STELIOS ANDREADAKIS

THE RIGHT TO ACCESS TO JUSTICE THROUGH AN EFFECTIVE LEGAL REMEDY: DRAWING THE COMPARISON BETWEEN THE LUXEMBOURG AND THE STRASBOURG COURTS

EL DERECHO DE ACCESO A LA JUSTICIA TRAVÉS DE UN RECURSO JUDICIAL EFECTIVO: ESTABLECIENDO LA COMPARACIÓN ENTRE LOS TRIBUNALES DE LUXEMBURGO Y ESTRASBURGO

ARTÍCULO INÉDITO DE INVESTIGACIÓN

CÓMO CITAR ESTE ARTÍCULO (CHICAGO)

Andreadakis, Stelios. «The Right to Access to Justice Through an Effective Legal Remedy: Drawing the Comparison Between the Luxembourg and the Strasbourg Courts». *Revista de Derecho Aplicado LLM UC* 13 (2024). https://doi.org/10.7764/rda.13.66407

REVISTA DE DERECHO APLICADO LLM UC

Número 13
Julio 2024
ISSN: 2452-4344

Recepción: 28 de agosto, 2023
Aceptación: 15 de marzo, 2024

Resumen

In the realm of human rights and justice, the fundamental principle of the right to access the court through an effective legal remedy holds utmost significance. This article engages in a comparative analysis between the Court of Justice of the EU in Luxembourg, and the Court of Human Rights in Strasbourg, in terms of their role in safeguarding this crucial right. By examining their jurisdictional differences, enforcement mechanisms, and approaches to ensuring access to justice, the analysis aims to shed light on the unique dynamics of these two influential Courts. The article not only explores the legal pathways available to individuals seeking remedies for rights' violations, but also examines the broader implications for the protection of human rights across the European continent. Through an examination of the relevant case law, procedural intricacies, and overarching principles, this article offers a comprehensive insight into the methods employed by the two Courts to uphold the right to an effective legal remedy, thus ultimately contributing to an understanding of the complex landscape of European legal protection, particularly in light of the upcoming EU accession to the European Convention on Human Rights.

Keywords: Access to Justice, Legal Remedy, Accession, ECHR, ECJ.

Abstract

En el ámbito de los derechos humanos y la justicia, el principio fundamental del derecho de acceso a los tribunales mediante un recurso judicial efectivo reviste la máxima importancia. Este artículo presenta un análisis comparativo entre el Tribunal de Justicia de la Unión Europea, con sede en Luxemburgo, y el Tribunal de Derechos Humanos, con sede en Estrasburgo, en cuanto a su papel en la salvaguarda de este derecho crucial. Mediante el examen de sus diferencias jurisdiccionales, mecanismos de ejecución y enfoques para garantizar el acceso a la justicia, el análisis pretende arrojar luz sobre la dinámica única de estos dos influyentes tribunales. El artículo explora las vías legales disponibles para las personas que buscan reparación por violaciones de sus derechos y examina las implicaciones más amplias para la protección de los derechos humanos en el continente europeo. A través de un examen de la jurisprudencia pertinente, las complejidades procesales y los principios generales, este artículo ofrece una visión global de los métodos empleados por los dos tribunales para defender el derecho a un recurso judicial efectivo, contribuyendo así en última instancia a la comprensión del complejo panorama de la protección jurídica europea, en especial con vistas a la próxima adhesión de la Unión Europea al Convenio Europeo de Derechos Humanos.

Palabras clave: Acceso a la justicia, recursos judiciales, adhesión, CEDH, TJCE.

Stelios Andreadakis

Brunel University London
Brunel Law School
London, United Kingdom
stelios.andreadakis@brunel.ac.uk
https://orcid.org/0000-0002-3836-8033

Stelios Andreadakis holds a PhD and an LLM in International Commercial Law from the University of Leicester, UK. Currently, he is a Reader in Corporate and Financial Law at Brunel University London, UK. He is also the Deputy Director of the Research Centre for Law, Economics and Finance at Brunel and the Director of Postgraduate Programmes at the Law School.

Brunel University London
Facultad de Derecho
Londres, Reino Unido
stelios.andreadakis@brunel.ac.uk
https://orcid.org/0000-0002-3836-8033

Stelios Andreadakis es doctor y máster en Derecho Mercantil Internacional por la Universidad de Leicester, Reino Unido. En la actualidad es docente de Derecho Mercantil y Financiero en la Universidad Brunel de Londres, Reino Unido. También es director adjunto del Centro de Investigación en Derecho, Economía y Finanzas de Brunel y director de Programas de Postgrado de la Facultad de Derecho.

1. INTRODUCTION

Access to justice should not be seen just as a right in itself, but also as a mechanism that contributes to the transformation of fundamental rights from theory to practice. Rights have absolutely no value if they only exist in legal instruments; they need to be effective and individuals should be able to enforce these rights and obtain adequate redress.[1] Although much emphasis placed on the protection of fundamental rights in Europe[2] and around the world[3], there are still concerns and obstacles for individuals wishing to get access to the justice system at both national and international level. Such obstacles include strict rules on *locus standi*, restrictive time limits, excessive legal costs and complex of legal procedures, while the remedies available and the applicable follow-up mechanisms are a matter of concern.

However, the fact that in Europe there are two main regimes reinforced by judicial mechanisms, which can ensure adequate protection, should not be overlooked, since they provide avenues of redress and guarantee enforcement of rights. On the one hand, there is the Court of Justice of the European Union (CJEU) along with the Lisbon Treaty, the Charter of Fundamental Rights of the European Union (Charter) and the general principles of EU law, while on the other hand, there is the European Court of Human Rights (ECtHR) and the European Convention of Human Rights (ECHR). It is also worth adding that the proposed Accession of the EU to the ECHR is intended to bridge these two regimes, so as to make fundamental rights more visible and ultimately strengthen individuals' access to justice.

---

1 European Union Agency for Fundamental Rights, *Access to Justice in Europe: An Overview of Challenges and Opportunities* (Publications Office of the European Union, 2011), 3.

2 Francesco Francioni, "The Rights of Access to Justice Under Customary International Law", in Francesco Francioni (editor), *Access to Justice as a Human Right* (Oxford: Oxford University Press, 2007), 1-55; Ales Galič, *The Inconsistency of case Law and the Right to a Fair Trial: Revisiting Procedural Human Rights. Fundamentals of Civil Procedure and the Changing Face of Civil Justice* (Cambridge: Intersentia, 2017), 17-51.

3 Macarena Vargas Pavez, *El derecho a la ejecución forzada: Noción e implicancias a partir de la jurisprudencia de la Corte Europea de Derechos Humanos* (Valparaíso: Publicaciones de la Escuela de Derecho PUCV, 2019); Martha Elba Dávila Pérez, "El derecho a un recurso efectivo: Una aproximación teórico-conceptual", *Revista de Derecho UNED* 17 (2015): 225-250; Karla Ayerim Yánez and Frank Luis Mila Maldonado, "Tutela judicial efectiva y el derecho fundamental al recurso", *Lex Revista de Investigación en Ciencias Jurídicas* 6, No. 20 (2023): 119-127; Gonzalo García Pino and Pablo Contreras Vásquez, "El derecho a la tutela judicial efectiva y el debido proceso en la jurisprudencia del TC chileno", *Estudios Constitucionales* 11, No. 2 (2013): 229-282.

The present article will focus on the right to access the justice system and the attainment of an effective legal remedy through a comparative analysis of the two main mechanisms that are currently in operation in Europe. This comparative analysis offers an overview of the existing *status quo* in Europe and the challenges that fundamental rights protection will face ahead in light of the upcoming EU Accession to the ECHR. The comparison will be based not only on an analysis of the relevant legislative provisions, but will also build upon the rich jurisprudence of the influential Courts of the European continent. These Courts' operation is interconnected and strongly related to the operation of the national courts in Europe, either because the judgements are applicable to the legal orders of the Member States (in the case of the CJEU) or because the cases have already been heard and decided by national courts (in the case of the ECtHR). In addition, reference will be made to a plethora of academic works and policy documents, which touch upon different aspects of this topic and allow for a critical reflection on this developing area of law and the aspects that have attracted the academic interest for years now.

The first part will examine the right to access to court from the perspective of both the EU and the Council of Europe's (CoE), covering not only the scope and the limitations of this right, but also procedural issues, such legal standing, the right to legal services and legal aid and admissibility. The second part will discuss the right to an effective remedy, the available supervisory mechanisms and the execution of judgements. Finally, the third part will deal with the EU Accession to the ECHR, its potential impact for both the EU and the CoE, its projected completion following the recent negative Opinion 2/13[4] of the CJEU and the challenge of closing the existing gap in human rights protection.

2. THE CASE OF TWO MACHINERIES

2.1. Right to Access to Court

The term 'access to justice' is not commonly used in the legal terminology of the European Convention on Human Rights (ECHR)[5]. Instead, the term is encapsulated by the provisions on fair trial and the right to an effective remedy within Articles 6 and 13 respectively.[6]

---

4 Court of Justice of the European Union, "Opinion 2/13 on the draft agreement on the accession of the European Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms and identifies problems with regard to its compatibility with EU law" (18 December 2014).

5 Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR).

6 Art 6 and Art 13 ECHR.

Article 6 paragraph 1 states that: '*In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law*'.[7]

The language of this paragraph illustrates the ambiguity in this respect, as the right of access to Court is not explicitly mentioned. The question of whether the latter could be implied from the wording of Article 6, paragraph 1 arose in the case of *Golder v. the United Kingdom*.[8] Having regard to the guiding principles of interpretation under the Vienna Convention on the Law of Treaties 1969[9], the Court of Human Rights reasoned as follows: '*In civil matters, one can scarcely conceive of the rule of law without there being a possibility of access to the courts... The principle whereby a civil claim must be capable of being submitted to a judge ranks as one of the universally recognized fundamental principles of law; the same is true of the principle of international law which forbids the denial of justice. Article 6(1) must be read in the light of these principles.*'[10]

The *Golder* judgment has been referred to as a landmark decision, in that it considerably extended the scope of Article 6 paragraph 1[11] by ruling that the right of access to court is granted both in law and in fact.[12] Notably, Article 6 of the ECHR is the most frequently invoked provision by applicants to Strasbourg.[13]

In parallel, within the legal order of the European Union, an explicit reference to access to justice was introduced through Article 67(4) of the Treaty on the Functioning of the European Union (TFEU), which provides that '*the Union shall facilitate access to justice, in particular through the principle of mutual recognition of judicial and extrajudicial decisions in civil matters*'[14] but also through Article 81(2)(f) that refers to the 'elimination of obstacles to the proper functioning of civil proceedings'.[15] Furthermore, the Charter of Fundamental Rights (hereinafter the Charter), having equal binding status as the Trea-

7 Art 6, para 1 ECHR.

8 *Golder v. United Kingdom* (1975) 1 EHRR 524.

9 *Ibid*, para. 29.

10 *Ibid*, paras. 34-35.

11 Pieter van Dijk, "The Maze of Paragraph 1 of Art.6", *Hague Yearbook of International Law* 18 (1988): 141.

12 Francis G. Jacobs, 'The Right to a Fair Trial in European Law", *European Human Rights Law Review* 2 (1999): 144.

13 European Court of Human Rights, *Annual Report 2012* (Strasbourg: Council of Europe Publishing, 2013), 132.

14 Art 67(4) Treaty on the Functioning of the European Union (TFEU) [2012] OJ C326/01.

15 Art 81(2)(f) TFEU.

ties, provides under Article 47 for the 'right to an effective remedy and to a fair trial'[16] emulating the provisions of Articles 6 and 13 of the ECHR.

Finally, the established principles of the CJEU, such as the principle of direct effect[17], the concept of state liability[18] and the requirement that national remedies for breaches of rights derived from Community (now Union) law, comply with the principles of equivalence and effectiveness[19] demostrating that access to justice is one of the constitutive components of a Union based on the rule of law.

Therefore, it can be *prima facie* asserted that both the CJEU and the ECtHR possess the foundations through which the right to access to court is legally provided to citizens.

2.2. Scope and Limitations

According to its wording, Article 6 para 1 ECHR can only apply to disputes over 'civil rights and obligations' which means that, at least on arguable grounds, it may be recognised under the domestic law of the Contracting States, as it cannot, in itself guarantee any particular content for those rights or obligations.[20] On the face of it, Article 6 para 1 is restricted to disputes between private individuals and thus not to any proceedings in which a citizen is confronted by a public authority. Nevertheless, the ECtHR specified that '*whether or not a right is to be regarded as civil within the meaning of this expression in the Convention must be determined by reference to the substantive content and effects of the right – and not its legal classification – under the domestic law of the state concerned*'.[21]

Indeed, a different approach would have allowed Contracting States to contravene Article 6 para 1 'simply by classifying various areas of the law as "public" or "administrative" and would have risked creating disparity in the protection of human rights'.[22] Yet, the ECtHR has not yet attempted to elaborate universal criteria through which to identify 'civil rights and obligations', preferring instead to decide the matter on a case-by-case basis. Following

16 Art 47 Charter of Fundamental Rights of the European Union [2012] OJ C326/391.

17 Case C-26/62 *Van Gend en Loos v. Nederlandse Administratie der Belastingen* [1963] ECR 1.

18 Case C-6/90 *Francovich and Bonifaci v. Italy* [1995] ICR 722.

19 Case C-78/98 *Preston v. Wolverhampton Healthcare NHS Trust* [2000] ICR 961.

20 *W v. United Kingdom* (App No 9749/82) (1987) 10 EHRR 29.; *Z v. United Kingdom* (App No 29392/95) (2001) ECHR 2001-V.

21 *König v. Germany* (1978) 2 EHRR 170, paras 89-90.

22 Bernadette Rainey, Elizabeth Wicks and Clare Ovey, *Jacobs, White and Ovey: The European Convention on Human Rights*, 6th ed. (Oxford: Oxford University Press, 2014), 252.

the decision in the *Ringeisen* case[23], the jurisprudence of the ECtHR reflects an increasingly liberal interpretation of the concept.[24] Despite what has been said, the right of access to court under Article 6 para 1 is not absolute, but it is subject to limitations. By its very nature, the ECtHR has said that it calls for regulation by the state, which may vary in time and place according to the needs and resources of the community and individuals.[25] Thus, a Contracting State has a margin of appreciation in making such regulations[26], but following the *Ashingdane* principles, the limitations applied must not restrict or reduce the access left to the individual in such a way or to such extent that the very essence of the right is impaired.[27] In addition, a limitation will be incompatible with Article 6 para 1 if it does not pursue a legitimate aim and if there is not a reasonable proportionality between the means employed and the aim sought to be achieved.[28]

Conversely, Article 47 of the Charter has a wider scope as the restrictive criterion of disputes having to relate to 'civil rights and obligations' is abandoned. Instead, it grants access to justice to all sorts of rights and freedoms guaranteed by the law of the European Union. Indeed, the explanations relating to the Charter explain assert that '*in Union law, the right to a fair hearing is not confined to disputes relating to civil law rights and obligations. That is one of the consequences of the fact that the Union is a community based on the rule of law... Nevertheless, in all respects other than their scope, the guarantees afforded by the ECHR apply in a similar way to the Union*'.[29]

However, the liberal approach of Luxembourg has been known to come into conflict with Strasbourg due to differences of opinion over the applicability of Article 6 para 1 in proceedings classified as administrative rather than penal. Despite the CJEU's extensive contribution to the development of administrative justice[30], it has been criticized for giving the Commission too much procedural latitude. If the practice of the CJEU and the Commission was to deviate too much from that of the ECtHR, a conflict of authority

---

23 *Ringeisen v. Austria* (App No 2614/65) (1971) 1 EHRR 455.

24 *See Feldbrugge v. Netherlands* (1986) 8 EHRR 425; *McMichael v. United Kingdom (1995) 20 EHRR 205; Mats Jacobsson v. Sweden* (1991) 13 EHRR 79.

25 *Golder*, para 38.

26 *Handyside v United Kingdom* (1976) 1 EHRR 737, para 49.

27 *Ashingdane v. United Kingdom* (1985) 7 EHRR 528, para 57.

28 *Ibid*.

29 Explanations Relating to the Charter of Fundamental Rights (2007) OJ C303/17, 30.

30 Jürgen Schwarze, "Developing Principles of European Administrative Law", *Public Law* (1993): 229.

would arise which could only be resolved if the stance of the former was to align with that of the latter.[31] It is argued that the wording of the new Article 6, paragraph 2 of the Treaty on the European Union[32] (TEU), which calls for the European Union to accede to the ECHR, might suggest that it should do so.

2.3 Procedural access

Access to justice in the two European human rights legal orders, albeit comparable, is not identical. In the sections that follow, we seek to compare and contrast the criteria that an applicant has to satisfy in order to bring proceedings either before the CJEU or the ECtHR. Such an endeavour is deemed necessary in order to shed light on the substantive differences that underlie the two legal orders.

2.3.1 Locus Standi

Article 34 ECHR provides that: '*the Court may receive applications from any person, non-governmental organization or group of individuals claiming to be a victim of a violation by one of the High Contracting Parties of the rights set forth in this Convention or the protocols thereto'*. The Article applies, with no restrictions based on residence, to nationality or any other status. Though, under the ECtHR there is no possibility for a person to bring proceedings *actio popularis*[33]. In the Swiss Minaret Applications to the Strasbourg court, regarding whether the constitutional amendment in Switzerland prohibiting the building of minarets was incompatible with the ECHR, the ECtHR declared both applications as inadmissible on the ground that the applicants could not claim to be 'victims' of a violation of the Convention.[34] The applicant is required to demonstrate that he/she is a victim of a breach of his/her Convention rights.

In comparison, in the Luxembourg Court, *locus standi* encompasses greater complexity than merely proving that the applicant is a 'victim'. Indeed, under Article 263 TFEU, which

---

31 Carol Harlow, "Access to Justice as a Human Right: The European Convention and the European Union", in Philip Alston (ed.), *The EU and Human Rights* (Oxford: Oxford University Press, 1999), 202.

32 Treaty on European Union (Consolidated Version) [2002] OJ C325/5, Art 6(2).

33 *Ouardiri v. Switzerland* (App. 65840/09) 28 June 2011 and *Ligue des Musulmans de Suisse and Others* (App.66272/09) 28 June 2011.

34 European Court of Human Rights, "Prohibition on building minarets in Switzerland: Applications inadmissible" (8 July 2011), Press release ECHR 101 (2011).

governs the action for annulment, strict standing conditions are imposed[35]. Natural or legal persons, classified as non-privileged applicants, have to fulfil the following *locus standi* conditions in order to challenge the act in question before the CJEU:

> 1. If they are addressees of the act they wish to challenge, they will have automatic standing,
>
> 2. If they are non-addressees of the act, they will have to show that they are *directly and individually* concerned by it,
>
> 3. If they are non-addressees and wish to challenge a regulatory act that does not entail implementing measures, they will have to show only that they are directly concerned by it.

The TFEU does not define the terms 'directly and individually concerned', 'regulatory act' or 'implementing measures' which has proven problematic as the interpretation of the aforementioned terms ultimately decides the fate of private parties in annulment proceedings.[36]

The general standing test, applying the *Plaumann* criteria[37] is that the act in question is of direct and individual concern to the applicant even if the applicant is a non-addressee. The applicant will be directly concerned where the act requires no implementation or, even if it does, the addressee of an act has no discretion as to how to implement it.[38] In this case, the CJEU highlighted the importance of the applicant to belong in a 'closed category' of applicants. The stringent approach adopted and reiterated in its case law[39] is able to act as an impediment to access to justice. It thus follows that an applicant, who may be influenced by the act at stake and by virtue of belonging to an 'open category' of claimants, will be deprived standing and hence access to court. For example, in *Piraiki-Patraiki v. Commission*, the Commission measure importing quotas on the importation of Greek cot-

35 Albertina Albors-Llorens, "Judicial Protection before the Court of Justice of the European Union". In Catherine Barnard and Steve Peers (eds.), *European Union Law* (Oxford: Oxford University Press, 2014), 265.

36 Albors-Llorens, "Judicial...", 268.

37 Case C-25/62 *Plaumann v. Commission* [1963] ECR 95.

38 Case C-294/83 *Les Verts v. European Parliament* [1986] ECR 1339.

39 Cases 106/63 and 107/63 *Toepfer and Gertreide-Import Gesellschaft v. Commission* [1965] ECR 405, para 411; Case 62/70 *Bock v Commission* [1971] ECR 897, para 10.

ton yarn into France was challenged by two groups of Greek exporters. On the one hand, it was challenged by Greek traders, who had pending contracts at the time the measure was adopted (and therefore they passed the threshold of individual and direct concern) and on the other, by Greek traders who normally exported cotton to France but who had no pending contracts at the time. While the former were accorded standing, partly on the basis that the traders were members of a closed category, the latter were denied standing despite the fact that the measure clearly had an adverse economic impact on them.[40]

In light of the difficulty to acquire standing before the Luxembourg Court, a new test has been introduced by the Lisbon Treaty that would co-exist with the general standing test. The new test is found in Article 263(4) TFEU that 'allows a non-privileged applicant to challenge a regulatory act which is of direct concern to the applicant and does not entail implementing measures'.[41]

A regulatory act has been defined as an 'act of general application apart from legislative'.[42] It follows that in cases in which an applicant wishes to challenge a legislative act, the Lisbon test is inapplicable and the general test applies instead—in such cases the *locus standi* criteria remain difficult to fulfil under the *Plaumann* test. In other words, the Lisbon test is 'simply a partial gap-plugging mechanism'.[43]

In Strasbourg, in order to acquire legal standing, a non-governmental organization (NGO) has to specifically act on behalf of the victim and it cannot act on a general capacity.[44] Conversely, the ability of an NGO to bring proceedings before the court in Luxembourg is, to a large extent, limited. An NGO has to fulfil the *Federolio*[45] criteria in order to be allowed standing before the CJEU:

1. Where a legal provision grants the association a series of procedural rights.
2. Where their members are themselves directly and individually concerned.
3. Where the own interests of the association are affected and in particular its position as negotiator is affected by the EU act in question.

---

40 Case 11/82 *Piraiki-Patraiki v. Commission* [1985] ECR 207.

41 Art 263(4) TFEU.

42 Case T-18/10 *Inuit Tapiritt Kanatami v. Parliament and Council (Inuit I)* [2011] ECR II-5599.

43 Catherine Barnard and Steve Peers (eds.), *European Union Law* (Oxford: Oxford University Press, 2014), 278. See also Case T-262/10 *Microban v. Commission* [2011] ECR II-7697; Case T-380/11 *Palirra Souliotis*; Case C-274/12 P *Telefonica v. Commission* [2013] (E.C.R. Dec. 19, 2013).

44 *Confederation des syndicats medicaux francais and Federation nationale des ifirmiers v. France*, Decision 12 May 1986 (47 DR 225).

45 Case T-122/96 *Federolio v. Commission* [1997] ECR II-1559.

The aforementioned criteria make it very difficult for an NGO to satisfy the 'closed category' group requirement.[46] Nonetheless, the EU's signature to the UN Economic Commission for Europe (UNECE) Convention on Access to Information, Public participation in Decision Making and Access to justice in Environmental matters (Aarhus Convention) in 1998, and the adoption of Directive 2003/4/EC on public access to environmental information, aims at facilitating better access to justice to environmental NGOs.

2.3.2 Right to Legal Services and Legal Aid

In the absence of legal aid, access to justice for the most vulnerable and disadvantaged in society exists merely in theory. To this end, Article 6 para 3(c) ECHR guarantees '*the right of someone charged with a criminal offence the opportunity to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance to be given it free when the interests of justice so require*'.[47]

The Strasbourg Court recognises that granting legal aid and providing representation to applicants in court proceedings is essential in criminal proceedings.[48] As evident in the wording of the Article, legal aid for civil or administrative proceedings is not guaranteed. Nonetheless, the case of *Airey v. Ireland*[49] highlighted the importance of legal aid in civil proceedings. The ECtHR went as far as stating that Article 6 para 1 could include an implied right to legal aid in civil cases as well if it is necessary to ensure access to justice[50] and the principle of equality of arms. In the case, the applicant wished to petition for judicial separation in the Irish High Court but was unable to afford a lawyer. The ECtHR rejected the argument that the applicant would be able to present her case properly and satisfactorily and thus applied the equality of arms rule to stress that the applicant would be disadvantaged if the defendant was represented by a lawyer and the applicant was not.

---

46 Case C-313/90 *CIRFS v. Commission* [1993] ECR I-1125, where three environmental associations challenged the Commission's decisions to grant aid for the construction of two power stations in the Canary Islands, but their actions were dismissed as inadmissible.

47 Art 6, para 3(c) TFEU.

48 *Boner v. United Kingdom* (1995) 19 EHRR 246.

49 *Airey v. Ireland* (1979) 2 EHRR 305.

50 Steve Peers, "Europe to the Rescue? EU Law, the ECHR and Legal Aid", in Ellie Palmer et al. (eds.), *Access to Justice: Beyond the Policies and Politics of Austerity* (Oxford: Hart, 2016), 54. See also Lize R. Glas, "Translating the Convention's Fairness Standards to the European Court of Human Rights: An Exploration with a Case Study on Legal Aid and the Right to a Reasoned Judgment", *European Journal of Legal Studies* 10, No. 2 (2018): 47-82.

In parallel, Article 47(3) of the Charter provides that '*legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice*'.[51] To this effect, the Council Directive 2003/8/EC[52] was adopted by the EU to improve access to justice in civil cross border disputes by establishing minimum common rules relating to legal aid for such disputes. Article 3 of the Directive states that: '*Natural persons involved in a dispute covered by this Directive shall be entitled to receive appropriate legal aid in order to ensure their effective access to justice in accordance with the conditions laid down in this directive*'.[53]

Legal aid is to be granted based on non-discrimination grounds as regards EU citizens and legally resident third country nationals, but the allowance of legal aid is not absolute.[54] Member States can reject claims which appear to be manifestly unfounded and also if the applicant has been granted pre litigation advice, further legal aid 'may be refused or cancelled' on the merits of the case, as long as 'access to justice is guaranteed'.[55]

2.3.3 Admissibility Criteria

According to Article 35 ECHR, 'an application is inadmissible if it is not brought within six months from the date on which the final decision was taken'.[56] Time starts running as soon as the applicant becomes aware of the act or the decision of which he or she complains. If a domestic remedy has been completed, this is usually the hearing at which the final domestic judgment is delivered. In cases where there has been no domestic remedy made available, time starts running from the date of the act that allegedly violates the applicant's rights under the Convention. The six months rule is applied strictly and it cannot be waived by the respondent state.[57] Arguably, the six month rule is capable of creating injustice where, for instance, an application is submitted late due to a lawyer's mistake. Notably, when Protocol 15 of the ECHR comes into force, it will reduce the six-month period to a four-month period.[58]

---

51 Article 47(3) Charter.

52 Directive 2003/8/EC of 27 January 2003 [2003] OJ L348/98.

53 *Ibid*, Art 3.

54 *Ibid*, Art 4.

55 *Ibid*, Art 6(2).

56 Art 35 ECHR.

57 *Walker v. United Kingdom* App. No 34979/97 (ECtHR, 25 January 2000).

58 Protocol 15, Art 4.

The rule covering time limitations in the EU legal order is much more stringent. An application to the CJEU for an action for annulment under Articles 263 and 264 or for an action for failure to act under Articles 265 and 266 TFEU, is rendered admissible only if it is brought within two months. The time limit begins to run from the date of publication of the measure or of its notification to the applicant or in the absence thereof, of the day in which it comes to the knowledge of the applicant. If an action for annulment is brought outside the two-month time limit, it becomes automatically inadmissible.[59]

Under Articles 268 and 340(2) and (3) TFEU, any legal or natural person may bring an action for damages provided that the action is brought within five years from the occurrence of the event giving rise to the liability.[60] Damages will be awarded only if liability is established. Liability is established if there is an unlawful act or conduct on the part of the EU institution, if the applicant has suffered actual damage and there is a causal link between the illegality of the act and the damage suffered by the applicant[61].

Article 35 para 1 ECHR provides that a court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognized rules of international law, and within the period of six months from the date on which the final decision was taken.[62] Thus, applicants are under an obligation to use the remedies offered by their respective national legal order.[63] It is only those claims that have been raised before the national court that will be declared admissible.[64]

An application before the Court will be declared inadmissible as incompatible *ratione loci* with the Convention if it relates to an alleged violation of the Convention outside the state's territorial jurisdiction. Also, it will be declared incompatible *ratione temporis* if it is based on events which occurred before the respondent state accepted the jurisdiction of the Court or became a party to the Convention. An applicant does not have standing to sue for rights not covered by the Convention or the protocols and a claim cannot be brought before a party regarding alleged violations of rights included in protocols that it has not ratified. The complaints are rejected under Article 35 para 3 and are incompatible *ratione materiae* with the provisions of the Convention.[65]

---

59 Barnard and Peers, *European Union Law*, 278.

60 Article 46 of the Statute of the Court.

61 Case 4/69 *Lutticke*, para 10.

62 Art 35 para 1 ECHR.

63 Rainey, Wicks and Ovey, *Jacobs...*, 34-35.

64 *A and others v. United Kingdom* (2009) 49 EHRR 29.

65 Art 35 para 3 ECHR.

Furthermore, an application before the ECtHR is inadmissible if it is '*substantially the same as a matter which has already been examined by the Court or has already been submitted to another procedure of international investigation or settlement and contains no relevant new information*'.[66]

The case of *Mikolenko*[67], where complaints were made to the Human Rights Council and the Human Rights Committee under the International Covenant on Civil and Political rights, was declared admissible as those complains were not perceived by the Court as 'comparable international investigations'[68]. In *POA and others v. United Kingdom*[69], though, the complaint made to the ILO Committee was found to be a submission to a comparable international investigation.[70]

An important admissibility criterion is that found in Article 35 para 3 ECHR. According to this provision, the Strasbourg Court will reject an application as inadmissible because it is manifestly ill-founded. Article 35 para 3 allows the Court to deal efficiently with its case load. To this end, paragraph 3(b) was added by Article 12 of Protocol 14 in order to facilitate the use of this 'filtering mechanism'. It states that an application is inadmissible if the applicant has not suffered *significant disadvantage.* The definition of 'significant' is based on a *de minimis* principle, meaning that a violation of a right should attain a minimum level of severity to warrant consideration by an international court. The interpretation of significant disadvantage depends on both subjective and objective elements[71] and it includes both financial as well as non-financial disadvantage. Generally, in cases concerning financial disadvantage, an amount less than 500 EUR has been found to be an insignificant disadvantage.[72]

In Luxembourg, under Article 263 and 264 TFEU, a claim is declared admissible, if it seeks to challenge an act that is legally binding. It is often the case that actions for annulment are brought against regulations, directives and decisions—the three types of binding legal acts listed in Article 288 TFEU. The Court in Luxembourg takes a non-formalistic approach in order to decide when an EU measure has a legal effect or not.[73]

---

66 *Ibid*, para 2(b).

67 *Mikolenko v. Estonia* (App.16944/03), Decision of 5 January 2006.

68 Rainey, Wicks and Ovey, *Jacobs...*, 39.

69 *POA and Others v. United Kingdom* (App No 59253/11) [2013] ECHR 600.

70 Rainey, Wicks and Ovey, *Jacobs...*, 39.

71 *Ionescu v. Romania* (App No. 36659), ECHR 1 June 2010.

72 Rainey, Wicks and Ovey, *Jacobs...*, 43.

73 Case 60/81 *IBM v. Commission* [1981] ECR 2639.

3. THE RIGHT TO AN EFFECTIVE REMEDY

3.1. Foundational Provisions

Article 13 ECHR provides the right to an effective remedy by imposing the following obligation upon Contracting Parties: '*Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity*'.[74] Article 13, along with Article 1 on the obligation to respect human rights[75] and Article 46 on the execution of judgments of the ECtHR[76], form the remedial triptych of the Convention system, which, in turn, allows for the practical application of the principle of subsidiarity by highlighting the constructive role of domestic systems.[77]

Luxembourg has drawn inspiration from the jurisprudence of Strasbourg and the ECHR, particularly Articles 6 and 13, in order to assert that the right to access the court is a general principle of law that stems for the common traditions of its member states. The European Union legal order guarantees the right to an effective remedy in Article 19(1) TEU as well as in Article 47 of the Charter. The latter states that '*everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented*'.

Evidently, the Holy Grail of any successful human rights policy is the guarantee that its subjects enjoy the right to an effective remedy – where there is a right, there must be a remedy (*Ubi jus ibi remedium)*.[78] The principle *ubi jus ibi remedium*, promulgated in the *Johnston* case in 1986[79], is now enshrined in the Union legal order via the Charter.

---

74 Art 13 ECHR.

75 Art 1 ECHR.

76 Art 46 ECHR

77 *McFarlane v. Ireland* [2010] ECHR 1272, para 107.

78 Takis Tridimas, "Enforcing Community Rights in National Courts: Some Recent Developments", in Claire Kilpatrick, Tonia Novitz and Paul Skidmore (eds.), *The Future of Remedies in Europe* (Oxford: Oxford University Press, 2000) 36.

79 Case C-222/84 *Johnston v Chief Constable of the Royal Ulster Constabulary* [1986] ECR 1651, para 18.

3.2. Constitutive Elements

The Convention requires that a 'remedy' be such as to allow the competent domestic authorities both to deal with the substance of the relevant Convention complaint and to grant appropriate relief.[80] Moreover, a remedy is deemed effective if it is available and sufficient in theory and practice[81] but also in law, having regard to the individual circumstances of the case[82]. Nonetheless, its effectiveness is not dependent on the certainty of a favourable outcome for the applicant.[83] Instead, the overall legal and political context in which available remedies operate is taken into account when assessing effectiveness.[84] Furthermore, a 'national authority' does not necessarily have to be a judicial authority, but if it is not, the powers and the guarantees which it affords are relevant in determining whether the remedy before it is 'effective'.[85]

When analysing the term remedy from a narrow standpoint, one could argue that 'remedy' entails only the orders that a court awards to a successful litigant. Viewed through a wider lens, a remedy entails the judicial process in its entirety, that is, time limits, standing, as well as interim, and final orders.[86]

In the EU, the enforcement of EU law has always been decentralised. In light of the principle of national procedural autonomy, and, in the absence of harmonisation measures, it is for the national legal system to designate the courts that have jurisdiction over EU law and to determine the procedural conditions that will protect the rights that persons enjoy under Union Law.[87] This principle was highlighted in the *Rewe (Kiel)* case[88], where the CJEU

---

80 See *M.S.S. v. Belgium and Greece* App No 30696/09 (ECtHR, 21 January 2011), para 288; *Halford v. the United Kingdom* [1997] ECHR 32, para 64.

81 *McFarlane*, para 114; *Riccardi Pizzati v. Italy* (App No. 62361/00) [2006] ECHR 275, para 38.

82 *Kudła v. Poland* (2000) 35 EHRR 198, para 152.

83 *Ibid*, para 157.

84 See *Đorđević v. Croatia* (App No 41526/10) (2012) ECHR 1640, para 101; *Van Oosterwijck v. Belgium* (App no. 7654/76) [1980] ECHR 7, paras 36-40.

85 *McFarlane*, para 114.

86 Peter Oliver, "State Liability in Damages following Factortame III: A Remedy Seen in Context", in Jack Beatson and Takis Tridimas (eds.), *New Directions in European Public Law* (Oxford: Hart, 1998), 49.

87 Case C-33/76, *Rewe-Zentalefinanz eG and Rewe-Zentral AG v Landwirtschaftskammer fur das Saarland* [1976] ECR 1989.

88 Case C-158/80 *Rewe-Handelsgesellschaft Nord mbH and Another v Hauptzollamt Kiel* [1981] 1 CMLR 449.

stated that the Treaty was not intended to create new remedies in the national courts to ensure the observance of Union law other than those already laid down by national law.

3.3. Execution of Judgment

The ECtHR, inferring from 'the principle of the rule of law'[89], held that the right of access to court or tribunal '*would be illusory if a Contracting State's domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party... Execution of a judgment given by any court must therefore be regarded as an integral part of the 'trial' for the purposes of Article 6*'.[90]

Given that the right to an effective remedy falls within the overall access to justice provisions, such as the right to access to court under Article 6, it can be inferred from the judgment of the ECtHR, that the execution of a judgment is an integral part of the 'remedy' for the purposes of Article 13 ECHR as well. For this reason, Article 46 para 1 places a strict obligation upon Contracting Parties to 'undertake to abide by the final judgment of the Court in any case to which they are parties'.[91] This obligation arises out of the responsibility assumed by a Contracting Party, which has failed to fulfil its foundational obligation under Article 1, to secure everyone within its jurisdiction the rights defined in the Convention.[92] Indeed, the ECtHR is increasingly referring to Article 1, in parallel with Article 46, to remind States of their obligation to adjust their domestic legislation to the Convention. In this context, the Convention has become one of the cornerstones of the European political structure since the execution of each individual judgment, in which a Contracting Party is found to have violated the Convention, is closely and systematically monitored by the other Contracting Parties through their representation in the Committee of Ministers.

3.4. Supervision Mechanisms

The Convention system in its entirety and subsequently the right to an effective remedy would be unprotected if the obligation to execute judgments was left without a monitoring mechanism. Hence, the Committee of Ministers, the main political body of the Council of Europe, is assigned under Article 46 para 2 of the Convention, the ultimate responsibility of supervising the execution of the ECtHR's judgments.[93]

---

89 *Paudicio v. Italy* (App No. 77606/01), judgment of 24 May 2007, para 53.

90 *Hornsby v. Greece* (1997) 24 EHRR 250, para 40.

91 Art 46, para 1 ECHR.

92 Art 1 ECHR.

93 Art 46, para 2 ECHR.

In a general context, the practice of the Committee of Ministers illustrates that it has undertaken a closer scrutiny of the individual and general measures adopted by the Contracting Parties. Indeed, it sometimes actively contributes to their identification, requires proofs showing how they have actually been implemented[94], and considers whether or not States fulfil the obligation to prevent future violations through the adoption of adequate general measures[95]. Moreover, the reform of the procedures before the Committee has shown that attention is paid to the requirement of transparency. For instance, the Committee may now receive communications from civil society, national Human Rights Institutions (NHRIs), the Commissioner for Human Rights of the Council of Europe, or the victim[96], and publishes an annual report[97] and documents related to the execution of cases pending before it, such as the actions plans provided by the states[98]. For instance, in its annual report published in 2012, the Committee of Ministers acknowledged that the supervision of execution has become more efficient and transparent with the adoption of the twin-track procedure.[99]

The Committee of Ministers has four sets of measures which can be used to incite the execution of a judgment. Primarily, it can exert diplomatic pressures on reluctant States during the Human Rights meetings and through special contracts between the Presidency of the Committee and the State authorities.[100] Once again, it needs to be pointed out that the efficiency of this procedure depends on the political will of the members of the Committee of Ministers.

---

94 Elisabeth Lambert-Abdelgawad, *L'exécution des arrêts de la Cour Européenne des Droits de l'Homme*, 2nd ed. (Strasbourg: Council of Europe 2008), 33.

95 Jean-François Flauss, "L'effectivité des arrêts de la Cour Européenne des Droits de l'Homme : du politique au juridique ou vice-versa", *Revue Trimestrielle des Droits de l'Homme* 77 (2009): 32.

96 Committee of Ministers of the Council of Europe, "Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements", (10 May 2006), Rule 9, https://wcd.coe.int/ViewDoc.jsp?id=999329.

97 *Ibid*, Rule 5.

98 Committee of Ministers of the Council of Europe, *Supervision of the execution of judgments and decisions of the European Court of Human Rights, Annual Report 2011* (Strasbourg: Council of Europe, 2012), 19.

99 Committee of Ministers of the Council of Europe, *Supervision...*, 19.

100 Xavier-Baptiste Ruedin, *L'Exécution des Arrêts de la Cour Européenne des Droits de l'Homme : Procédure, Obligation des Etats, Pratique et Réforme* (Brussels: Bruylant, 2009) 30.

Secondly, according to Rule No. 16 adopted by the Committee of Ministers on the basis of Article 46, paragraph 2: '*the Committee of Ministers may adopt interim resolutions, notably in order to provide information on the state of progress of the execution or, where appropriate, to express concern and/or to make suggestions with respect to the execution*'[101]. For instance, the Committee of Ministers stated that it was 'resolved to take all adequate measures against Turkey if Turkey failed once more to pay the just satisfaction awarded by the Court to the applicant'[102], following the failure of Turkey to take measures to implement the *Loizidou* judgment[103]. These resolutions introduce more transparency in the process of supervision[104], but like the exercise of diplomatic pressures, are dependent on the political process[105].

A third means is the adoption of decisions and press releases to raise awareness of the public when problems of execution are less serious.[106] Finally, the Committee of Ministers is empowered under Article 8 of the Statute of the Council of Europe[107] to suspend the rights of representation of a state or request it to withdraw from the organisation under Article 7 of the Statute[108]. Although used sparingly, the non-execution of a judgment could be interpreted as a violation serious enough to justify such a measure.[109]

Following the adoption of Protocol No. 14, new working methods were implemented in the context of the Interlaken Action Plan, and two new tools empower the Committee to speed up the execution.[110] The first tool is the possibility under Article 46, paragraph 3 ECHR[111] for the Committee of Ministers to make a referral to the Court for the interpretation of a final judgment which could lead to fewer delays and more precise judgments

101 Committee of Ministers, Rule 16.

102 Committee of Ministers, Interim resolution 'CM/ResDH(2003)174', 12 November 2003.

103 *Loizidou v. Turkey* [1995] ECHR 10, para 43.

104 Ruedin, *L'Exécution...*, 33.

105 Abdelgawad (n 92) 43.

106 Ruedin, *L'Exécution...*, 35.

107 Statute of the Council of Europe, 87 UNTS 103, ETS 1, Art 8.

108 *Ibid*, Art 7.

109 Lambert-Abdelgawad, *L'exécution...*, 45.

110 Committee of Ministers of the Council of Europe, "Supervision of the execution of judgments and decisions of the European Court of Human Rights: implementation of the Interlaken Action Plan – Modalities for a twin-track supervision system", CM/Inf/DH(2010)37, 6 September 2010.

111 Art 46, para 3 ECHR.

from the ECtHR. The second tool is the infringement procedure under Article 46 para 4 ECHR[112] when the respondent State and the Committee of Ministers have failed to reach an agreement on the adequate measures to comply with the judgment. The success of this procedure is unclear since it may only apply when the non-execution results from the lack of political will of a Contracting Party[113]. So far, the procedure has never been applied despite the existence of situations which could fall within the scope of Article 46 para 4. For instance, the United Kingdom has refused to implement the judgment *Hirst (No.2)*[114] since 2005 on the voting rights of prisoners, as well as the pilot-judgment *M.T. and Greens*[115] since 2010 on the same issue, and has justified its inaction through reference to the public opinion opposed to an amendment to the legislation. Nevertheless, the Committee of Ministers has been reluctant to apply the infringement procedure, despite the calls from NGOs.[116]

Similar to the safeguard mechanisms of the Strasbourg Court, the EU ensures that the right to an effective remedy is safeguarded by limiting the remedial discretion of its members states via the principles of effectiveness and equivalence. *Stricto sensu*, '[the former principle] requires that national remedies and procedural rules must not render the exercise of EU law rights virtually impossible or excessively difficult in practice'[117]. The latter is concerned with the national procedural laws and mechanisms that are already in place within the national legal order, and whether they are sufficient 'in scope and character' to safeguard the exercise of citizens' EU law rights in the same way that national rights are legally protected and enforced.[118]

In spite of the principles that are now firmly established to ensure that the right to an effective remedy does not merely exist in theory, the most important supervisory mechanism in place is the principle of state liability. Its genesis can be traced back in the seminal case of *Francovich* where the CJEU highlighted that: '*the full effectiveness of [EU] rules*

112 Art 46, para 4 ECHR.

113 Lambert-Abdelgawad, *L'exécution...*, 89.

114 *Hirst (No. 2) v. the United Kingdom* [2005] ECHR 681.

115 *Greens and M.T. v. the United Kingdom* [2010] ECHR 1826.

116 Secretariat of the Committee of Ministers of the Council of Europe, "Communications from different NGOs (AIRE, UNLOK, PRI, PRT) in the case of Hirst No. 2 against the United Kingdom", DH-DD (2010)609E, 1 December 2010, https://wcd.coe.int/ViewDoc.jsp?id=1714637&Site=CM.

117 Michael Dougan, *National Remedies before the Court of Justice: Issues of Harmonisation and Differentiation* (Oxford: Hart, 2004) 26-27.

118 Dougan, *National...*, 26-27.

would be impaired and the protection of the rights which they grant would be weakened if individuals were unable to obtain redress when their rights are infringed by a breach of [EU] law for which a member state can be held responsible'.[119]

3.5. Supranationalism and the right to an effective remedy in the Union

In light of the piecemeal state of written EU procedural law and in view of the trust delineated to the EU's member states to act in *sincere cooperation* with the Union[120], there is a rebuttable presumption of national competence over the remedies, sanctions and procedural rules for the enforcement of EU law. It is thus inevitable that procedural rules that allow for an effective remedy will differ from Member State to Member State. Within the endeavour towards an ever closer Union, the EU has developed a number of principles to safeguard and ensure the right to an effective remedy.

The right to move freely and the freedom of establishment, two fundamental rights of EU law, nurture the idea of an ever closer Union, whereby all Europeans share the same rights and entitlements under Union Law. Thus, given the plethora of nationalities in a given Member State, the right to an effective legal remedy would be obsolete in the absence of a prohibition of discrimination on grounds of nationality. Article 47 of the Charter ensures that '*everyone* shall have the right to an effective remedy'. The principle of non-discrimination on grounds of nationality is set out in Article 18 TFEU and it prohibits direct discrimination, criteria that are *ipso facto* different for EU nationals than for nationals of the Member State, and indirect discrimination, criteria that are *prima facie* neutral, but in practice impose a greater burden on EU nationals than nationals of the Member State[121].

In addition, Luxembourg developed the principle of practical impossibility, along with the principles of effectiveness and equivalence, in order to ensure that the effectiveness of the right under Article 47 of the Charter is indeed effective. In a series of cases[122], Luxembourg reiterated the principle of practical impossibility. In essence, it should not be practically impossible for an individual to assert EU law rights before a national court or to obtain redress for the violation of such rights.

---

119 Joined Cases C-69/90 *Francovich and Bonafaci v. Italy* [1991] ECR I-5357, para 33.

120 Article 4(3) TEU.

121 Dougan, *National...*, 21.

122 C-430 and 431/93 *Van Schijndel & Van Veen v. Stichting Pensioenfonds voor Fysiotherapeuten* [1995] ECR I-4605 and Case C-312/92 *Peterbroeck, Van Campenhout & Cie v. Belgian state* [1995] ECR I-4599.

2.6 The future of remedies in Europe: *Quo vadis?*

It is therefore submitted that the implementation of the various supervision mechanisms appears problematic since it depends, to a large extent, upon the individual and collective political consensus of Contracting Parties. Is it just that the supervision safeguard is at the hands of foreign ministers? Is the right to an effective remedy hindered by political discourse among Contracting Parties?

It is argued that greater efforts should be made by Contracting Parties to give an *erga omnes* effect to the Convention and the case-law of the ECtHR to avoid future violations and to uphold the anthropocentric approach to human rights. Indeed, the Brighton Declaration made it clear that States should improve the monitoring of the execution of judgments of the Court by developing domestic capacities and mechanisms and by setting up action plans for the execution of the judgments as widely accessible as possible.[123] It also expressed 'the determination of the States Parties to ensure effective implementation of the Convention' by considering, *inter alia*, 'the introduction if necessary of new domestic legal remedies, whether of a specific or general nature' and by 'enabling and encouraging national courts and tribunals to take into account the relevant principles of the Convention, having regard to the case law of the Court, in conducting proceedings and formulating judgments.'[124]

The aforementioned argument should not be considered merely with regards to the ECHR and its Contracting Parties. The Luxembourg Court adopts a rather formalistic approach when it grants standing to applicants on the ground of the applicant being 'individually concerned' which renders the possibility of an individual applicant being granted *locus standi* —an obscured vision in the European horizon. Certainly, pursuant to the principle of judicial subsidiarity, Luxembourg appreciates the crucial role of the national courts to guarantee and safeguard the judicial protection of applicants[125]. As judge David Edward eloquently argued, national courts are the 'powerhouse' of EU law and national judges play a crucial role in generating the electricity that runs the machinery that is the EU[126].

---

123 High Level Conference on the Future of the European Court of Human Rights, *Brighton Declaration* (20 April 2012), para 29, http://www.echr.coe.int/Documents/2012_Brighton_FinalDeclaration_ENG.pdf.

124 *Ibid*, para 9(c)(iii) and (iv).

125 Sanja Bogojevic, "Judicial Protection of Individual Applicants Revisited: Access to Justice through the Prism of Judicial Subsidiarity", *Yearbook of European Law* 34, No. 1 (2015): 21.

126 David Edwards, "National Courts—the Powerhouse of Community Law", in John Bell, Alan Dashwood and Angela Ward (eds.), *Cambridge Yearbook of European Legal Studies*, vol. 5 (Oxford: Oxford University Press, 2014), 1-2.

Thus, it is submitted that with such an emphasis placed in national legal orders, states must be prudent in effectuating their duties of ensuring the right of an applicant to not only access the court but also be granted an effective legal remedy under the binary system of human rights protection in Europe. To this end, greater efforts to give *erga omnes* effect to the rights under the ECHR and the Charter is an imperative.

The preceding analysis has provided a sketch of the comparable, albeit not identical, procedural provisions and mechanisms in Europe that seek to ensure the enforcement of the right to an effective legal remedy. Yet, our sketch was not drawn on a blank canvas. In light of the prospective accession of the EU to the ECHR, and even more so, CJEU's Opinion on the (in)compatibility of the Draft Accession Treaty with EU law, our analysis should be regarded as organic and it should be viewed through the prism of such a future possibility.

4. EUROPEAN UNION'S ACCESSION TO THE EUROPEAN CONVENTION ON HUMAN RIGHTS

4.1. The (in)significance of the EU Accession to the ECHR

The EU's Accession to the ECHR purports to deal with the imperfect *status quo* of the current European system of human rights protection by creating a bridge of convergence and cooperation between the two regimes.[127] Through its formal integration into the ECHR system, the EU would be subjected to the external scrutiny of the ECtHR. The external scrutiny would serve as a reinforcement of the internal system of EU protection, based on the Charter and the CJEU, while underlining the commitment of the EU to fundamental rights protection. In this way, the objective of achieving a coherent interpretation of human rights across Europe would be realistic and thus the human rights' legal protection would be more extensive.

During the negotiation process the Secretary General of the Council of Europe, Thorbjørn Jagland, and the then Vice President of the European Commission, Viviane Reding, emphasised that the Accession will send a strong political message for greater coherence

127 Sonia Morano-Foadi and Stelios Andreadakis, *A Reflection on the Relationship between the Court of Justice of the European Union and the European Court of Human Rights post Lisbon* (Strasbourg: Council of Europe, 2014). See also Stelios Andreadakis, "Problems and Challenges of the EU's Accession to the ECHR: Empirical Findings with view to the Future", in Sonia Morano-Foadi and Lucy Vickers (eds.), *A Matter for Two Courts: The Fundamental Rights Question for the EU* (Oxford: Hart, 2014), 47-67.

of human rights protection in Europe.[128] It also has been argued that 'the Accession of one international organisation (the EU) to another international treaty regime (the Convention) and its judicial enforcement machinery (the Strasbourg Court) represents an unprecedented step in the history of international law.'[129] At the same time, it is important to see the Accession through a more practical, if not critical spectacle, and determine whether the it is merely an exercise of delivering a 'strong political message' to the rest of the international community or whether it will have any practical significance.

Douglas-Scott stated that the Accession would not enhance human rights protection fully; the EU would still be shielded from many human rights claims including but not limited to the controversial areas of Common Foreign and Security Policy (CFSP) and Freedom, Security and Justice (AFSJ).[130] Furthermore, one might argue that, following the entry into force of the Treaty of Lisbon and the legally binding force of the Charter, the Accession is either not needed or merely insignificant because Article 53(3) provides that, in so far as the Charter contains rights which correspond to rights guaranteed by the ECHR, the meaning and scope of those rights shall be the same as those laid down by ECHR.[131] However, such an argument is not difficult to defuse, as the Accession has the capacity to enhance the individual's right of access to justice by bringing the actions of the EU *per se* under the ECtHR' scrutiny. What is more, even if the Charter ensures that the rights under the ECHR are safeguarded by its provisions, there is no 'watchdog' to guarantee this effect *vis-à-vis* the actions of EU institutions.[132]

The following questions inevitably arise: Is the time now ripe to extend the individual's right of access to justice? When can we expect an unprecedented leap into a unitary human rights regime? A projection of the new legal order to come is, without doubt, not easy to imagine in light of the challenges and legal problems. Nonetheless, it is submitted that the Accession of the EU to the ECHR will significantly improve the current *status quo* in terms of an individual's access to justice.

---

128 Council of Europe, "EU accession to the European Convention on Human Rights (ECHR)", Youtube (6 June 2013), https://youtu.be/ok0R6FSMqGw.

129 Paul Gragl, *The Accession of the European Union to the European Convention on Human Rights* (Oxford: Hart, 2013), 9.

130 Sionaidh Douglas-Scott, "The Relationship between the EU and the ECHR: Five Years on from the Treaty of Lisbon", in Ulf Bernitz, Sybe de Vries and Stephen Weatherill (eds.), *Five Years Legally Binding Charter of Fundamental Rights* (Oxford: Hart, 2015), 21.

131 Art 35 (3) Charter.

132 See Sonia Morano-Foadi and Stelios Andreadakis, *Protection of Fundamental Rights in Europe: The Challenge of Integration* (Cham: Springer, 2020).

3.3 Human Rights Pluralism: A Gateway to Legal Uncertainty

Europe's current human rights protection architecture resembles a 'crowed house'[133] as citizens and courts are faced with different legally binding texts: the domestic law, including in most cases the national constitution's fundamental rights catalogue; the ECHR and its protocols and EU law, in particular the EU Charter. As it has been noted in the preceding analysis, the provisions of the Convention and the Charter relating to access to court and to the right to an effective remedy do not merely co-exist with and overlap each other but often have different standards, terminology and qualifications. It is argued that the interpretation of different human rights texts by two distinct Courts constitutes a gateway to legal uncertainty.

In the words of the then President of the European Court of Human Rights Luzius Wildhaber: '*to avoid a situation in which there are alternative, competing and potentially conflicting systems of human rights protection both within the Union and in the greater Europe. The duplication of protection systems runs the risk of weakening the overall protection offered and undermining legal certainty in this field.*'[134]

Indeed, the absence of a formal linkage between the two regimes, aside from a certain degree of overlap whereby EU Members States are also members of the Council of Europe, obscures the vision of coherent human rights standards in Europe. The issue of human rights pluralism[135] is aggravated as the EU is presently not a party to the ECHR and therefore cannot be held directly responsible for violations of the Convention caused by EU primary or secondary law or other EU activities (executive or judicial). Consequently, any complaint directed against the EU is inadmissible *ratione personae*.[136] The EU institutions are the only public bodies in a Council of Europe of 47 Parties/States, whose acts are not amenable to challenge in Strasbourg.[137] Instead, the ECtHR holds the EU's Member

---

133 Cruz Villalón, "Rights in Europe: The Crowded House" (working paper, King's College London, January 2012).

134 See Committee of Ministers' reply to Parliamentary Assembly Recommendation 1439 (2000), adopted on 31 May 2000 at the 711th meeting of the Ministers' Deputies 21 *HRLJ* (2000) 188.

135 Sonia Morano-Foadi, "Fundamental Rights in Europe: 'Constitutional' Dialogue between the Court of Justice of the EU and the European Court of Human Rights", *Oñati Journal of Emergent Socio-legal Studies* 5, No. 1 (2013): 64. See also Helen Quane, "Legal Pluralism and International Human Rights Law: Inherently Incompatible, Mutually Reinforcing or Something in Between?", *Oxford Journal of Legal Studies* 33, No. 4 (2013): 675-702.

136 *CFTD v. European Communities* (App no 8030/77) (1978) D.R. 13, 213; *Dufay v. European Communities*, (App No 13539/88) (ECommHR 19 Jan 1989).

137 Douglas-Scott, "The Relationship...", n. 128.

States responsible for human rights violations originating in EU law as exemplified in the *Matthews* case[138], resulting in evident injustice.

4.4. Reuniting the 'twins separated at birth': Closing the Gap in Human Rights Protection

Even though the European Union and the Council of Europe were once characterised as 'twins separated at birth'[139], their 'reunion' is an imperative to ensure a harmonious system of human rights protection. The accession of the EU to the ECHR constitutes the next logical step in this development. Their present relationship, built upon the *Bosphorus* 'equivalence principle'[140], is 'not based on a legal duty to cooperate, but merely on comity'[141] and, consequently, either court can unilaterally end this cooperation at any time[142]. It is envisaged that the accession will alter the relationship of the two courts, reserving 'the last word' for Strasbourg rather than continuing the existing comity.[143]

The insistence on the constitutional autonomy of the EU human rights system, evident throughout the CJEU's Opinion 2/13, is in striking contrast to the constitutional vision of the 1950s, in which the then Community was to be integrally connected with the emerging regional and international human rights system.[144] Indeed, even the General Court, (previously the Court of First Instance) has voiced some concerns about the CJEU's view of the EU's constitutional framework as a wholly autonomous legal order not subject to the rules of international law.[145] It is submitted that the EU should be treated no differently than any other signatory state to the ECHR by virtue of it being a *sui generis* polity, as human rights are based on universal values of transcendent nature. There exists a recurring message in Luxembourg's Opinion that the EU should be respected as a special entity—a

138 *Matthews v United Kingdom* [2011] ECHR 1895.

139 Gerard Quinn, "The European Union and the Council of Europe on the Issue of Human Rights: Twins Separated at Birth?", *McGill Law Journal* 46 (2011): 849.

140 *Bosphorus v. Ireland* (App no 45036/98) 2005 ECHR 2005-VI.

141 Tobias Lock, "The ECJ and the ECtHR: The Future Relationship between the Two European Courts", *The Law and Practice of International Courts and Tribunals* 8 (2009): 375, 381.

142 Nico Krisch, "The Open Architecture of European Human Rights Law", *Modern Law Review* 71, No. 2 (2008): 201.

143 Douglas-Scott, "The Relationship...", 29.

144 Gráinne de Búrca, "The Road Not Taken: The European Union as a Global Human Rights Actor", *The American Journal of International Law* 105, No. 4 (2011): 649, 680.

145 Case T-85/09 *Kadi v. Commission* [2010] ECR II-05177, paras. 119-121.

'new legal order'. In the same vein, the ECtHR's special role as Europe's specialised human rights court should be respected as well. In this sense, if the goal is to guarantee access to justice to individuals, the acts of the EU as a legal entity must be in part subjected to scrutiny. As rightly highlighted by Peers, the CJEU's Opinion poses a clear and present danger to human rights protection.[146]

5. CONCLUSION

The concept of access to justice is multi-faceted and goes far beyond the victims' right of access to a court, as it includes amongst others execution or enforcement of judgments, legal aid, legal costs and cost of proceedings.[147] It also goes hand in hand with the right to an effective remedy and to a fair trial. As Italian jurist Mauro Cappelletti famously said, 'effective access to justice can be seen as the most basic requirement, the most basic human right, of a system which purports to guarantee legal rights'.[148] Fundamental rights and freedoms are in fact meaningless without access to justice or without effective enforcement of the law. The mere declaration of rights is insufficient; there must be a robust and accessible legal system that actively protects and enforces these rights. Access to justice and effective enforcement act as the bridge between theoretical rights and their tangible realisation, ensuring that fundamental rights have a real value and relevance in the lives of individuals within our society.[149]

In Europe, the existing avenues to access justice available to individuals, in particular the CJEU and the ECtHR, offer sufficient guarantees that redress can be sought. Both Courts have been widely accepted as effective mechanisms for accessing justice above the national level in Europe in terms dispute resolution as well as influence, but their unsustainably high caseload requires further attention. Luxembourg and Strasbourg stand together as

---

146 Steve Peers, "The CJEU and the EU's Accession to the ECHR: a Clear and Present Danger to Human Rights Protection", *EU Law Analysis*, 18 December 2014, http://eulawanalysis.blogspot.com/2014/12/the-cjeu-and-eus-accession-to-echr.html.

147 Ricardo Lillo Lobos, "The Right to Access to Justice as a Key to Understand the Right to a Fair Trial in Civil Matters", in Ricardo Lillo Lobos (ed.), *Understanding Due Process in Non-Criminal Matters* (Cham: Springer, 2022), 251, 253-4; Gianluigi Palombella, "Access to Justice: Dynamic, Foundational, and Generative", *Ratio Juris* 34, No. 2 (2021): 121-138.

148 Mauro Cappelletti and Bryant Garth, *Access to Justice Volume 1: A World Survey* (Alphen aan den Rijn: Sijthoff/Noordhoff, 1978). See also Ellie Palmer *et al.* (eds.), *Access to Justice: Beyond the Policies and Politics of Austerity* (Oxford: Hart, 2016), 31.

149 Monique Hazelhorst, *Free Movement of Civil Judgments in the European Union and the Right to a Fair Trial* (The Hague: TMC Asser, 2020), 63-67.

guardians of human rights and fundamental freedoms in Europe. Having said this, Europe's human rights protection system, as it stands, still has a gap which can only be filled if the EU accedes to the ECHR and subjects its own regime of fundamental rights protection under external judicial review. This will not only enhance the credibility of the EU's human rights policy but also foster the coherence of human rights protection in Europe.[150]

Thus, the Accession of the EU to the ECHR will send a strong political signal of coherence between the EU and Greater Europe, it will codify the existing values of the EU that place the individuals and their rights at the centre of its gravity. With the EU's future Accession to the ECHR, the interaction between the ECtHR and the CJEU is bound to intensify, providing further developments for a range of issues, including access to justice.[151] Over and beyond the Accession, access to justice should remain in the top of the agenda of the EU and the CoE, as it is imperative to ensure that it remains as free from limitations as possible, and it plays a key role in maintaining a system of check and balances and accountability in Europe. ■

150 European Parliament resolution of 19 May 2010 on the institutional aspects of the accession of the European Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms (2009/2241 (INI)), A7-0144/2010, at para. 1; European Commission, MEMO/10/84, 17 March 2010.

151 European Union Agency for Fundamental Rights, *Access...*, 30.

BIBLIOGRAFÍA

Secondary Sources

- Albors-Llorens, Albertina. "Judicial Protection before the Court of Justice of the European Union". In Catherine Barnard and Steve Peers (eds.), *European Union Law*. Oxford: Oxford University Press, 2014.
- Andreadakis, Stelios. "Problems and Challenges of the EU's Accession to the ECHR: Empirical Findings with view to the Future". In Sonia Morano-Foadi and Lucy Vickers (eds.), *A Matter for Two Courts: The Fundamental Rights Question for the EU*. Oxford: Hart, 2014.
- Ayerim Yánez, Karla and Frank Luis Mila Maldonado. "Tutela judicial efectiva y el derecho fundamental al recurso". *Lex Revista de Investigación en Ciencias Jurídicas* 6, No. 20 (2023): 119-127.
- Barnard, Catherine and Steve Peers (eds.). *European Union Law*. Oxford: Oxford University Press, 2014.
- Bogojevic, Sanja. "Judicial Protection of Individual Applicants Revisited: Access to Justice through the Prism of Judicial Subsidiarity". *Yearbook of European Law* 34, No. 1 (2015): 21.
- Cappelletti, Mauro and Bryant Garth. *Access to Justice Volume 1: A World Survey*. Alphen aan den Rijn: Sijthoff/Noordhoff, 1978.
- Dávila Pérez, Martha Elba. "El derecho a un recurso efectivo: Una aproximación teórico-conceptual". *Revista de Derecho UNED* 17 (2015): 225-250.
- De Búrca, Gráinne. "The Road Not Taken: The European Union as a Global Human Rights Actor". *The American Journal of International Law* 105, No. 4 (2011): 649.
- Dougan, Michael. *National Remedies before the Court of Justice: Issues of Harmonisation and Differentiation*. Oxford: Hart, 2004.
- Douglas-Scott, Sionaidh. "The Relationship between the EU and the ECHR: Five Years on from the Treaty of Lisbon". In Ulf Bernitz, Sybe de Vries and Stephen Weatherill (eds.), *Five Years Legally Binding Charter of Fundamental Rights*. Oxford: Hart, 2015.
- Edwards, David. "National Courts—the Powerhouse of Community Law". In John Bell, Alan Dashwood and Angela Ward (eds.), *Cambridge Yearbook of European Legal Studies*, vol. 5. Oxford: Oxford University Press, 2014.

- Flauss, Jean-François. "L'effectivité des arrêts de la Cour Européenne des Droits de l'Homme : du politique au juridique ou vice-versa". *Revue Trimestrielle des Droits de l'Homme* 77 (2009): 27-72.
- Francioni, Francesco. "The Rights of Access to Justice Under Customary International Law". Francesco Francioni (ed.), *Access to Justice as a Human right*. Oxford: Oxford University Press, 2007.
- Galič, Ales. *The Inconsistency of Case Law and the Right to a Fair Trial: Revisiting Procedural Human Rights. Fundamentals of Civil Procedure and the Changing Face of Civil Justice*. Cambridge: Intersentia, 2017.
- García Pino, Gonzalo and Pablo Contreras Vásquez. "El derecho a la tutela judicial efectiva y el debido proceso en la jurisprudencia del TC chileno". *Estudios Constitucionales* 11, No. 2 (2013): 229-282.
- Glas, Lize R. "Translating the Convention's Fairness Standards to the European Court of Human Rights: An Exploration with a Case Study on Legal Aid and the Right to a Reasoned Judgment". *European Journal of Legal Studies* 10, No. 2 (2018): 47-82.
- Gragl, Paul. *The Accession of the European Union to the European Convention on Human Rights*. Oxford: Hart, 2013.
- Harlow, Carol. "Access to Justice as a Human Right: The European Convention and the European Union". In Philip Alston (ed.), *The EU and Human Rights*. Oxford: Oxford University Press, 1999.
- Hazelhorst, Monique. *Free Movement of Civil Judgments in the European Union and the Right to a Fair Trial*. The Hague: TMC Asser, 2020.
- Jacobs, Francis G. "The Right to a Fair Trial in European Law". *European Human Rights Law Review* 2 (1999): 144.
- Krisch, Nico. "The Open Architecture of European Human Rights Law". *Modern Law Review* 71, No. 2 (2008): 183.
- Lambert-Abdelgawad, Elisabeth. *L'exécution des arrêts de la Cour Européenne des Droits de l'Homme*, 2nd ed. Strasbourg: Council of Europe, 2008.
- Lillo Lobos, Ricardo. "The Right to Access to Justice as a Key to Understand the Right to a Fair Trial in Civil Matters". In Ricardo Lillo Lobos (ed.), *Understanding Due Process in Non-Criminal Matters*. Cham: Springer, 2022.

- Lock, Tobias. "The ECJ and the ECtHR: The Future Relationship between the Two European Courts". *The Law and Practice of International Courts and Tribunals* 8 (2009): 375.
- Morano-Foadi, Sonia. "Fundamental Rights in Europe: 'Constitutional' Dialogue between the Court of Justice of the EU and the European Court of Human Rights". *Oñati Journal of Emergent Socio-legal Studies* 5, No. 1 (2013): 64.
- Morano-Foadi, Sonia and Stelios Andreadakis. *A Reflection on the Relationship between the Court of Justice of the European Union and the European Court of Human Rights post Lisbon*. Strasbourg: Council of Europe, 2014. https://dm.coe.int/CED20140017597
- — *Protection of Fundamental Rights in Europe: The Challenge of Integration*. Cham: Springer, 2020.
- Oliver, Peter. "State Liability in Damages following Factortame III: A Remedy Seen in Context". In Jack Beatson and Takis Tridimas (eds.), *New Directions in European Public Law*. Oxford: Hart, 1998.
- Palmer, Ellie *et al.* (eds.). *Access to Justice: Beyond the Policies and Politics of Austerity*. Oxford: Hart, 2016.
- Palombella, Gianluigi. "Access to Justice: Dynamic, Foundational, and Generative". *Ratio Juris* 34, No. 2 (2021): 121-138.
- Peers, Steve. "The CJEU and the EU's accession to the ECHR: a clear and present danger to human rights protection". *EU Law Analysis*, December 18, 2014. http://eulawanalysis.blogspot.com/2014/12/the-cjeu-and-eus-accession-to-echr.html
- — "Europe to the Rescue? EU Law, the ECHR and Legal Aid". In Ellie Palmer *et al.* (eds.), *Access to Justice: Beyond the Policies and Politics of Austerity*. Oxford: Hart, 2016.
- Rainey, Bernadette, Elizabeth Wicks and Clare Ovey. *Jacobs, White and Ovey: The European Convention on Human Rights*. 6th ed. Oxford: Oxford University Press, 2014.
- Ruedin, Xavier-Baptiste. *L'Exécution des Arrêts de la Cour Européenne des Droits de l'Homme : Procédure, Obligation des Etats, Pratique et Réforme*. Brussels: Bruylant, 2009.
- Quane, Helen. "Legal Pluralism and International Human Rights Law: Inherently Incompatible, Mutually Reinforcing or Something in Between?". *Oxford Journal of Legal Studies* 33, No. 4 (2013): 675-702.

- Quinn, Gerard. "The European Union and the Council of Europe on the Issue of Human Rights: Twins Separated at Birth?". *McGill Law Journal* 46 (2011): 849.
- Schwarze, Jürgen. "Developing Principles of European Administrative Law" *Public Law* (1993): 229.
- Tridimas, Takis. "Enforcing Community Rights in National Courts: Some Recent Developments". In Claire Kilpatrick, Tonia Novitz and Paul Skidmore (eds.), *The Future of Remedies in Europe*. Oxford: Oxford University Press, 2000.
- Van Dijk, Pieter. "The Maze of Paragraph 1 of Art. 6". *Hague Yearbook of International Law* 18 (1988): 141.
- Vargas Pavez, Macarena. *El derecho a la ejecución forzada: Noción e implicancias a partir de la jurisprudencia de la Corte Europea de Derechos Humanos*. Valparaíso: Escuela de Derecho PUCV, 2019.
- Villalón, Cruz. "Rights in Europe: The Crowded House". Working Paper, King's College London, January 2012.

LEGISLATION

- Charter of Fundamental Rights of the European Union [2012] OJ C326/391.
- Directive 2003/8/EC of 27 January 2003 [2003] OJ L348/98.
- Treaty on European Union (Consolidated Version) [2002] OJ C325/5.
- Treaty on the Functioning of the European Union (TFEU) [2012] OJ C326/01.

CASES

- *A and others v. United Kingdom* (2009) 49 EHRR 29.
- *Airey v. Ireland* (1979) 2 EHRR 305.
- *Ashingdane v. United Kingdom* (1985) 7 EHRR 528.
- *Boner v. United Kingdom* (1995) 19 EHRR 246.
- *Bosphorus v. Ireland* (App no 45036/98) 2005 ECHR 2005-VI.
- C-106/63 and 107/63 *Toepfer and Gertreide-Import Gesellschaft v. Commission* [1965] ECR 405.
- C-11/82 *Piraiki-Patraiki v. Commission* [1985] ECR 207.
- C-158/80 *Rewe-Handelsgesellschaft Nord mbH and Another v Hauptzollamt Kiel* [1981] 1 CMLR 449.
- C-222/84 *Johnston v Chief Constable of the Royal Ulster Constabulary* [1986] ECR 1651.
- C-25/62 *Plaumann v. Commission* [1963] ECR 95.
- C-26/62 *Van Gend en Loos v. Nederlandse Administratie der Belastingen* [1963] ECR 1.
- C-294/83 *Les Verts v. European Parliament* [1986] ECR 1339.

- C-312/92 *Peterbroeck, Van Campenhout & Cie v. Belgian state* [1995] ECR I-4599.
- C-313/90 *CIRFS v. Commission* [1993] ECR I-1125.
- C-33/76, *Rewe-Zentalefinanz eG and Rewe-Zentral AG v Landwirtschaftskammer fur das Saarland* [1976] ECR 1989.
- C-430 and 431/93 *Van Schijndel & Van Veen v. Stichting Pensioenfonds voor Fysiotherapeuten* [1995] ECR I-4605.
- C-6/90 *Francovich and Bonifaci v. Italy* [1995] ICR 722.
- C-60/81 *IBM v. Commission* [1981] ECR 2639.
- C-62/70 *Bock v Commission* [1971] ECR 897, para 10.
- C-78/98 *Preston v. Wolverhampton Healthcare NHS Trust* [2000] ICR 961.
- *CFTD v. European Communities* (App no 8030/77) (1978) D.R. 13, 213.
- *Confederation des syndicats medicaux francais and Federation nationale des ifirmiers v. France,* Decision 12 May 1986 (47 DR 225).
- *Đorđević v. Croatia* (App No 41526/10) (2012) ECHR 1640.
- *Dufay v. European Communities*, (App No 13539/88) (ECommHR 19 Jan 1989).
- *Feldbrugge v. Netherlands* (1986) 8 EHRR 425.
- *Golder v. United Kingdom* (1975) 1 EHRR 524.
- *Greens and M.T. v. the United Kingdom* [2010] ECHR 1826.
- *Halford v. the United Kingdom* [1997] ECHR 32.
- *Handyside v United Kingdom* (1976) 1 EHRR 737.
- *Hirst (No. 2) v. the United Kingdom* [2005] ECHR 681.
- *Hornsby v. Greece* (1997) 24 EHRR 250.
- *Ionescu v. Romania* (App No. 36659), ECHR 1 June 2010.
- Joined Cases C-69/90 *Francovich and Bonafaci v. Italy* [1991] ECR I-5357.
- *König v. Germany* (1978) 2 EHRR 170.
- *Kudła v. Poland* (2000) 35 EHRR 198.

- *Ligue des Musulmans de Suisse and Others* (App No 66272/09) 28 June 2011.
- *Loizidou v. Turkey* [1995] ECHR 10.
- *Mats Jacobsson v. Sweden* (1991) 13 EHRR 79.
- *M.S.S. v. Belgium and Greece* (App No 30696/09) ECtHR, 21 January 2011.
- *Matthews v United Kingdom* [2011] ECHR 1895.
- *McFarlane v. Ireland* [2010] ECHR 1272.
- *McMichael v. United Kingdom* (1995) 20 EHRR 205.
- *Mikolenko v. Estonia* (App.16944/03), Decision of 5 January 2006.
- *Ouardiri v. Switzerland* (App. 65840/09) 28 June 2011.
- *Paudicio v. Italy* (App No. 77606/01), 24 May 2007.
- *POA and Others v. United Kingdom* (App No 59253/11) [2013] ECHR 600.
- *Riccardi Pizzati v. Italy* (App No. 62361/00) [2006] ECHR 275.
- *Ringeisen v. Austria* (App No 2614/65) (1971) 1 EHRR 455.
- T-122/96 *Federolio v. Commission* [1997] ECR II-1559.
- T-18/10 *Inuit Tapiritt Kanatami v. Parliament and Council (Inuit I)* [2011] ECR II-5599.
- T-262/10 *Microban v. Commission* [2011] ECR II-7697.
- T-380/11 *Palirra Souliotis*; Case C-274/12 P *Telefonica v. Commission* [2013] (E.C.R. Dec. 19, 2013).
- T-85/09 *Kadi v. Commission* [2010] ECR II-05177.
- *Van Oosterwijck v. Belgium* (App No. 7654/76) [1980] ECHR 7.
- *W v. United Kingdom* (App No 9749/82) (1987) 10 EHRR 29.
- *Z v. United Kingdom* (App No 29392/95) (2001) ECHR 2001-V.
- *Walker v. United Kingdom* (App. No 34979/97) ECtHR, 25 January 2000.

OFFICIAL PUBLICATIONS

- Committee of Ministers of the Council of Europe, 'Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements', (10 May 2006), Rule No.9, https://wcd.coe.int/ViewDoc.jsp?id=999329
- Committee of Ministers of the Council of Europe, 'Supervision of the execution of judgments and decisions of the European Court of Human Rights: implementation of the Interlaken Action Plan – Modalities for a twin-track supervision system', CM/Inf/DH(2010)37, 6 September 2010.
- Committee of Ministers of the Council of Europe, Supervision of the execution of judgments and decisions of the European Court of Human Rights, Annual Report 2011 (Council of Europe 2012), 19, https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680592ac7
- Committee of Ministers, Interim resolution 'CM/ResDH(2003)174', 12 November 2003.
- Committee of Ministers' reply to Parliamentary Assembly Recommendation 1439 (2000), adopted on 31 May 2000 at the 711th meeting of the Ministers' Deputies 21 HRLJ (2000) 188.
- Council of Europe, 'EU accession to the European Convention on Human Rights (ECHR)' published on 6 June 2013 https://www.youtube.com/watch?v=ok0R6FSMqGw.
- Court of Justice of the European Union, 'Opinion 2/13 on the draft agreement on the accession of the European Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms and identifies problems with regard to its compatibility with EU law (18 December 2014).
- European Commission, MEMO/10/84, 17 March 2010.
- European Court of Human Rights, 'Prohibition on building minarets in Switzerland: applications inadmissible' (8 July 2011), Press release ECHR 101 (2011).
- European Court of Human Rights. Annual Report 2012. Strasbourg: Council of Europe Publishing, 2013.

- European Parliament resolution of 19 May 2010 on the institutional aspects of the accession of the European Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms (2009/2241 (INI)), A7-0144/2010
- European Union Agency for Fundamental Rights, Access to Justice in Europe: An Overview of Challenges and Opportunities. Publications Office of the European Union, 2011.
- Explanations Relating to the Charter of Fundamental Rights (2007) OJ C303/17.
- High Level Conference on the Future of the European Court of Human Rights, Brighton Declaration (20 April 2012), http://www.echr.coe.int/Documents/2012_Brighton_FinalDeclaration_ENG.pdf
- Secretariat of the Committee of Ministers of the Council of Europe, 'Communications from different NGOs (AIRE, UNLOK, PRI, PRT) in the case of Hirst No. 2 against the United Kingdom', DH – DD (2010)609E, 1 December 2010, https://wcd.coe.int/ViewDoc.jsp?id=1714637&Site=CM
- Statute of the Council of Europe, 87 UNTS 103, ETS 1.