1989). Everyone has the legal right to life.

Expectant and New Mothers: It is recognised in The International Covenant on Economic, Social and Cultural Rights (OHCHR 1976) that ***"Special protection should be accorded to mothers during a reasonable period before and after childbirth."***

Exposures of mothers to be and new mothers to EMFs "*has raised public health concerns because of the possible effects (cancer, neurological effects, developmental disability effects, etc) from the long-term exposure to low-intensity, environmental level fields in daily life*," (Bellieni & Pinto 2012).

Protection of Embryos/Foetuses: All EU States agree that the human embryo/foetus belongs to the human race (Hoffman & Rowe 2010). The potentiality of that being obliges it to be protected in the name of human dignity, even when it is not legally ruled as a person with right to life (Mowbray 2012). It can still have interests capable of protection under law (Deazley & Smith 2013).

Protection for Children: The need for special protection being accorded to children is recognised in human rights legislation. As examples, it is mentioned in The UN Convention on the Rights of the Child (United Nations 1989) and The Declaration of the Rights of the Child (UN 2012) that **"*the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth.*"**

> *"It is essential that any new standards for … wireless devices* [or any other EMF emitting devices – comment by present author] *be based on protecting the youngest and most vulnerable populations to ensure they are safeguarded through their lifetimes,"* American Academy of Pediatrics (2012).

As risk of EHS and other types of childhood ill health may increase as a result of inappropriate EMF exposure, increasing involuntary exposures and not adequately informing children or their guardians of risks may be contrary to everyone's best interests.

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General Population: Claims might be brought that other individuals may be arbitrarily deprived of their lives - or have their life quality and span reduced - through health conditions exacerbated or brought on as a result of the EMF exposures they receive.

As noted by Hoffman & Rowe (2010), when authorities are aware (or should be aware) of real risk to life they are under obligation to take appropriate mitigative action to protect those at risk. **Many countries stipulate lower maximum EMF levels than ICNIRP for sensitive areas to protect the vulnerable.** Refer to bar graph on page 2.

ARTICLE 3: Prohibition of torture

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

The term 'Degrading treatment' can be defined as "*… such as to arouse … feelings of fear, anguish and inferiority, capable of humiliating and debasing… and possibly breaking… physical or moral resistance*," (Conseil de l'Europe / Council of Europe 1978).

The above appears very similar to descriptions provided by some electromagnetically hypersensitive (EHS) individuals (EMFSN 2013), describing how their condition makes them feel when exposed to EMFs.

> "*EHS frequently experience ridicule and eventual rejection or dismissal by their usual systems of support. This common outcome has a profound impact on many aspects of life including employment, accommodation, healthcare, finances as well as having a profound bearing on social, emotional and psychological dimensions of life*," Genuis & Lipp (2012).

Article 3 embodies a fundamental human right. ***"… the right to freedom from bodily harm is second only to the right to life, and is equally based on the right which all people have a level of basic respect and dignity as human beings,"*** (Hoffman & Rowe 2010).

> It appears that this Article may be breached as a result of the creation of biologically inappropriate EMFs exposures and poor design and specification of equipment. **The physical symptoms experienced by some of those with EHS, and some non-EHS individuals adversely affected by EMFs, are a form of torture.**

ARTICLE 5: Right to liberty and security

1. *"Everyone has the right to liberty and security of person. … "*

Right to Liberty: The liberty of EHS to go where they wish is compromised by electromagnetic pollution. The rights of such individuals may be violated if emissions prevent them from being able to go where they wish (even within their own homes and gardens) unhindered by exposures to electromagnetic field regimes perceived as detrimental to their wellbeing.

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"EHS has been described by patients as a 'loner's disease'. Due to the prevalence of ubiquitous EMR in the contemporary urban environment, EHS causes patients to experience extreme social isolation. The serious symptoms confine them to their home. ***Venturing out to shopping malls, libraries, theatres, hospitals, and doctors' offices is often precarious because of the prevalence of wireless routers, cell phones, antennas, and other sources of EMR.*** *Furthermore many … are often no longer able to spend time in the homes of family members due to EMR issues. As a result, huge stresses are placed on marriages and families …"* (Genuis & Lipp 2012).

It appears highly likely that individuals who consider that they are deprived of their liberty to go where they wish, when they wish, may eventually seek legal recourse.

Further problems are being caused as a result of the rollout of invasive technologies that (often wirelessly) report on individuals' behaviour and activity patterns.

Prohibiting individuals from enjoying proper liberty within society is dangerous, demeaning, degrading and a gross breach of human rights.

Right to Security: 'Security of person' can be legally defined as "*The legal and uninterrupted enjoyment by a man of his life, his body, his health and his reputation*." Claims may be brought by some that enjoyment of life, body, health and reputation may be seriously affected as a result of exposure to inappropriately developed electronic technologies that may compromise such basic human rights.

Claims might additionally be brought that some individuals may have their reputations damaged as a result of how they are forced to behave as a result of exposures, or potential exposures. Claims could also be brought that they find that having to behave in this way is degrading and damaging to their security of person.

Additionally, with regard to privacy issues, it may well be claimed that lifestyle information determined by third parties from many modern technologies (if data is not suitably protected and/or anonymised) may potentially damage individuals' reputations and security of person.

Security of health impacts both wellbeing and productivity. The health of a growing number of individuals is being adversely affected by electromagnetic pollution. **It is estimated that between 3% to 5% of Europeans (around 22.3 million to 37.1 million individuals) may presently be affected by EHS. <u>This number is growing</u>** (Jamieson 2014).

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ARTICLE 8: Right to respect for private and family life

1. "*Everyone has the right to respect for his private and family life, his home and his correspondence*."

"*Respect for home and home life means more than just providing some form of dwelling or shelter: it extends to maintaining the situation to which a person has become accustomed, and the very permanence of which gives comfort*," (Hoffman & Rowe 2010).

The quality of home life and enjoyment of inhabiting a dwelling may be "*spoilt by various forms of interference, such as noise, light, smells, fumes or other forms of pollution [including some suggest electromagnetic pollution – comment by present author], and anyone who has experienced this might well refer to it as an invasion of their privacy*," (Hoffman & Rowe 2010).

In Guerra and others v. Italy (Conseil de l'Europe/Council of Europe 1998), it was ruled that environmental pollution can cause a violation of human rights. In that instance, the European Court found the state guilty of failing to take 'positive steps' to provide vital information and that the quality of life of individuals, and that of their home and private lives had suffered as a result of their human rights being breached on this issue.

In the case of López Ostra v Spain (Conseil de l'Europe/Council of Europe 1994), the European Court declared that "*environmental pollution may affect individuals' well-being and prevent them from enjoying their homes in such a way as to affect their private and family life adversely, without … seriously endangering their health*."

The right for people to be able to enjoy their property in the manner to which they have become accustomed can become severely compromised by electromagnetic pollution and the additional unwarranted electronic recording of their activities.

It is already indicated that EMF emissions can prevent some individuals using parts of their homes and gardens, and can even cause them to move home in order to avoid/reduce adverse health effects (EMFSN 2013, Gregory 2011, Havas 2011).

ARTICLE 12: Right to marry

"*Men and women of marriageable age have the right to marry* ***and to found a family*** *[emphasis by current author], according to the national laws governing the exercise of this right*."

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Scientific research indicates environmental exposures to EMFs can reduce human fertility and increase risk of miscarriage (Bellieni & Pinto 2012).

There is a risk that States, telecommunications firms, utility companies and manufacturers of poorly designed EMF emitting devices may be found negligent if they advocate and/or promote the use of technologies that may compromise the right for individuals to found families.

ARTICLE 14: Prohibition of discrimination

"The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground …"

Individuals with EHS are discriminated against with regards to jobs, place of residence and public access to most areas of life. They are not just restricted from access to desirable things, such as leisure and entertainment, but also essentials such as groceries, health care and even petrol.

Claims might be brought that those who ignore the special needs of individuals who are, or believe they are, vulnerable to EMF radiation may be guilty of discrimination and wilful blindness.

"*The doctrine of wilful blindness imputes knowledge to an accused whose suspicion is aroused to the point where he or she sees the need for further inquiries, but deliberately chooses not to make those inquiries.* This was similarly stated in the U.S. case of State v. McCallum: "*[T]he rule is that* ***if a party has his suspicion aroused but then deliberately omits to make further enquiries, because he wishes to remain in ignorance, he is deemed to have knowledge…. The rule that wilful blindness is equivalent to knowledge is essential*** *…*" Michener (2010).

"*In Jorgensen (Supreme Court of Canada, 1995), Mr. Justice Sopinka explained: "A finding of wilful blindness involves an affirmative answer to the question: Did the accused shut his eyes because he knew or strongly suspected that looking would fix him with knowledge?*" Michener (2010).

Claims might also be brought that those who deliberately ignore and dismiss relevant scientific evidence of potential risks, whether through wilful blindness or recklessness, may be guilty of inciting others to unwittingly discriminate against such individuals.

The use of the Precautionary Principle helps address this issue.

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ARTICLE 17: Prohibition of abuse of rights

"Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention."

The rights and freedoms of EHS, and others adversely affected by EMFs, must be actively protected. Doing so will help protect, health, wellbeing and the economic prosperity of Europe.

Protocol

to the Convention for the Protection of Human Rights and Fundamental Freedoms

ARTICLE 1: Protection of property

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law." … (HRA 1998).

Many EHS are forced to move home as a result of adverse health effects from electromagnetic pollution experienced in their property. The term 'property' can also be used legally to describe anything over which the rights of possession, use, and enjoyment are exercised. It can be legally defined as including real estate, land, growing plants and animals.

Both scientific research and anecdotal evidence indicate that, in addition to potentially harming humans, EMFs at levels considerably below those permitted in ICNIRP guidelines appear capable of causing damage to plants and animals.

Where components of EMF infrastructures are indicated as causing losses to any of these, or loss of access to any of these (as may particularly be the case with those who are EHS), claims could be made that that this basic human right is being breached.

ARTICLE 2: Right to education

"No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions."

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It is hoped equal credence will be given to the right of parents to ensure that medical evidence indicating the benefits of low EMF environments (and technologies) is also embraced.

It may be argued that the right to education of children who are EHS is potentially compromised by electromagnetic pollution, particularly that caused by the use of Wi-Fi in schools when wired alternatives are available.

Protocol No. 4

to the Convention for the Protection of Human Rights and Fundamental Freedoms securing certain rights and freedoms other than those already included in the Convention and in the First Protocol thereto

ARTICLE 2: Freedom of movement

1. "*Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence*."…

This freedom is already being compromised as a result of electromagnetic pollution restricting the freedom of movement of EHS individuals.

EMFs in the workplace can compromise the right of vulnerable individuals to work where they please. This adds greatly to their problems. "*The pronounced physical and psychological symptoms often prompt EHS [individuals]… to take medical leaves from their employment and many eventually leave work all together*," Genuis & Lipp (2012).

Additionally, inappropriate EMF exposures may prohibit individuals with health conditions exacerbated by electromagnetic pollution from directly accessing public services where such pollution is present. It may also greatly curtail their ability to find places where they can relax, socialise and live.

The prevalence of increasing levels of electromagnetic radiation in the environment adds greatly to the difficulties of those with EHS finding places where they can live, work or socialise without feeling unwell.

The freedom of movement of EHS individuals is greatly restricted. Refer also to comments for 'Article 14: Prohibition of discrimination'.

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Protocol No. 12

to the Convention for the Protection of Human Rights and Fundamental Freedoms

ARTICLE 1: General prohibition of discrimination

1. *"The enjoyment of any right set forth by law shall be secured without discrimination on any ground … ."*

2. *"No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1."*

Social inclusion is one of the major goals of sustainable development. It is also one of the main declared objectives of the European Union (Atkinson 2009).

The best way to ensure Human Rights are adhered to and that EHS are not discriminated against is to adopt more protective EMF measures, develop safer technologies and encourage the creation of white-zones in rural <u>and</u> urban areas.

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