REPORT OF THE RAPPORTEURS

WORKSHOP ON HUMAN RIGHTS AND NEUROTECHNOLOGIES

Steering Committee for Human Rights in the fields of Biomedicine and Health (CDBIO)

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March 2026

Council of Europe

French version :
RAPPORT DES RAPPORTEURS
ATELIER SUR LES DROITS HUMAINS ET
LES NEUROTECHNOLOGIES

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This publication has not been copy-edited by the SPDP Editorial Unit to correct typographical and grammatical errors.

INTRODUCTION

Neurotechnologies – such as brain-computer interfaces, neuroimplants and advanced brain imaging – are developing rapidly and are becoming increasingly important in medicine, research and even commercial contexts. At the same time, these technologies raise fundamental ethical, legal and societal questions. Because neurotechnologies can collect, influence or interpret information directly from the human brain, they touch on some of the most valuable things we have: our thoughts, emotions and personal identity. Against this background, there is a need to clarify how existing legal frameworks apply to risks regarding personal integrity, misuse of sensitive brain data and increased inequalities between people. Governance is needed to ensure that neurotechnologies are developed and used in a safe, fair and responsible way, where human rights such as those relating to human dignity, identity, privacy, and autonomy are adequately protected.

On November 18th, 2025, the Steering Committee of Human Rights in the fields of Biomedicine and Health (CDBIO) organised, in cooperation with the Steering Committee for Human Rights (CDDH) and the Consultative Committee of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (T-PD), a workshop on Human Rights and Neurotechnologies. The objective of the workshop was to examine whether and how human rights law in its current form can serve as an effective legal framework to address the human rights challenges arising from the increasing use and development of neurotechnologies.

This report conveys the key messages of the speakers of the workshop and draws conclusions on the actions for the CDBIO to consider, in cooperation with the CDDH and the T-PD.

The structure of the workshop was to first introduce the ethical and human rights concerns which may derive from the development and use of neurotechnologies. Then, in its second and third sessions, to examine how the existing European legal framework and jurisprudence applies to human rights challenges raised by these developments. In the fourth and final session, to provide final considerations and orientation as to possible avenues for the Council of Europe to ensure the adequate protection to individuals.

BACKGROUND

In 2019, the Organisation for Economic Co-operation and Development (OECD) adopted the OECD Recommendation on Responsible Innovation in Neurotechnology, the first international standard in the field of neuroscience to address ethical, legal and social challenges of these technologies.

In 2021, the International Bioethics Committee (IBC) of the United Nations Educational, Scientific and Cultural Organization (UNESCO) published a report on the ethical issues of neurotechnology which made a series of recommendations, including advocating for the adaptation of existing human rights and "to provide insights into the interpretation and application of existing human rights instruments…" [pg. 38, 2021]. The report called on countries to guarantee the human rights of its citizens by adopting laws that protect their human right to mental privacy and freedom of thought.

In 2024, the Human Rights Council of the United Nations adopted a Resolution on "Neurotechnology and Human Rights", and in 2025 UNESCO adopted a "Recommendation on the Ethics of Neurotechnology".

In November 2021, the Steering Committee for Human Rights in the fields of Biomedicine and Health (CDBIO) of the Council of Europe organised a round table, together with the OECD, to explore whether we need new human rights pertaining to neurotechnologies.[1] The report can be found here. The main conclusions were that while specific "neuro"-rights may well be important in the future, it may be premature to embark upon their development at this juncture. Further, it was recommended to explore not only regulation but also multilevel governance, including communication and exchange across a wide variety of stakeholders, codes of conduct, conceptual clarification and the tailoring of existing law to encompass neurotechnologies.

As a follow-up, the CDBIO commissioned Roberto Adorno, associate professor in Bioethics and Medical Law at the University of Zurich, to draft a report analysing the existing European human rights framework with regard to the human rights issues raised by neurotechnologies and their applications. The report was published in 2025.

The objective of the workshop held on the 18th November 2025 was, as stated above, to examine whether and how the existing human rights framework, in particular the European Convention on Human Rights (ECHR), serves as an effective legal framework to address the challenges posed by neurotechnologies, and whether adaptations would be needed. To this end, this report draws conclusions and proposes how the Council of Europe could further facilitate the interpretation and advancement of human rights regarding neurotechnologies.

[1] Neurotechnologies - Human Rights and Biomedicine

SAFEGUARDS

This part of the report draws on the discussions and presentations delivered during the workshop and seeks to synthesise the contributions of the speakers. The considerations concerning existing safeguards set out below are derived from the exchanges that took place in that context and are intended to capture the main issues, questions and approaches highlighted during the workshop. They do not purport to take a position on, or to advance a particular stance with regard to, the issues discussed.

The applicable normative framework of the ECHR as it relates to the use of neurotechnologies consists of the following provisions:

- Article 3 (prohibition of torture, inhuman and degrading treatment);
- Article 6 (right to a fair trial, in particular right to not incriminate oneself);
- Article 8 (right to respect for private life, including right to privacy);
- Article 9 (freedom of thought);
- -Article 10 (freedom of expression).

Other ECHR provisions of relevance include Article 2 (right to life), Article 14 and Protocol No. 12 (non-discrimination).

More specifically:

Article 3 ECHR affords absolute and unconditional protection against torture and inhuman or degrading treatment once the requisite threshold (minimum degree of severity) has been reached. Where this threshold is met, the protection against the reading, recording, accessing or alteration of an individual's mind or neurological processes, the infliction of severe psychological harm, including forms of mental suffering, is subject to no exception. Such interference cannot be derogated from under any circumstance (including war or public emergency, according to article 15 ECHR), restricted or balanced against any legitimate aim. Measures that are justified by a genuine therapeutic necessity, however, are not regarded as inhuman or degrading.

Article 6 ECHR guarantees the right not to incriminate oneself. Thus, information obtained via neuroimaging is not allowed where it extracts or reveals information that depends on the individual's mental activity or will, rather than having an existence independent of the will of the suspect.

Article 8 ECHR is of capital importance, as the protection of private life is engaged in many applications of neurotechnology. According to the case-law of the European Court of Human Rights (ECtHR), the concept of 'private life' is a broad term that is not susceptible to an exhaustive definition; its scope extends well beyond traditional interpretations, covering interventions altering the brain and mental states, as well as brainwashing, coercion, exploitation and forced disclosure.

A central concept underpinning the guarantee of Article 8 of the ECHR is the notion of "integrity", which is often analysed in two distinct aspects, namely physical and psychological (or mental) integrity.

Physical, or bodily, integrity protects persons against neurotechnological interventions involving the use of invasive methods, but also non-invasive procedures with a physiological correlate. Psychological integrity prohibits interventions having an impact on a person's psychological well-being or affecting mental processes. It has however been suggested that there can be no dichotomy between the abovementioned aspects and that there is a need to use instead the concept of "personal integrity", encompassing the human body in all its components as well as its intellectual and sensory capacities.

The list of legal interests protected under Article 8 of the ECHR is broad and multifaceted. It includes human dignity, and in particular self-determination, mental integrity, biological, personal or social identity, psychological continuity, mental privacy and decisional freedom. This allows individuals to determine who may access their *forum internum* (thoughts, emotions and beliefs), and thus protects their ability to hold, preserve, and form mental content without coercion or forced exposure as well as their informational self-determination. Other interests protected under Article 8 include social identity, privacy, personal data and protection against medical procedures against a person's will or free and informed consent. Article 8 offers special protection for vulnerable groups or mentally incompetent persons.

Neural data - resulting from brain activity regardless of whether the person concerned is conscious of them or not - can identify the individual it relates to thereby triggering the application of data protection rules, such as Convention 108. Endowed with a special and inherent sensitivity, neural data merits strengthened protection to safeguard individuals from intrusions into their most intimate sphere (their brain, emotions, etc.) including the risks of discrimination.

The question arises as to whether the guarantees under Article 8 of the ECHR can be activated only if a certain threshold has been met or harm has been suffered. It could be argued that there are three graduated levels of protection: neurotechnological interventions confined to the realm of lifestyle, well-being or gambling, with effects foreseen and desired not qualifying for protection; cases of misuse or malicious exploitation of neurotechnological interventions falling within the scope of Article 8; interferences resulting in severe psychological harm triggering the application of Article 3 of the ECHR. Furthermore, from the perspective of the autonomy of the individual, Article 8 would apply if a person's physical or psychological well-being had been adversely affected, or if there had been no effect. It would also apply if psychological well-being had been improved through, for example, the provision of medical assistance against the will of the person concerned.

Article 9 of the ECHR protects freedom of thought, a right which has not received much attention, unlike freedoms of conscience or religion. Indeed, until recently at least, it has been presumed that internal psychological processes and thoughts were technologically inaccessible. This approach is still reflected in the case-law of the ECtHR which establishes a clear distinction between the absolute and unconditional right to hold any belief and to

change one's belief and the qualified freedom to manifest one's religion or beliefs. In this context, it should be considered whether freedom of thought (a) covers all thoughts or there is a certain "threshold" and (b) whether it is absolute or qualified.

According to the threshold approach, the right to privacy under Article 8 of the ECHR would cover any individual psychological or mental process regardless of their content and quality; Article 9 of the ECHR would require a certain level of cogency, seriousness, cohesion and importance, while Article 10 of the ECHR would cover the right not to express one's views. By contrast, another view holds that Article 9 protects not just thought or mental states, but freedom of thought processes generally, regardless of their perceived value or quality. From this perspective, freedom of thought encompasses mental privacy and forbids any means of thought extraction which bypasses human agency and sidelines any autonomous decision to manifest or express a thought.

As to the unconditional or qualified nature of freedom of thought under Article 9 of the ECHR, it has been argued that an inverse relationship exists between its material scope and the protection it affords: the broader the scope, the less absolute the protection and vice versa. In order to avoid the pitfalls of a relativist approach to freedom of thought and the erosion of its guarantees, Article 9 should be read in conjunction with Article 3 of the ECHR. Read together, these two articles would operate according to the following "division of labour": Article 9 would protect, in a flexible manner and subject to a balancing exercise with legitimate aims, a wide range of mental interferences such as manipulation of mental processes, undue influence, exposure of thoughts, and interference with cognitive autonomy; Article 3 would provide absolute protection from the most serious violations of mental integrity, involving coercive brain stimulation, forced thought extraction, behavioural manipulation, or alteration of identity through invasive means.

Finally, Article 10 of the ECHR protects the "negative" right not to express oneself and disclose opinions, thus prohibiting forced revelation of mental content. Taken as a whole, the Convention safeguards the continuum between internal privacy and external expression.

STRENGTHS, LIMITATIONS AND OPEN QUESTIONS

STRENGTHS

The existing human rights framework displays significant strengths in addressing the challenges raised by neurotechnology.

- Such strengths are rooted in the ECHR itself, the cornerstone of the European system of protection of human rights, which is capable of addressing challenges raised by new and emerging technologies, such as neurotechnologies. According to the settled case law of the ECtHR, the ECHR is a living instrument that must be interpreted in the light of present-day conditions. On the basis of such a dynamic interpretation, the ECHR's notions have proven to be sufficiently elastic in adapting to technological advances, unimaginable at the time of the drafting of the Convention. The ECHR framework is highly attuned to emerging challenges, and the ECtHR has demonstrated a strong capacity to address novel challenges posed by new technologies, without having to resort to new legal categories. It can reasonably be assumed that this evolutive logic would also apply to neurotechnologies.

- Key concepts in the debate around neurotechnologies, such as moral and psychological integrity, autonomy and self-determination of the individual, or thought as part of the *forum internum,* already form a part of the ECtHR's interpretation of the ECHR. In view of the above, it can be convincingly argued that, based on the ECHR, there is no normative void as far as standards related to the use of neurotechnologies are concerned. This positive assessment, however, does not preclude the existence of unresolved issues requiring further attention, as discussed further below.

- Another salient feature of the ECHR and the ECtHR's case-law is the establishment and implementation of the robust positive obligations doctrine (in particular under Articles 8 and 9 of the ECHR), enabling, or requiring, States to regulate private sector actors and to protect individuals proactively, including in complex scientific and technological environments.

  Indeed, developments in the field of neurotechnologies are mainly driven by private sector actors and, in particular, business enterprises, which makes it all the more necessary for member States to fulfil their general positive obligations to develop effective and adapted legal frameworks to ensure the protection of individuals. The ECHR and the ECtHR are best placed to guide states' authorities in implementing their obligations in this respect.

  Considering the potential risks that neurotechnological interventions pose to human rights, human dignity and psychological well-being, the abovementioned obligations which will vary from case to case may, taking into account national contexts, require the establishment of regulatory frameworks extending beyond the medical sphere. Such frameworks may include information, transparency and disclosure requirements,

safeguards for persons in vulnerable situations, and adjudicatory enforcement or other monitoring mechanisms aimed at identifying potential risks.

- The Council of Europe provides a uniquely well-suited institutional ecosystem for addressing the use and development of neurotechnologies. It brings together a coherent and complementary set of instruments and bodies, such as the ECHR and its 16 Protocols, as interpreted by the well-established and highly authoritative ECtHR, 'Convention 108' +, and the 'Oviedo Convention', as well as intergovernmental committees such as the CDDH, the CDBIO and the Committee of Convention 108 (T-PD), covering human rights, biomedicine and health, and protection of personal data, respectively. These frameworks allow human rights standards to be interpreted, developed and operationalised in a consistent manner across different but interrelated domains affected by neurotechnologies, while offering a structured platform for any future standard-setting activities.

LIMITATIONS AND OPEN QUESTIONS

As already mentioned, there is already a human rights framework capable of addressing the challenges raised by neurotechnologies. However, a number of points remain unsettled. The central difficulty does not lie in the absence of human rights but in attributing specific neurotechnological interferences to appropriate existing human rights, and determining which right is engaged in a given factual context. It is not always obvious whether, and to what extent, specific thresholds should be met in the application of particular human rights, nor how such thresholds should be identified. Article 9 of the ECHR is a case in point, as it remains unclear as to whether freedom of thought extends to any form of thought as such, an issue that is directly relevant to determining whether the protection it affords is absolute or qualified, or whether the factual situation instead falls within the scope of another provision, such as Article 8 of the ECHR. This is not a merely theoretical discussion, as its conclusions may have concrete implications for the scope of member States' obligations under the Convention and for the design of any regulatory framework to be developed.

Issues such as the scope of human rights, their overlaps, boundaries and intersections, are of course determined to a large extent by the courts, at the national or international level, through incremental, case-driven development.

There are, however, inherent limits to the role played by courts. The ECtHR operates, by definition, *ex post facto*, acting only on the basis of individual applications and as a last resort. Judicial adjudication is by definition reactive; it must be complemented by proactive regulatory measures adopted at the national level. The primary responsibility therefore lies with the member States to introduce appropriate safeguards well before a a case reaches the ECtHR, as required by the principle of subsidiarity underpinning the ECHR system.

Policy and legislative responses are required as a matter of urgency. The institutional tempo must be commensurate to the rapid pace at which neurotechnologies are developing. This is far from being an easy task, as policy makers are facing novel and unforeseeable regulatory challenges. The competent authorities need to understand, or even anticipate, the impact of a

constantly evolving technology, and develop, on the basis of this knowledge, an appropriate legal framework and ensure follow-up and monitoring.

One of the major difficulties in this regard is the growing role of private sector actors in the field of neurotechnologies, where development is largely driven by business enterprises, including in non-medical consumer, contexts. Data has become the new currency, subject to large-scale extraction, aggregation, and monetisation. The stakes become ever higher when neurosignals or inferences about cognitive states are involved. Structural asymmetries persist, as individuals are frequently not in a position to assess risks, negotiate terms, or meaningfully refuse participation, notably in educational, workplace, or entertainment settings. Therefore, States are called upon to fulfil their positive obligations by regulating how private sector actors design, deploy, and commercialise neurotechnologies and process data. This calls for a careful balancing exercise between enabling innovation and imposing safeguards, including transparency, prevention of exploitative or manipulative practices, and enhanced protection for users in vulnerable situations, particularly children, through anticipatory, coordinated, and enforceable oversight rather than traditional public-sector controls.

Neurotechnologies raise challenges that are not only individual but also collective and structural in nature, such as systematic workplace monitoring, educational selection, or the use of enhanced tools of cognitive persuasion. While the ECtHR's individual application system is capable, in principle, of addressing such issues, the intervention of the ECtHR may come neither quickly nor easily.

Furthermore, while neurodata falls within the broader category of sensitive data, its direct and indirect cognitive implications justify the consideration of stricter safeguards; a prohibition of use may be appropriate, subject only to narrowly defined and highly justified exceptions.

As regards the question whether new human rights ("neurorights") could provide an answer to open questions such as those mentioned above, it was suggested that there already exists a sufficient and consolidated body of human rights, albeit one whose scope, content and permissible restrictions in relation to interferences by neurotechnologies need to be further explored. The proclamation of new human rights, despite their symbolic value, may prove counterproductive should they inflate risks leading to their devaluation, as well as to doctrinal redundancy and fragmentation.

However, existing safeguards are not always designed to regulate commercial, global and algorithmic processing environments. Accordingly, the development of principles specific to neurotechnologies, within the parameters set by existing law, might be warranted. At the same time, particular attention should be paid to the specific situation of persons in vulnerable situations and children, the protection of consumers, and to the safeguarding of national security.

FUTURE ACTIONS

The workshop discussions made it clear that there is a need and feasibility for further intergovernmental work on neurotechnologies within the Council of Europe building on its existing tools, standards and monitoring mechanisms, with the ECHR, as interpreted by the ECtHR, as its compass. The ECtHR is fully equipped to address issues raised by neurotechnologies through the 'living instrument' doctrine and has a proven capacity to engage with complex scientific and technical material. The Council of Europe offers a uniquely well-suited institutional framework for addressing neurotechnologies, bringing together complementary legal instruments and specialised bodies that enable the coherent interpretation, development and operationalisation of human rights standards across interrelated domains, while providing a structured platform for any future standard-setting.

The Council of Europe could, in this context, develop principles or guidelines that are technologically neutral, yet sufficiently future proof. The Committee of Ministers could issue recommendations addressing specific sectors, such as healthcare, scientific research, children's rights, employment, and criminal justice, adapting the existing human rights guarantees to specific contexts.

Member States could also be encouraged to carry out systematic human rights impact assessments prior to, and throughout, the deployment of neurotechnologies.

In addition, member States could make use of Protocol No. 16 to the ECHR, enabling national courts to request advisory opinions from the ECtHR as interpretative guidance on ECHR standards as they apply to novel neurotechnological interferences.

A possible avenue for normative evolution could consist in articulating more precise interpretations of existing human rights as they apply to neurotechnologies, in particular with regard to standards of consent and voluntariness in neurotechnological interventions, as well as mental privacy and the processing of neurodata, as the T-PD is currently doing through specific guidelines. Particular attention should be paid to the development of robust protections for children and persons in vulnerable positions, ensuring that existing ECHR safeguards are effectively adapted to the specific risks posed by neurotechnologies.

Neurotechnologies are inherently transnational, and European case law, jurisprudence, practice and guidance inevitably shape global debates and regulatory approaches. Enhanced coordination with regional and international actors, including UNESCO, the United Nations and the European Union, would therefore be instrumental in avoiding a fragmented regulatory landscape and in promoting robust, rights-based standards at the international level.

It is encouraging that, at the international level, relevant instruments have already been adopted, while other initiatives are ongoing. At the UN, the Human Rights Council adopted in 2024 a Resolution on "Neurotechnology and Human Rights", which, inter alia, requests its Advisory Committee (a consultative body of independent experts) to "draft a set of recommended guidelines for applying the existing human rights framework to the conception, design, development, testing, use and deployment of neurotechnologies" and to present it to

the Council at the beginning of 2027. UNESCO has also adopted a “Recommendation on the Ethics of Neurotechnology” and the OECD a “Recommendation of the Council on responsible innovation in neurotechnology”.

Within the Council of Europe, effective internal coordination across the Organisation could be achieved through strengthened cooperation and synergies between relevant bodies, each contributing its own perspective and expertise. The present workshop is a perfect example of this approach.

In view of the above, there is much room to develop activities focused on clarifying the scope and application of existing human rights and on developing sector-specific safeguards, in close cooperation with Council of Europe bodies, international organisations, national authorities, courts, independent experts, industry and civil society. This would be a complex and fascinating endeavour which does not start from scratch as the system of the ECHR and, more generally, the Council of Europe *acquis*, provide the conceptual tools required to adapt well developed guarantees, in a principled and forward-looking manner, to the specific challenges arising from the development of neurotechnologies.

CONCLUSIONS

Neurotechnologies raise crucial questions and challenges from a legal, ethical and societal point of view.

Panelists explored in depth and exchanged views on existing safeguards, strengths and limitations of the current legal framework and reflected upon open questions and future actions to be taken to adequately reply to the critical issues raised by new technologies impacting on the human rights of the individuals and society at large.

In respect of existing safeguards, the ECHR is a 'living instrument', which - through the evolutive interpretation of the ECtHR - is able to adapt to new phenomena, such as those raised within neurosciences, which the drafters of the ECHR could not have foreseen at the time of its inception.

Being aware that almost all human rights have a cognitive dimension - Article 3 (prohibition of torture, inhuman and degrading treatment), Article 6 (right to a fair trial, in particular the right to not incriminate oneself), Article 8 (right to respect for private life, including right to privacy), Article 9 (freedom of thought), and Article 10 (freedom of expression) – which play a particularly relevant role in the construction of the protection of human rights vis-a-vis potential intrusions to them deriving from neurotechnologies.

The Council of Europe is a privileged institutional framework which can address the many challenging issues raised by neurotechnologies for a number of reasons: because it is very much in the visionary spirit of the Council of Europe to explore new frontiers like neurosciences, it is endowed with relevant instruments, starting from the ECHR and its 16 Protocols, 'Convention 108' + and the 'Oviedo Convention', and because it develops its work through intergovernmental committees (e.g CDDH, CDBIO, T-PD) to provide a comprehensive vision and analysis of different issues impacted by neurotechnologies, from human rights, to biomedicine and health, and to the protection of personal data.

If ECHR resilience constitutes a fundamental strength for the construction of an appropriate framework for the protection of human rights in the field of neurosciences, the existence of unresolved issues requiring further reflection must be also acknowledged.

Among the main remaining significant open issues, there are:

- the difficulty to determine which specific human right applies to different types of neurotechnological interference;
- the 'reactive' action of the ECtHR which addresses human rights challenges only on the basis of individual applications as a last resort and within procedural timeframe;
- the need to adopt proactive regulatory measures, especially given the rapid development of neurotechnologies;

- the increasing role of private sector companies, which tend to set the scene in the absence of rules, particularly in non-medical contexts, where individuals often cannot meaningfully assess risks or refuse participation;
- the necessity of regulation by States on how private sector actors design, deploy, and commercialise neurotechnologies, balancing innovation with safeguards such as transparency, prevention of manipulation, and the protection of vulnerable users, especially children;
- the need to deal with collective and structural issues raised by neurotechnologies, such as workplace monitoring or cognitive persuasion tools, susceptible to having profound implications for democracy and human rights;
- the need to develop specific principles for neurotechnologies within the existing legal framework, with special attention to vulnerable groups.

Finally, in respect of future actions the workshop panelists concluded that it would be appropriate to:

- develop further intergovernmental work on neurotechnologies within the Council of Europe based on the evolutive interpretation of the ECHR by the ECtHR;
- consider preparing Committee of Ministers recommendations which address targeted sectors, taking into account their specific characteristics (e.g. healthcare, scientific research, minors, employment, criminal justice);
- promote systematic human rights impact assessments before and during the use of neurotechnologies;
- promote international coordination with bodies such as UNESCO, the UN, and the EU to avoid fragmented regulation, duplication and to promote coherent, human rights-based standards.
- strengthen internal cooperation within the Council of Europe among its various bodies with a view to developing clearer interpretations of existing human rights as well as sector-specific safeguards.

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