| Chapter 3 |

The European Court of Human Rights: Procedural and Jurisprudential Framework

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ABSTRACT

This chapter examines the role and functioning of the European Court of Human Rights (ECtHR) with a focus on its institutional structure, procedural framework, and the main interpretative doctrines shaping its jurisprudence. It explores how the Court adjudicates individual and inter-State applications and develops the standards of the European Convention on Human Rights (ECHR) in response to contemporary legal challenges. It also examines key interpretative doctrines, including the margin of appreciation and the living instrument doctrines, which illustrate the Court's dynamic interpretative approach and its effort to balance evolution with respect for State sovereignty and democratic legitimacy.

KEYWORDS

ECtHR, human rights, procedure, margin of appreciation, living instrument doctrine, jurisprudence

1. Introduction

Since its establishment in 1959, the Strasbourg-based European Court of Human Rights (ECtHR) has served as the guardian of the rights enshrined in the Convention for the Protection of Human Rights and Fundamental Freedoms, also known as the European Convention on Human Rights (ECHR).[1] Over the decades, the Court has developed a rich jurisprudence, comprising more than 10,000 judgments,[2] addressing a wide array of human rights issues across the Member States of the Council of Europe, the organisation that provided the framework for the Convention's adoption. Its judgments are binding on the State concerned and frequently prompt significant changes in national laws and practices.

1 ECHR, 1950.
2 Council of Europe, 2025a. For further statistical data, see: European Court of Human Rights, 2025a.

Enikő Krajnyák (2026) 'The European Court of Human Rights: Procedural and Jurisprudential Framework' in Paczolay, P. (ed.) *The European Convention on Human Rights A Central and Eastern European Perspective.* Miskolc–Budapest: Central European Academic Publishing, pp. 57–78. https://doi.org/10.71009/2026.pp.tecohr_3

This chapter examines the ECtHR's role in shaping human rights law in Europe, focusing on its institutional structure, procedural safeguards, and the interpretative doctrines guiding its decisions. By analysing the Court's interpretative approaches, the chapter also considers questions, such as how the Court balances national discretion with evolving international standards, and how it responds to emerging challenges in Europe and beyond. The chapter is structured as follows. Section 2 gives a brief historical overview of the Court's creation and early decades, and introduces its current institutional framework, including the composition and functioning of its judicial formations. Section 3 examines the procedural framework, including the types of proceedings and the Convention's procedural rules, with particular attention to the admissibility criteria. Section 4 discusses key doctrines and principles of interpretation, highlighting the margin of appreciation and living instrument doctrines characteristic of the ECtHR's jurisprudence. The final section addresses the Court's role in addressing new challenges and offers concluding reflections on the implications of its jurisprudence for contemporary human rights protection in Europe.

2. Institutional Framework

2.1. Historical Overview of the ECtHR: Its Creation and the First Decades

As noted above, the ECtHR was established in 1959, following the Convention's adoption (1950) and entry into force (1953). In the early period, the Convention's control mechanism consisted of the European Commission of Human Rights, established in 1954, which operated alongside the Court from 1959. Until the Commission's abolition in 1998, individuals did not have direct access to the Court; rather, the Commission received petitions from any person, non-governmental organisation or group of individuals alleging a violation by one of the Contracting States, provided the State had recognised the Commission's competence.[3] The first cases were declared admissible in 1958: *de Becker v. Belgium* and *Lawless v. Ireland*. The former concerned the conviction of a Belgian journalist for collaborating with German authorities during the Second World War,[4] while the latter involved the detention without trial of a suspected member of the Irish Republican Army (IRA) in a military detention camp.[5] *Lawless* was also the first case decided by the Court, adopted on 1 July 1961.[6]

The *Lawless* case arose in the context of IRA activity in the 1950s, which the Irish government regarded a threat to national security and public order. The applicant, an Irish citizen and suspected IRA member, complained of detention without trial, invoking violations of several human rights under the Convention, including liberty (Article 5), the right to a fair trial (Article 6), and the principle of non-retroactivity

3 Article 25 of the original text of the Convention, cited in: Nussberger, 2020, p. 9.
4 *De Becker v. Belgium*, Application no. 214/56.
5 *Lawless v. Ireland*, Application no. 332/57.
6 The Lawless case, 1962, p. 249.

under criminal law (Article 7). The Court accepted the government's arguments under Article 15 of the ECHR (derogation in time of emergency), concluding that the detention was necessary to address a public emergency in the Republic of Ireland threatening the life of the nation, and thus found no violation of any of the rights invoked by the applicant.[7]

This case was followed by numerous complaints arising from the conflict in Northern Ireland, including the inter-State case *Ireland v. the United Kingdom* and *McCann v. the United Kingdom*. The first case concerned the treatment of suspected IRA members. The Irish government alleged that the United Kingdom's use of the so-called "five techniques" of interrogation – wall-standing, hooding, exposure to noise, sleep deprivation, and deprivation of food and drink – amounted to a violation of the prohibition of torture (Article 3). The Court held that the techniques amounted to inhuman or degrading treatment under Article 3, but did not constitute the threshold of torture,[8] thereby drawing a sensitive line between torture and inhuman treatment.

McCann v. the United Kingdom arose from the killing of suspected IRA members in Gibraltar, by British Special Air Service soldiers who believed the suspects carried a remote detonation device. The applicants alleged that the use of lethal force violated the right to life (Article 2). The Court examined whether the lethal force used was absolutely necessary, and found that the killing was disproportionate to the aims pursued (Article 2(2)).[9]

Another important case from the Court's early jurisprudence was the so-called *Belgian linguistic case*, involving multiple applications and addressing complex issues of language rights and non-discrimination. The applicants, arguing on behalf of more than 800 children, claimed that Belgian linguistic legislation relating to education violated their rights under Article 8 (right to private and family life), Article 14 (non-discrimination), and Article 2 of Protocol No. 1 (right to education). The complaints centred on the State's failure to provide French-language education in municipalities where the applicants resided, which, however belonged to a region classified as Dutch-speaking. Furthermore, the applicants complained that State withheld grants from institutions that failed to comply with the linguistic provisions of the legislation, refused to homologate leaving certificated issued by such institutions, and did not allow the applicants' children to attend the French classes available outside their municipalities. It forced the applicants to either enrol their children in local schools or send them to school in the Greater Brussels area, where the language of instruction was Dutch or French according to the child's mother-tongue, thereby entailing various risks and hardships. On the other hand, the government argued that the right to education in one's own language was not included in the Convention, and that the applicants did not belong to a national minority within the meaning of Article 14.

7 The Lawless case, ibid., pp. 256–257.
8 *Ireland v. the United Kingdom*, Application no. 5310/71, Operative paragraphs.
9 *McCann and Others v. the United Kingdom*, Application no. 18984/91.

The Court held that the principle of non-discrimination under Article 14 is violated where a distinction lacks objective and reasonable justification, does not pursue a legitimate aim, or is disproportionate to the aim pursued. Nevertheless, the Court found no violation of the rights invoked by the applicants.[10] Given the sensitive linguistic tensions in Belgium, the Court's stance may be regarded as cautious, indicating its tendency at the time to balance human rights protection with respect for national discretion.

In addition, linguistic rights were also examined in the inter-State case of *Austria v. Italy,* which concerned fair trial rights of German-speaking residents in Northern Italy, and resulted in a finding of no violation of the Convention.[11] Other inter-State applications in the Court's early jurisprudence centred around the political situation in Greece following the military *coup* in 1967. In these cases, other Contracting States lodged applications against Greece concerning widespread and serious human rights violations, thereby acting as guardians of the Convention rather than intervening on behalf of their own citizens.[12] Although Greece denounced the Convention in 1969,[13] these early inter-State cases established an important precedent that grave human rights violations could attract scrutiny from other Member States of the Council of Europe, as later reflected in cases such as *Cyprus v. Turkey* and, more recently, *Ukraine and the Netherlands v. Russia*.

2.2. The Structure of the ECtHR after Protocols 11, 14 and 15

Protocol 11 to the ECHR, adopted in 1994 and entering into force in 1998, brought major reforms to the control mechanism of the Convention, replacing Articles 19–56 of the original text. It replaced the former dual control mechanism of part-time monitoring institutions (the Commission and the Court) and replaced them with a single, permanent Court. The Preamble of the Protocol explains the reform by 'the urgent need to restructure the Convention's control machinery in order to maintain and improve the efficiency of its protection of human rights and fundamental freedoms, mainly in view of the increase in the number of applications and the growing membership of the Council of Europe'.[14]

Following the collapse of the Soviet Union (USSR) and Yugoslavia (SFRY), the Council of Europe welcomed a significant number of new Member States from Central and Eastern The new members of this period included Hungary (1990), Poland (1991), Bulgaria (1992), Estonia, Lithuania, Slovenia, the Czech Republic, Slovakia, and Romania (1993), followed by Andorra (1994), Latvia, Moldova, Albania, Ukraine, North

10 *Case "relating to certain aspects of the laws on the use of languages in education in Belgium" v. Belgium*, Application nos. 1474/62; 1677/62; 1691/62; 1769/63; 1994/63; 2126/64.
11 *Austria v. Italy*, Application no. 788/60.
12 *Denmark, Norway, Sweden & the Netherlands v. Greece (I)*, Application nos. 3321/67 to 3323/67 and 3344/67, and *Denmark, Norway, Sweden & the Netherlands v. Greece (II)*, Application no. 4448/70. See also: Janis et al., 2008, pp. 24–68.
13 See: Committee of Ministers, *The Greek Case*, 1969.
14 Protocol No. 11, Strasbourg, 11 May 1994, Preamble.

Macedonia (1995), Croatia, the Russian Federation (1996), Georgia (1999), Armenia, Azerbaijan (2001), Bosnia and Herzegovina (2002), Serbia (2003), Monaco (2004), and Montenegro (2007).[15] This wave of accessions had a profound impact on the Convention system. It extended the reach of the ECHR to hundreds of millions of new rights-holders and significantly increased the Court's workload, as many applications arose from the legal and social aftermath of the post-communist transitions.[16] Therefore, post-Cold War enlargement transformed the Court into a continent-wide institution, and went hand in hand with major reforms of its control mechanism.

The new control system introduced by Protocol 11 laid down the fundamental rules governing the operation of the ECtHR. In this light, judges are elected by the Parliamentary Assembly of the Council of Europe by a majority of votes cast from a list of three candidates nominated by each Contracting State. The candidates for the office must be of high moral character and either possess the qualifications required for appointment to high judicial office or be jurisconsults of recognised competence. During their term of office, judges may not engage in any activity incompatible with their independence, impartiality, or the demands of a full-time position. Protocol 11 initially set the term of office for a period of six years, with the possibility of re-election, and provided that the terms of office of one-half of the judges shall be renewed every three years. It also introduced a maximum age limit of seventy years for the judges.[17]

Protocol 11 further established the Court's internal structure and the tasks of its various formations. According to it, the plenary Court shall have the following competence: (a) the election of the President and one or two Vice-Presidents, (b) the establishment of Chambers, (c) the election of Presidents of the Chambers, (d) the adoption of the rules of the Court, and (e) the election of the Registrar and Deputy Registrars. The composition of committees consist of three judges, Chambers of seven judges, and the Grand Chamber at seventeen judges. The latter shall also include the President of the Court, the Vice-Presidents, the Presidents of the Chambers, and other judges.

The committees may declare individual applications inadmissible by unanimous decision. In case where no such decision is possible, a Chamber determines the admissibility and merits of individual and inter-State applications. Cases may be referred to the Grand Chamber if they raised serious questions affecting the interpretation of the Convention or its Protocols, or where the resolution of a question before the Chamber might have a result inconsistent with a judgment previously delivered by the Court. In such instances, the Chamber could relinquish jurisdiction in favour of the Grand Chamber.[18]

15 See: Our member States [Online]. Available at: Council of Europe, 2025b.
16 A significant amount of such cases centered around the property expropriated by the communist regimes, and the status of public officials after the change of regime. See: Gross, 1996, pp. 92–100.
17 Protocol No. 11, Article 1.
18 Protocol No. 11.

Protocol 11 further addressed procedural questions, such as admissibility criteria, third-party intervention, friendly settlements, and public hearings, which are analysed in the following section. At this point, it is sufficient to note that these reforms fundamentally reshaped the operation of the Court, establishing its accessibility and efficiency. Therefore, the key aspects of the reformed structure that form the basis of today's institutional framework can be summarised as follows. Protocol 11 abolished the former part-time monitoring institutions, the European Commission on Human Rights and the European Court of Human Rights, and replaced them with a single, full-time European Court of Human Rights based in Strasbourg. With the abolition of the Commission, applicants gained direct access to the Court in both individual and inter-State cases. In addition, Protocol 11 limited the role of the Committee of Ministers to supervise the executive organ of the Council of Europe, removing its former jurisdiction to decide on the merits of cases.[19]

The current institutional structure of the Court is shaped not only by Protocol 11 but also by Protocols 14 and 15, which introduced further adjustments to its composition and functioning.

The adoption of Protocol 14 in 2004, entering into force in 2009, was explained by the urgent need to maintain and improve the long-term efficiency of the Convention's control system, particularly in the light of the Court's steadily increasing workload.[20] This Protocol extended judges' terms of office from six to nine years and abolished the possibility of re-election.[21] It also introduced the single-judge formation, empowered to declare applications inadmissible or to strike an individual application from the Court's list without further examination.[22] Furthermore, the competences of the committees were amended to allow them to render a judgment on the merits, where the underlying question in a case is already the subject of well-established case law.[23]

Protocol 15, adopted in 2013 and entering into force in 2021, sought to strengthen the ECtHR's role in the protection of human rights in Europe.[24] As elaborated below, it explicitly enshrined the principle of subsidiarity and the margin of appreciation doctrine, placing them at the end of the Preamble to the ECHR.[25] It also clarified structural rules brought by Protocol 11. In particular, it supplemented the rules on judicial age limits by requiring candidates to be under 65 years of age on the date on which the list of three candidates is requested by the Parliamentary Assembly.

In light of these amendments, the following paragraphs outline the current institutional structure of the European Court of Human Rights, as enshrined in the text of the Convention. The Court consist of a number of judges equal to the number

19 Drzemczewski, 1999, pp. 224–225.
20 Protocol No. 14, Strasbourg, 13 May 2004, Preamble.
21 Protocol No. 14, Article 2.
22 Protocol No. 14, Article 6.
23 Protocol No. 14, Article 8.
24 Protocol No. 15, Strasbourg, 24 June 2013, Preamble.
25 Protocol No. 15, Article 1.

of Contracting Parties of the ECHR.[26] As of 2025, the Court is composed of forty-six judges,[27] following the Russian Federation's departure from the Council of Europe in March 2022, and its withdrawal from the Convention six months later, which terminated the office of the judge elected in respect of that State.[28] The criteria for office remain as proposed in Protocol 11, as adjusted by Protocol 15, therefore, the judges must be of high moral character and must either possess the qualifications required for appointment to high judicial office or be jurisconsults of recognised competence. Candidates must also be under 65 years of age at the moment when the Parliamentary Assembly requests the list of three nominees.[29] Judges are elected by the Parliamentary Assembly by a majority of votes cast from a list of three candidates nominated by each Contracting State.[30] Based on Protocol 14, the judges are elected for a period of nine years, without the possibility of re-election.[31]

The competences of the plenary Court remain largely as established by Protocol 11, with the addition under Protocol 14, with the power to request the Committee of Ministers to reduce the number of judges in Chambers to five for a fixed period.[32] For the consideration of cases, the Court sits in different formations, depending on the nature of the cases, namely in a single-judge formation, in committees, chambers, and the Grand Chamber. Single judges may declare an individual application inadmissible or strike it out of the list of cases, where such a decision can be taken without further examination. The single judge's decision is final. However, if the judge does not declare an application inadmissible or strike it out, they may forward it to a committee or a Chamber for further consideration. A judge acting in the single-judge formation may not examine any application lodged against the State in respect of which they were elected.[33]

Committees, composed of three judges, may adopt final decisions by unanimous vote in two cases. First, similar to the competence of single judges, they may declare an individual application inadmissible or strike it out. Second, they may declare an application admissible and render a judgment on the merits simultaneously, where the underlying question in the case is covered by well-established case law. In this formation, if the judge elected in respect of the State the application concerns, the committee may invite the judge to sit in place of one of its members.[34]

If no decision was taken by a single judge or a committee, Chambers composed of seven judges decide on the admissibility and merits of individual applications. Chambers may also adjudicate inter-State applications. If a case pending before a

26 ECHR, Article 20.
27 The list of current judges of the Court: European Court of Human Rights, 2025b.
28 Committee of Ministers, Resolution CM/Res(2022)2 of 16 March 2022; European Court of Human Rights, Resolution of 22 March 2022.
29 ECHR, Article 21.
30 ECHR, Article 22.
31 ECHR, Article 23.
32 Protocol No. 14, Article 5; ECHR, Article 25.
33 ECHR, Article 27.
34 ECHR, Article 28.

Chamber raises a serious question affecting the interpretation of the Convention or its Protocols, or where the resolution of the question may lead to inconsistency with a previous judgment, the Chamber may relinquish jurisdiction in favour of the Grand Chamber.[35]

The Grand Chamber, composed of seventeen judges, has three principal competences. First, it determines individual and inter-State applications where a Chamber has relinquished jurisdiction, or where a case has been referred to it within three months of the Chamber judgment. In the latter situation, a panel of five Grand Chamber judges may accept the request if it raises a serious question affecting the interpretation or application of the Convention or its Protocols, or a serious issue of general importance.[36] Referral is therefore relevant only after a judgment has been adopted and concerns cases already declared admissible and examined on the merits. As of 2021, nearly five per cent of referral requests were accepted,[37] demonstrating the exceptional nature of the procedure: it does not constitute an appeal against the judgment, rather a reconsideration.

Second, the Grand Chamber decides on issues referred to it by the Committee of Ministers when a Contracting State is alleged to have failed to abide by a final judgment of the Court. Third, the Grand Chamber considers requests for advisory opinions submitted to the Court. These procedures are discussed in greater detail in the next section. For present purposes, it suffices to note that the Grand Chamber functions as the Court's highest judicial formation, responsible for resolving questions of general importance and safeguarding the authority and coherence of the Court's jurisprudence.

3. Procedural Framework

3.1. Types of Proceedings before the Court

The European Court of Human Rights exercises competence in both contentious proceedings and advisory opinion procedures. Its contentious jurisdiction encompasses applications brought by individuals under Article 34 and by States under Article 33, as well as infringement proceedings under Article 46(4) of the convention. The following paragraphs address these procedures before turning to the Court's advisory competence, which underwent notable changes with the adoption of the newest protocol to the ECHR, namely Protocol 16.

Inter-State proceedings are regulated in Article 33, providing that 'Any High Contracting Party may refer to the Court any alleged breach of the provisions of the Convention and the Protocols thereto by another High Contracting Party'.[38]

35 ECHR, Articles 29–30.
36 ECHR, Article 31.
37 Note prepared by the Registry, 2021, pp. 4–5.
38 ECHR, Article 33.

Although inter-State cases form a small proportion of the Court's workload,[39] they can significantly impact large groups of individuals, as they often relate to crises or conflicts between two or more States. The first inter-State case, *Greece v. the United Kingdom (I)*, was lodged in 1956 regarding the alleged human rights violations attributable to the United Kingdom in the administration of Cyprus.[40] Inter-State applications also arose in connection with the conflict over Northern Ireland, particularly concerning interrogation techniques and the arbitrary detention of individuals suspected of terrorist activities. The most prominent example, *Ireland v. the United Kingdom*, became the first inter-State judgment issued by the Court in 1978. The Court also dealt with inter-State disputes arising from Turkey's military operations in Cyprus, which led to findings of systemic violations of the rights of the Greek Cypriots.[41]

A significant group of cases concerned the armed conflict between Georgia and Russia, including allegations of collective expulsion of thousands of Georgian nationals from Russia *(Georgia v. Russia (I))*,[42] the killing of civilians, and the torching and looting of houses in Georgian villages during armed hostilities *(Georgia v. Russia (II))*,[43] and practices associated with "borderisation", namely the demarcation of a de facto border with physical infrastructure, surveillance, and crossing regime *(Georgia v. Russia (IV))*.[44] Taken together, the Court found mass violations of several Convention rights, including the right to life (Article 2), the prohibition of torture (Article 3), the right to liberty (Article 5), and the protection of property (Article 1 of Protocol 1). However, the Court's approach to extraterritorial jurisdiction in *Georgia v. Russia (II)* was subject to strong criticism,[45] as it held that events occurring during the "active phase of the hostilities" did not fall within the jurisdiction of the Russian Federation, limiting jurisdiction to the period following the cessation of hostilities.[46]

Given the pending applications, the Court's cautious approach may set a questionable precedent for future cases arising from armed conflicts, such as those between Ukraine and Russia or between Armenia and Azerbaijan. The first set of cases between Ukraine and Russia concerns events in Crimea and Eastern Ukraine,[47] while subsequent cases relate to the large-scale human rights violations arising from the invasion starting in February 2022.[48] The outcome of these cases is yet to be seen;

39 Mondré highlights that, as of 2021, there have been 27 inter-State applications in light of the total of around 920,000 applications to the Court. See: Mondré, 2021, p. 47.
40 *Greece v. the United Kingdom (I),* Application no. 176/56.
41 See: *Cyprus v. Turkey (I) and (II),* Application nos. 6780/74 and 6950/75; *Cyprus v. Turkey (III),* Application No. 8007/77; *Cyprus v. Turkey,* Application no. 25781/94.
42 *Georgia v. Russia (I),* Application no. 13255/07.
43 *Georgia v. Russia (II),* Application no. 38263/08.
44 *Georgia v. Russia (IV),* Application no. 39611/18.
45 The controversies of this aspect of the judgments are also shown by the significant number of dissenting opinions. See also: Dzehtsiarou, 2021; Tan and Zwanenburg, 2021; Marcinko, 2022.
46 *Georgia v. Russia* (II), 125–144.
47 *Ukraine v. Russia (re Crimea),* Application nos. 20958/14 and 38334/18.
48 *Ukraine and the Netherlands v. Russia,* Application nos. 8019/16, 43800/14, 28525/20 and 11055/22.

the situation is further complicated by Russia's withdrawal as the Member State of the Council of Europe. Thus, although the judgments may bring a limited impact on the ongoing conflict, these cases play a significant role in documenting human rights violations, shaping international legal standards, and supporting future legal and diplomatic measures.

The vast majority of the Court's cases arise from individual applications under Article 34, providing that 'The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right'.[49]

The Convention thus distinguishes between three categories of applicants in individual petitions. The first category encompasses physical persons who claim that their Convention rights were violated within the jurisdiction of the State concerned, in accordance with Article 1 of the Convention,[50] regardless of nationality, place of residence, civil status, or legal capacity.[51] Secondly, a legal entity may also have standing before the Court if it qualifies as a non-governmental organisation under Article 34. In determining whether a legal person falls within the autonomous concept of "non-governmental organisation", the Court takes into account its legal status, the nature of its activities, the context in which those activities are carried out, and the degree of independence from political authorities.[52] Thirdly, an application may be lodged by a group of individuals on their behalf, if each of them is personally affected by the alleged violation. This is particularly important, as the Convention does not provide for an *actio popularis*, that is, the claims brought in the public interest to challenge a law or practice *in abstracto*. The purpose of an individual is to determine whether a violation has occurred with regard to the specific applicant(s).[53]

Accordingly, Article 34 not only defines the scope of individual applications but also lays down the criteria for victim status. As the Court points out, "the concept of "victim" must be interpreted autonomously and irrespective of domestic concepts such as those concerning an interest or capacity to act.[54] The contours of victim status were significantly challenged in the context of climate change litigation, particularly in *Verein KlimaSeniorinnen and Others v. Switzerland*. In that judgment, the Court held that the criteria for individual applicants is especially high, and depends on the level and severity of the adverse consequences of governmental action or inaction, as well

49 ECHR, Article 34.
50 Article 1 of the ECHR reads as follows: 'The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.'.
51 Practical Guide on Admissibility Criteria, 2025, p. 9.
52 See: *Radio France and Others v. France*, Application no. 53984/00, para. 26.
53 See: *Roman Zakharov v. Russia*, Application no. 47143/06, para. 164.
54 *Gorraiz Lizarraga and Others v. Spain*, Application no. 62543/00, para. 35.

as the need for individual protection in light of reasonable measures to reduce harm.[55] After examining the nature and scope of the complaints, the likelihood and severity of the adverse effects of climate change, their specific impact on each applicant's life, health or well-being, the magnitude and duration of the harmful effects, the scope of the risk, and the applicant's vulnerability, the Court concluded that the individual applicants did not meet the criteria to be considered victims under Article 34. By contrast, it found that the association acting on behalf of affected individuals did qualify as a victim, based on the specific feature of climate change as a common concern of humankind and the necessity of intergenerational burden-sharing.[56]

Therefore, it may be concluded that the Convention sets a relatively high threshold for individual applicants, requiring a direct link between the alleged violation and the applicant submitting the claim, whether as an individual, a non-governmental organisation, or a group of individuals. However, recent jurisprudence shows that the Court may adopt a more flexible and purposive approach to victim status in specific contexts, such as climate change.

In addition to inter-State and individual applications, the Court has competence to deliver advisory opinions under Article 47. Under the original Protocol 2, advisory opinions could be requested by the Committee of Ministers on legal questions concerning the interpretation of the Convention and the Protocols. These opinions could not concern the content or scope of the rights and freedoms defined in the Convention or the Protocols, nor any questions that the Commission, the Court or the Committee of Ministers might have to consider in contentious proceedings.[57] The advisory jurisdiction significantly changed with the adoption of Protocol 16, which enabled the highest courts or tribunals of States Parties to request advisory opinions on questions of principle relating to the interpretation or application of the Convention. Protocol 16, adopted in 2013 and entering into force in 2018 for States that ratified it, aims to enhance interaction between the Court and national authorities, thus reinforcing the implementation of the Convention. However, given its recent entry into force and the limited number of ratifications, the potential of this procedure remains largely unexplored.

3.2. Overview of the Proceedings before the ECtHR

The procedural framework of the Court reflects a careful balance between accessibility for hundreds of millions of potential applicants and the effective functioning of the Convention system. Central to this framework is the principle of subsidiarity, which underpins the entire system by affirming that primary responsibility for protecting human rights rests with national authorities. This can also be deduced from Article 1 of the ECHR, which imposes on the High Contracting Parties, i.e. the States, the

55 Verein KlimaSeniorinnen and Others Schweiz v. Switzerland, Application no. 53600/20, para. 487.

56 Verein KlimaSeniorinnen, paras. 521–526. See also: Dzehtsiarou, 2024, p. 423; Sefkow-Werner, 2025, p. 814.

57 Protocol No. 2, Strasbourg, 6 May 1963, Article 1.

obligation to respect human rights. The explicit formulation of subsidiarity principle was later incorporated in the Preamble of the Convention by means of an additional protocol.

Proceedings before the Court begin with an assessment of the admissibility criteria, which operate as an essential filter. Once a case passes this initial stage, it may proceed through different procedural avenues, including the pilot judgment procedure designed to address structural or systemic violations. Finally, the Court's judgments are subject to supervision by the Committee of Ministers, which ensures their effective implementation at the domestic level. This section, therefore, provides an overview of the key elements and specific features of the proceedings before the ECtHR.

3.2.1. Admissibility Criteria

The admissibility criteria are set out in Article 35 of the Convention, and may be divided into three categories: (a) procedural grounds for inadmissibility, (b) grounds for inadmissibility relating to the Court's jurisdiction, and (c) inadmissibility based on the merits.[58]

With respect to procedural grounds, the Convention first establishes the exhaustion of domestic remedies as a key requirement under customary international law. This requirement reflects the principle of subsidiarity, one of the fundamental principles governing the ECHR's control mechanism, as also reflected in the Preamble.[59] Within the framework of the ECtHR, subsidiarity means that responsibility for ensuring respect for the Convention lies, first and foremost, with domestic authorities, and the Court intervenes only where the domestic authorities fail in this task. Although subsidiarity was explicitly introduced in the Preamble after the entry into force of Protocol 15 in 2021, the subsidiary nature of the Court's machinery had long been expressed in the judgments. For instance, in the abovementioned *Belgian linguistic case*, the Court pronounced that: 'it [the Court] cannot assume the role of the competent national authorities, for it would thereby lose sight of the subsidiary nature of the international machinery of collective enforcement established by the Convention.'[60]

Similarly, in *Scordino v. Italy*, the Court held that 'the primary responsibility for implementing and enforcing the rights and freedoms guaranteed by the Convention is laid on the national authorities. The machinery of complaint to the Court is thus subsidiary to national systems safeguarding human rights'.[61]

58 See: ECHR, Article 35. See also: Practical Guide on Admissibility Criteria, pp. 29–97.

59 The abovementioned Article 1 of Protocol No. 15 provides that the following recital shall be added at the end of the preamble to the Convention: 'Affirming that the High Contracting Parties, in accordance with the principle of subsidiarity, have the primary responsibility to secure the rights and freedoms defined in this Convention and the Protocols thereto, and that in doing so they enjoy a margin of appreciation, subject to the supervisory jurisdiction of the European Court of Human Rights established by this Convention'.

60 *Case "relating to certain aspects of the laws on the use of languages in education in Belgium" v. Belgium*, para. 10.

61 *Scordino v. Italy (No. 1),* Application no. 36813/97, para. 140.

In addition to the requirement that domestic remedies be appropriate, available, and effective, applicants must comply with a four-month time-limit. Application must be submitted to the Court within a period of four months from the date of the final decision of the case. This time-limit was introduced by Protocol 15, with the aim of maintaining legal certainty, ensuring that cases are examined within a reasonable period and preventing authorities and other persons concerned from being kept in a state of uncertainty for extended periods.[62]

Regarding individual applications under Article 34, the Court set further admissibility restrictions. Anonymous applications, those that do not disclose the applicant's identity, are inadmissible. For instance, in *"Blondje" v. the Netherlands*, the case file did not mention the applicant's name or date of birth, and the applicant failed to provide a valid identity document, which resulted in the case to be found anonymous, and thus, inadmissible.[63] The Court also excludes applications that are substantially the same as those already examined either by the Court or by another international procedure.[64] Finally, the abuse of the right of application includes conduct that is manifestly contrary to the purpose of the right of individual petition and that impedes the proper functioning of the Court or the proper conduct of the proceedings. Examples include misleading the Court, using offensive language, breaching the confidentiality of friendly-settlement proceedings, submitting manifestly vexatious applications or the misuse of domestic remedies in a manner designed to obstruct the process.[65]

The second category of grounds for inadmissibility concerns the Court's jurisdiction. These criteria include incompatibility *ratione personae, ratione loci, ratione temporis,* and *ratione materiae.* According to the Court's jurisprudence, applications are incompatible *ratione personae* with the Convention where, for instance, the applicant lacks standing under Article 34; is unable to show that he or she is a victim of the alleged violation; brings an application against an individual or an international organisation that has not acceded to the Convention; or complains of a breach of a Protocol that the Respondent State has not ratified.[66]

Compatibility *ratione loci* with the Convention is primarily examined on the basis of Article 1 of the ECHR, providing that Contracting Parties "shall secure everyone within their jurisdiction the right and freedoms defined in [...] this Convention".[67] While jurisdiction is primarily territorial, a State may exceptionally be held responsible for acts performed outside its territory where it exercises effective control over the relevant territory.[68]

62 *Mocanu and Others v. Romania*, Application nos. 10865/09, 45886/07 and 32431/08, para. 258.
63 *"Blondje" v. the Netherlands*, Decision of 15 September 2009.
64 *OAO Neftyanaya Kompaniya Yukos v. Russia*, Application no. 14902/04, para. 521.
65 *Mamić and Others v. Croatia*, Application no. 21714/22, paras. 116–119.
66 Practical Guide on Admissibility Criteria, pp. 64–65.
67 ECHR, Article 1.
68 See, for instance, *Catan and Others v. the Republic of Moldova and Russia*, Application nos. 43370/04, 8252/05 and 18454/06, paras. 106–107; *Al-Skeini and Others v. the United Kingdom*, Application no. 25579/05, paras. 138–140.

Incompatibility *ratione temporis* reflects the principle of non-retroactivity of the Convention. Thus, jurisdiction *ratione temporis* covers only the period after the respondent State has ratified the Convention or the relevant Protocols. However, under specific circumstances, the Court may extend its temporal jurisdiction to continuing violations that originated before the entry into force of the Convention but persisted thereafter.[69]

Finally, compatibility *ratione materiae* derives from the Court's substantive jurisdiction. The right relied on by the applicant must be protected by the Convention or its Protocols. The Court has no competence to examine alleged violations of rights guaranteed exclusively by other international human rights instruments, although it may take such instruments can be taken into consideration as part of the relevant international legal framework.

The third category of grounds for inadmissibility encompasses inadmissibility based on the merits. An application is found inadmissible if it is manifestly ill-founded or the applicant has not suffered a significant disadvantage. One specific category of manifestly ill-founded applications is the so-called "fourth-instance complaints", whereby applicants seek to have the Court act as an appellate body reviewing the facts, interpretation of domestic law, assessment of evidence, the substantive fairness of civil proceedings or the guilt or innocence of an accused person. The Court may also find application manifestly ill-founded where it discloses no appearance of a violation of Convention rights. In addition, an application may be inadmissible if the applicant cannot demonstrate a significant disadvantage resulting from the alleged violation. This criterion, introduced to the Convention with Protocol 14, allows the Court to dismiss applications where the level of disadvantage is sufficient to justify examination on the merits.[70]

In sum, the admissibility criteria in Article 35 acts as a crucial procedural filter, ensuring that the Court remains a subsidiary mechanism of human rights protection rather than a fourth instance body. By requiring exhaustion of domestic remedies, compliance with the four-month time-limit and the exclusion of cases falling under *a de minimis* threshold, these criteria maintain the Court's capacity to address serious and systemic human rights violations.

4. The Role of the Court in the Interpretation of the ECHR: Key Doctrines

The European Court of Human Rights does not limit itself to settling individual or inter-State disputes. Each decision and judgment forms part of a broader and dynamic jurisprudential corpus through which the Court interprets and clarifies the human rights standards of the Convention. In this respect, the Court operates as an authoritative interpreter by progressively developing the normative content of the

69 See, for instance, *Hutten-Czapska v. Poland*, Application no. 35014/97, paras. 152–153.
70 Practical Guide on Admissibility Criteria, pp. 81–97.

rights enshrined in the ECHR. This section therefore provides an overview of the key interpretative methods employed by the Court.

Since its establishment in 1959, the Court has developed distinctive methods of interpretation. These methods, elaborated below, fit within the general interpretative techniques applicable to international treaties, such as textual, teleological, systemic, and, to some extent, historical interpretation.[71] However, the evolving social, political, and technological circumstances confronting the expanding circle of Contracting Parties have necessitated an interpretation responsive to such developments. The doctrines of the Convention as a "living instrument" and evolutive interpretation emerged as functional responses to this teleological necessity, enabling the Court to ensure the effectiveness and relevance of the Convention amidst contemporary human rights challenges. The margin of appreciation doctrine complements this dynamic interpretative approach by balancing the need for uniform protection of Convention rights with respect for national discretion in their implementation.

4.1. The Concept of the "Living Instrument Doctrine"

Against this backdrop, the "living instrument doctrine" constitutes the cornerstone of the Court's interpretative approach, it reflects the idea that the Convention must be read in light of present-day conditions rather than being confined to the original intention of its drafters in the 1940s and 1950s. This principle was first articulated in *Tyrer v. the United Kingdom* in the 1970s, concerning the corporal punishment of a minor in the Isle of Man. Assessing whether birching constituted degrading punishment contrary to Article 3 of the Convention (prohibition of degrading treatment), the Court recalled that 'the Convention is a living instrument which, [...] must be interpreted in the light of present-day conditions. In the case now before it the Court cannot but be influenced by the developments and commonly accepted standards in the penal policy of the member States of the Council of Europe in this field'.[72]

In light of the evolving standards of Contracting States, the Court pronounced that judicial corporal punishment amounted to a violation of the prohibition of degrading punishment.[73] Since *Tyrer,* the Court has consistently applied the "living instrument doctrine" in contexts where societal or technological developments have transformed the human rights norms. For example, in *Marckx v. Belgium,* the Court recognised the legal bond between an unmarried mother and her child, departing from earlier understanding prevalent at the time of the Convention's adoption in 1950, when distinctions between "illegitimate" and "legitimate" children were permissible. By 1979, such distinctions no longer reflected contemporary standards.[74] Similarly, in *Dudgeon v. the United Kingdom,* the Court took note of increased tolerance of homosexual conduct in the great majority of Council of Europe Member States, compared with

71 Ammann, 2020, p. 191. See also: McBride, 2021, p. 34.
72 Tyrer v. the United Kingdom, Application no. 5856/72, para. 31.
73 Hilliard and Duranti, 2024, p. 343.
74 *Marckx v. Belgium,* Application no. 6833/74, para 41.

the situation thirty years earlier, and found that criminalisation of homosexual acts violated Article 8 (the right to respect for private and family life).[75]

4.2. The Concept of Margin of Appreciation

In these early cases in which the Court invoked the "living instrument" doctrine, it relied on the prevailing consensus among the great majority of Contracting States to justify departures from the interpretation prevalent at the time of the Convention's adoption.[76] However, in situations where no such European consensus exists, the Court acknowledges that States retain a certain degree of discretion in implementing Convention rights. The margin of appreciation doctrine was established in *Handyside v. the United Kingdom* (1976) in the context of freedom of expression and was gradually incorporated into the Court's jurisprudence. In that case, the Court assessed whether the confiscation of a book deemed obscene violated the applicant's freedom of expression under Article 10. The Court noted that 'it is not possible to find in the domestic law of the various Contracting States a uniform European conception of morals. The view taken by their respective laws of the requirements of morals varies from time to time and from place to place, especially in our era which is characterised by a rapid and far-reaching evolution of opinions on the subject. By reason of their direct and continuous contact with the vital forces of their countries, State authorities are in principle in a better position than the international judge to give an opinion on the exact content of these requirements as well as on the "necessity" of a "restriction" or "penalty" intended to meet them'.[77]

In light of the State's aim of protecting minors, the Court found the confiscation necessary in a democratic society, and found no violation of Article 10.

The margin of appreciation may be wide or narrow, depending on the degree of European consensus on the matter. As noted in *Dickson v. the United Kingdom*, the margin is wider where there is no consensus among Contracting States, either as to the relative importance of the interest at stake or as to how best to protect it. This is particularly evident in cases raising complex issues or choices of social strategy,[78] for instance, in cases concerning abortion,[79] reproductive rights,[80] and end-of-life decisions.[81] By contrast, the Court tends to apply a narrow margin where there is a strong European consensus on the scope of a right, particularly in areas concerning the core aspects of private life and human dignity. The Court allowed a narrow margin for the

75 *Dudgeon v. the United Kingdom*, Application no. 7525/76, para. 60.
76 Letsas, 2013, p. 112.
77 *Handyside v. the United Kingdom*, Application no. 5493/72, para. 48.
78 *Dickson v. the United Kingdom*, Application no. 44362/04, para. 78.
79 See, for instance, *Vo v. France*, Application no. 53924/00, para. 82; A, B and C v. Ireland, Application No. 25579/05, para. 185.
80 *Evans v. the United Kingdom*, Application no. 6339/05, para. 59.
81 *Dániel Karsai v. Hungary*, Application no. 32312/23, paras. 139–146.

State in the context of the protection of biometric data,[82] secret surveillance,[83] and the exercise of political rights.[84]

The application of the margin of appreciation doctrine is a defining characteristic of the European human rights doctrine and distinguishes the ECtHR from other regional or universal human rights jurisdictions. The Inter-American Court of Human Rights (IACtHR), the ECtHR's Latin American counterpart, has been cautious in adopting the doctrine, primarily because many of its cases involve non-derogable rights and because domestic systems do not always offer strong protection.[85] In *Artavia Murillo et al. v. Costa Rica*, which concerned a prohibition on in vitro fertilisation, the IACtHR noted the ECtHR's case law and use of the doctrine, but did not accept Costa Rica's argument that it enjoyed a margin of appreciation to impose such restrictions.[86]

Similarly, the doctrine has not been incorporated into the jurisprudence of United Nations human rights treaty bodies, such as the Human Rights Committee (HRC), explained by the large number of States Parties to the International Covenant on Civil and Political Rights (ICCPR), and their geographical, political and cultural diversity.[87] The deferential approach inherent in the margin of appreciation may, on occasion, lead to divergent outcomes between the ECtHR and the HRC, as seen in differing conclusions on restrictions concerning the wearing of full-face veils. Whereas the ECtHR in *S.A.S. v. France*[88] upheld the French ban as falling within the margin of appreciation under Article 9, the HRC in *Sonia Yaker v. France*[89] and *Miriana Hebbadj v. France*[90] (HRC) found a violation of freedom of religion under Article 18 of the ICCPR. Such divergences can be attributed to the differing historical and geopolitical contexts in which the two bodies operate. As Yuval Shany, former HRC Member points out,

> 'the ECtHR forms part of a European agenda of regional integration and democratisation, which has no direct parallel at the global level, and that the said agenda influences the legal tools the Court applies and its self-role perception. At the same time, [the HRC], like other UN treaty bodies, derive their legitimacy from other sources – especially from the notion of universality of international human rights – a notion with powerful symbolic value, which exerts on some states considerable compliance pull'.[91]

82 *S. and Marper v. the United Kingdom*, Application nos. 30562/04 and 30566/04, para. 112.
83 *Big Brother Watch and Others v. the United Kingdom*, Application nos. 58170/13, 62322/14 and 24960/15, para. 347.
84 United Communist Party of Turkey and Others v. Turkey, Application no. 19392/92, para. 46.
85 Cançado Trindade, 1998, pp. 582–583.
86 *Artavia Murillo et al. v. Costa Rica*, para. 316. See also: Raisz, 2018.
87 Joseph and Casten, 2013, p. 625. See also: Shany, 2018.
88 *S.A.S. v. France*, J Application no. 43835/11.
89 Sonia Yaker v. France, Views adopted on 7 December 2018.
90 *Miriana Hebbadj v. France*, Views adopted on 12 December 2022.
91 Shany, 2021. p. 71.

Accordingly, the logic of the margin of appreciation presupposes a community of States bound by shared values, historical backgrounds, and cultural tradition, which cannot be transposed to the universal level. As shown above, the interpretation of the ECHR has evolved considerably since its adoption in 1950, through the Court's use of evolutive interpretation, enabling it to take account of societal developments across Europe. However, the evolutive interpretation has limits, as it is constrained by the principles of subsidiarity and the margin of appreciation, which require the Court to respect national authorities' primary role in balancing competing interests, particularly in areas involving complex policy choices or moral sensitivities.

5. Concluding Remarks

This chapter outlined the historical development of the institutional, procedural, and jurisprudential framework of the European Court of Human Rights. It demonstrated how the Court has evolved from a reactive body primarily resolving individual complaints into a dynamic institution that actively interprets and elaborates the standards of the European Convention on Human Rights in response to contemporary challenges.

The chapter also highlighted how the subject matter of the Court's case law has evolved over time. Initially, the Court addressed "classic" human rights violations, such as arbitrary detention, torture, and restrictions on political freedoms. Its role expanded significantly following the enlargement of the Council of Europe in the 1990s and 2000s, which brought numerous post-communist States with diverse legal traditions and emerging human rights challenges. This expansion increased the Court's caseload, necessitating institutional and procedural reform, and diversified the range of issues brought before it. Over the decades, the Court's jurisprudence has expanded to encompass emerging issues reflecting societal, technological, and environmental developments, often intertwined with moral and political considerations. Through its interpretative doctrines – including the "living instrument" approach, evolutive interpretation, reliance on European consensus and the margin of appreciation – the Court is often faced with the sensitive task of reconciling competing interests, such as individual rights, public policy, and national traditions. Its task is to ensure that the essence of the human rights enshrined in the Convention is preserved and that human rights protection remains practical and effective across the diverse legal and societal contexts of contemporary Europe.

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