

European Court of Human Rights



Judge Davor Derenčinović
Strasbourg
2022

The European Court of Human Rights

- set up in 1959
- based in Strasbourg, in the Human Rights Building designed by the British architect Lord Richard Rogers in 1995
- it rules on individual or State applications alleging violations of the civil and political rights set out in the **European Convention on Human Rights**
- Its judgments are binding on the countries concerned and have led governments to alter their legislation and administrative practice in a wide range of areas



Not to be confused with

Court of Justice of the European Union

Based in Luxembourg, this Court ensures compliance with EU law and rules on the interpretation and application of the treaties establishing the European Union.

International Court of Justice

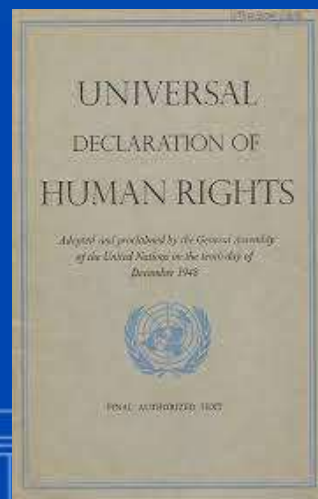
Judicial organ of the United Nations, based in The Hague.

Universal Declaration of Human Rights

Text adopted by the United Nations in 1948 in order to strengthen human rights protection at international level.

Charter of Fundamental Rights

European Union text on human rights and fundamental freedoms, adopted in 2000.

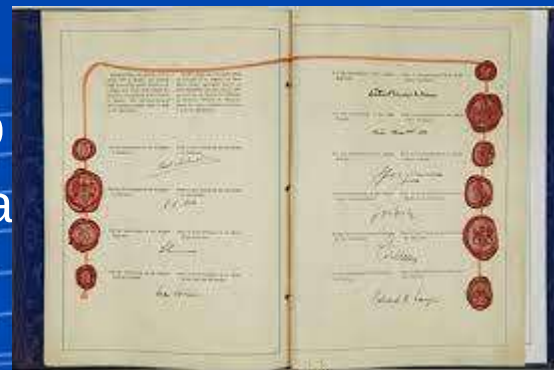


Important dates

- **5 May 1949**→Creation of the Council of Europe
- **4 Nov 1950**→Adoption of the Convention
- **3 Sept 1953**→Entry into force of the Convention
- **21 Jan 1959**→First members of the Court elected by the Consultative Assembly of the Council of Europe
- **23-28 Feb 1959**→The Court's first session
- **18 Sept 1959**→The Court adopts its Rules of Court
- **14 Nov 1960**→The Court delivers its first judgment: *Lawless v. Ireland*
- **1 Nov 1998**→Entry into force of Protocol No. 11 to the Convention, instituting "the new Court"
- **18 Sept 2008**→The Court delivers its 10,000th judgment
- **1 June 2010**→Entry into force of the Protocol No. 14, whose aim is to guarantee the long-term efficiency of the Court
- **1 August 2018**→Entry into force of Protocol No. 16 to the Convention allowing the Court to deliver advisory opinions

The European Convention for the Protection of Human Rights and Fundamental Freedoms

- Signed in 1950; entered into force in 1953
- Established the first international complaints procedure and the first international court of human rights
- Transformation of abstract human rights ideals into a concrete legal framework
- Problems: concerns over “sovereignty” and a reluctance to take the concept of a state accountability too far
- The signing and ratification of this international treaty is the main precondition for the membership in the Council of Europe for new candidates, and a present-day 46 member states are party to the Convention



The Guarantees and Prohibitions

The Convention secures in particular:

- the right to life,
- the right to a fair hearing,
- the right to respect for private and family life,
- freedom of expression,
- freedom of thought, conscience and religion and,
- the protection of property.

The Convention prohibits in particular:

- torture and inhuman or degrading treatment or punishment,
- slavery and forced labour,
- death penalty,
- arbitrary and unlawful detention, and
- discrimination in the enjoyment of the rights and freedoms set out in the Convention.



Articles

- **Art. 2** Right to life
- **Art. 3** Prohibition of torture
- **Art. 4** Prohibition of slavery and forced labour
- **Art. 5** Right to liberty and security
- **Art. 6** Right to a fair trial
- **Art. 7** No punishment without law
- **Art. 8** Right to respect for private and family life
- **Art. 9** Freedom of thought, conscience and religion
- **Art. 10** Freedom of expression
- **Art. 11** Freedom of assembly and association
- **Art. 12** Right to marry
- **Art. 13** Right to an effective remedy
- **Art. 14** Prohibition of discrimination

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.

Protocols (additional provisions)

- the right to property
- the right to education
- the obligation to hold free elections
- freedom from imprisonment for civil debts
- freedom of movement and residence
- freedom from exile
- no collective expulsion of aliens
- abolition of the death penalty
- the right to compensation for a miscarriage of justice
- immunity from double prosecution for the same offence
- equal rights and responsibility of spouses

Composition of the Court

Number of judges: equal to the number of High Contracting Parties (Member States)

Criteria for office of judges:

→ They “shall be of high moral character and must either possess the qualifications required for appointment to high judicial office or be jurists of recognised competence”

→ Judges sit in their individual capacity and may not engage in any activity that is incompatible with their independence, impartiality or the demands of a full-time office



Composition of the Court

Election of judges

- Governments present list of three candidates
- Elected by the Parliamentary Assembly by a majority of votes cast from a list of 3 candidates submitted by a High Contracting Party
- Serve for a nine-year term
- The term of any judge expires when he or she reaches the age of 70
- Various backgrounds: national judiciary, law professors, lawyers, senior officials
- Ad hoc judges also serve when required



Structure of the Court

- Bureau
- Plenary Court (Elections, internal organisation, Rules)
- **Single judge**
 - Admissibility of individual applications
- **Committees (3 judges)**
 - By unanimous vote may declare inadmissible or strike out of their list of cases any individual application where such a decision can be taken without further examination



Structure of the Court

- **Chambers** (7 judges)

→ Decide on the admissibility and merits of cases not eliminated by a Committee, and on the admissibility and merits of inter-State applications

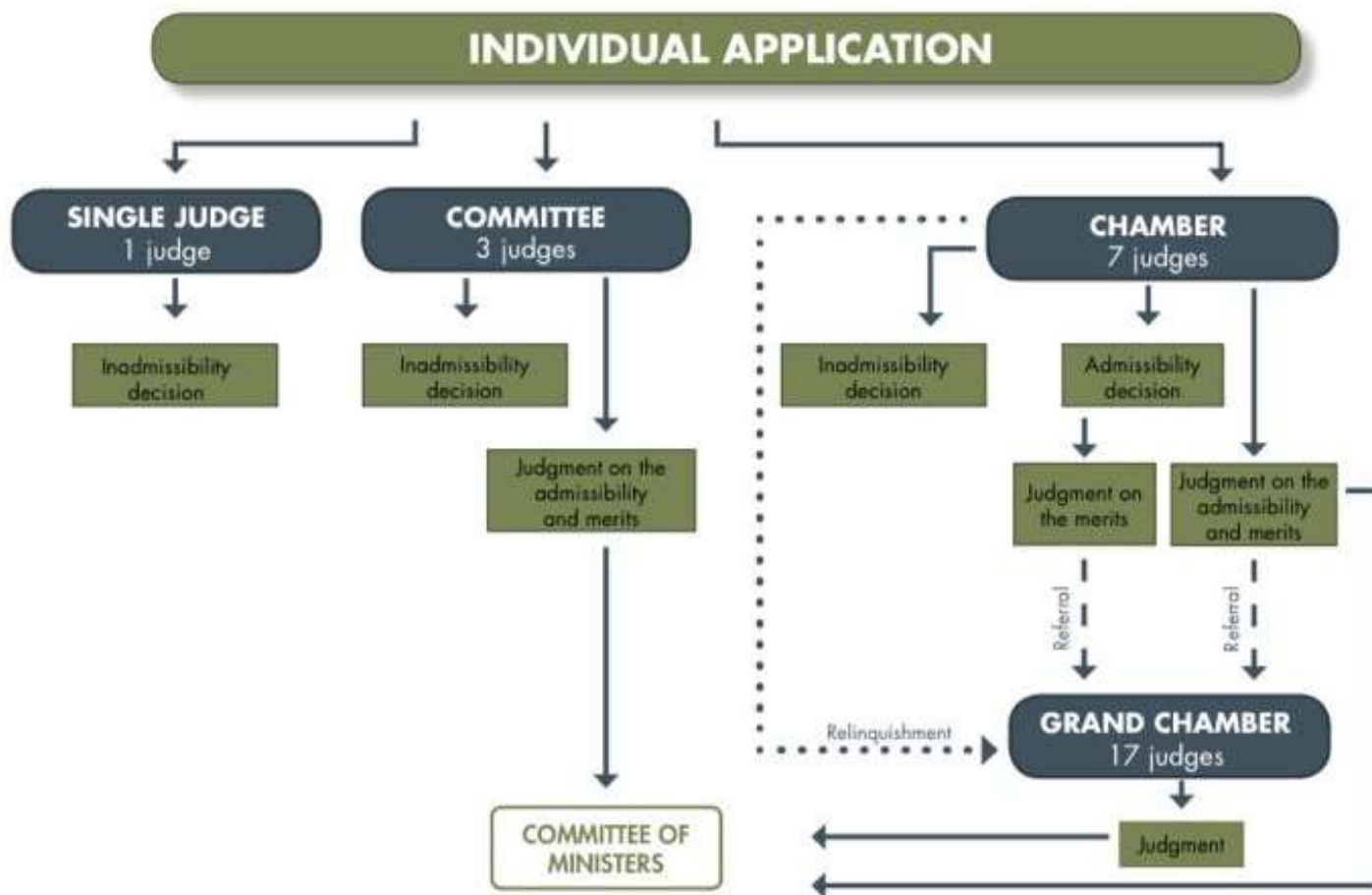
→ If a case raises serious question of interpretation of the Convention, or if there is a risk that its judgment may be inconsistent with a previous judgement, a Chamber may relinquish jurisdiction in favour of the Grand Chamber

- **Grand Chamber** (17 judges)

→ A panel of judges of the Grand Chamber may consider requests from any party to a case that has been decided by a Chamber to review the case and render its own judgment

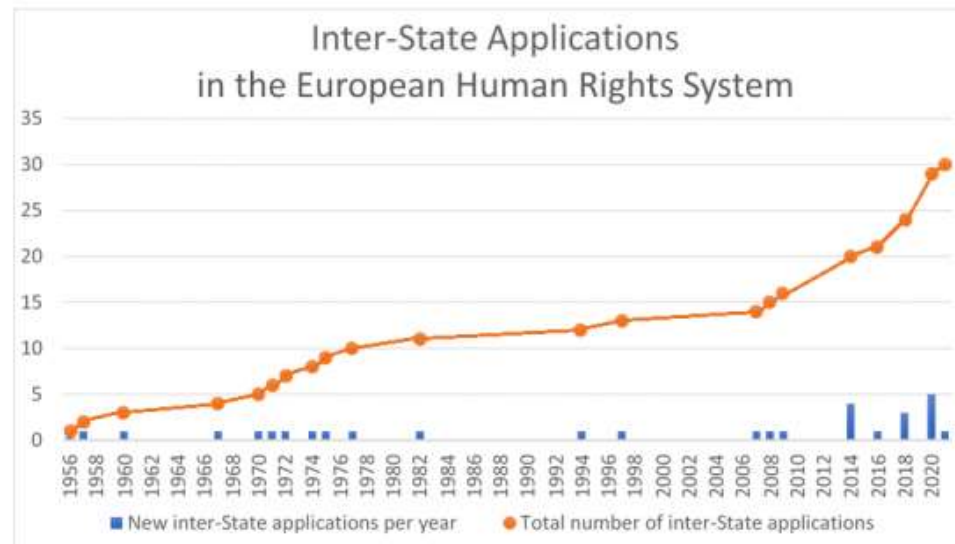
→ If a case raises “a serious question affecting the interpretation or application of the Convention or the protocols thereto, or a serious issue of general importance (Article 43)

Simplified flow chart of case-processing by the Court



Jurisdiction

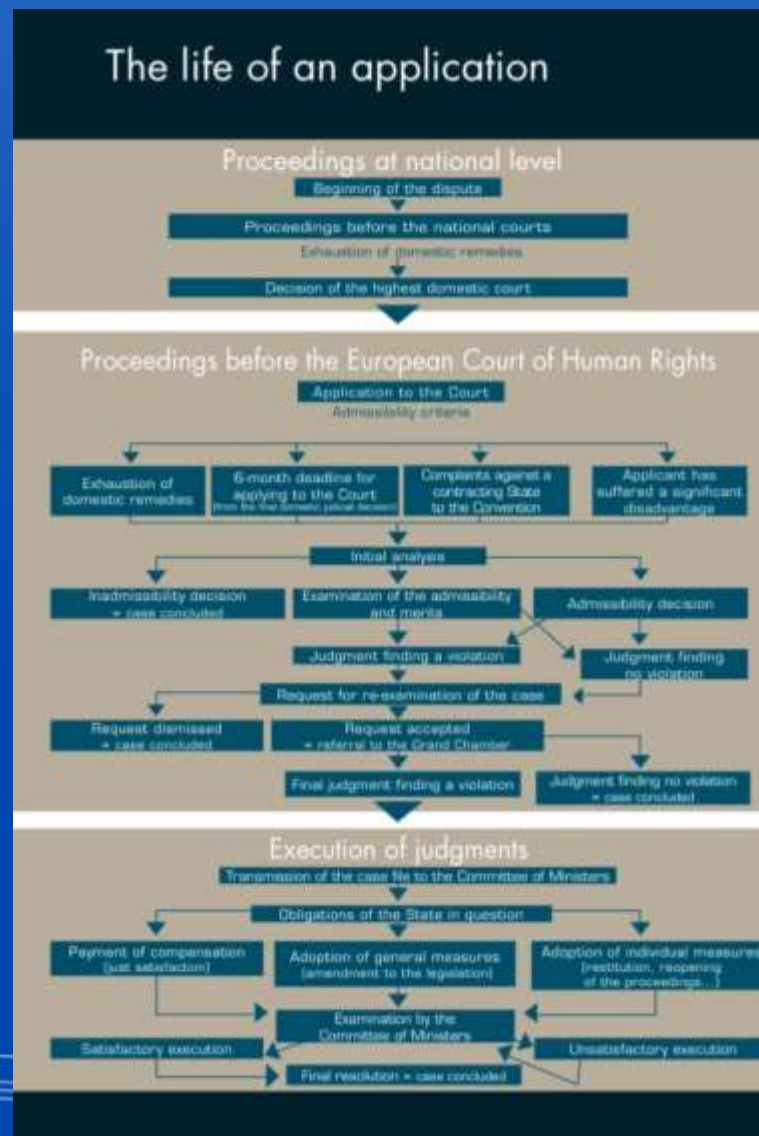
- 1) Article 47: the Committee of Ministers may request the Court to give an advisory opinion on any legal question concerning the interpretation of the Convention
- 2) Articles 33 and 34: Contentious jurisdiction in inter-state and individual cases



Source: https://www.echr.coe.int/Documents/InterState_applications_ENG.pdf (J. Batura, 02/2021)

The right of individual petition

- One of the most effective means of protecting human rights
- Essential element of the supervisory system established by the Convention
- Convention protects the rights of individuals (natural or legal persons), but not groups as such
- Only parties who are directly affected by a violation of the rights may bring a claim in Strasbourg



Requisites for a complete application

- the statement of the facts of the case, which show that the applicant **suffered a significant disadvantage**
- the **statement of alleged violation(s)** of the Convention and/or its Protocols;
- information about **available remedies** in the country of the applicant, including appeals.

The image shows a sample of the European Court of Human Rights Application Form. The form is titled "Application Form" and includes the following sections:

- Instructions:** A box containing instructions for the applicant, including a warning that the form is not to be completed by the applicant's lawyer or other representative.
- Applicant's details:** A section for the applicant to provide their name, address, and contact information.
- Respondent's details:** A section for the respondent to provide their name, address, and contact information.
- Statement of facts:** A section for the applicant to provide a detailed statement of the facts of the case, including the date and location of the alleged violation.
- Statement of alleged violation(s):** A section for the applicant to provide a detailed statement of the alleged violation(s) of the Convention and/or its Protocols.
- Available remedies:** A section for the applicant to provide information about available remedies in the country of the applicant, including appeals.

Admissibility Criteria

- Rule 47 (application form)
- Exhaustion of domestic remedies
- 4-month time-limit
- State's liability
- Victim status-No actio popularis
- Jurisdiction (*ratione personae, materiae, temporis, loci*)
- Manifestly ill-founded
- Abuse of the right of application
- Substantially the same
- No significant disadvantage



Proceedings on the merits

- This first stage of proceedings before the Court, called the admissibility stage, is followed by the merits stage, during which the state party is notified of the complaint and both parties have the opportunity to submit their observations, and relevant information or material to the Court
- Once the Court declares an application admissible, there are 2 courses of action (Article 38):
 - 1) Examination of a case
 - 2) Friendly settlement
- Role of Registry
- Case struck out – CM supervision
- Unilateral declaration
- Pilot Judgment Procedure



Hearings

- The Court basically has a written procedure but occasionally decides to hold public hearings in specific cases.
- They are public unless otherwise decided by the President of the Chamber or Grand Chamber
- All hearings are filmed and broadcast on the Court's website on the day itself, from 2.30 p.m. (local time).



Just satisfaction

- **Art. 41:** If a High Contracting Party is in breach of its obligations under the Convention, and if its domestic law does not provide for adequate reparation of the breach, “the Court shall, if necessary, afford just satisfaction to the injured party”
 - In many cases: the finding of a violation is in itself just satisfaction
 - In others: a monetary compensation
 - Return of unlawfully expropriated property, etc.



Judgment

- **A judgement delivered by a chamber** becomes final after the expiry of a three-month period during which the applicant or Government may request the referral of the case to the Grand Chamber in an **appeal procedure**
- The judgment of the Grand Chamber is final

EXECUTION

→ Committee of Ministers



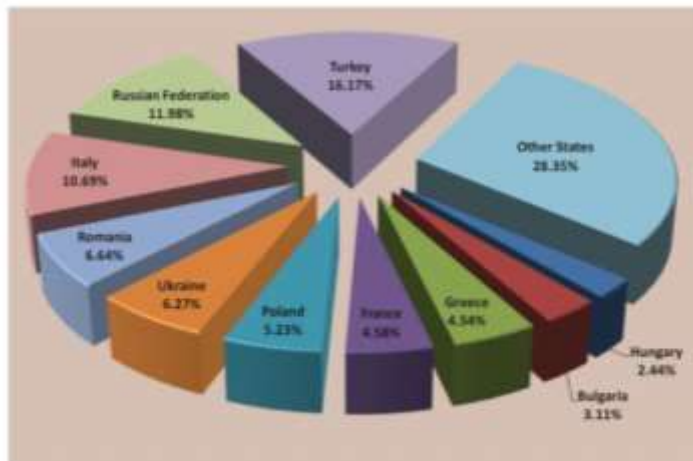
Facts and Figures

Statistics 1959 to 2019

Judgments by State

Since it was established in 1959 the Court has delivered more than 22,500 judgments. Around 40% of these concerned 3 member States of the Council of Europe: Turkey (3,645), the Russian Federation (2,699) and Italy (2,410).

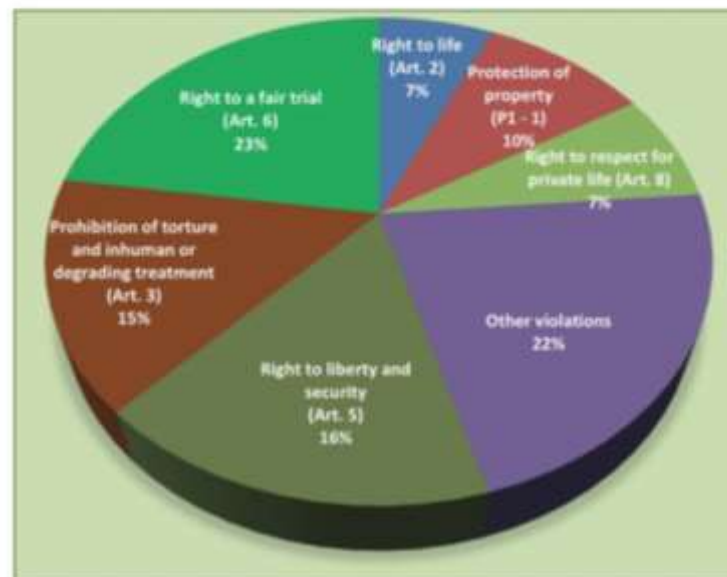
In 84% of the judgments it has delivered since 1959, the Court has found at least one violation of the Convention by the respondent State.



Subject-matter of the Court's violation judgments

In the judgments delivered by the Court in 2020, nearly a quarter of the violations concerned Article 6 (right to a fair hearing), whether on account of the fairness or the length of the proceedings.

In addition, more than 20% of the violations found concerned serious breaches of the Convention, namely the right to life or the prohibition of torture and inhuman or degrading treatment (Articles 2 and 3).



Thank you for your attention!

