

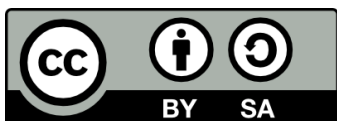


European Human Rights Law



Guarantees and limitations of the Human Rights in Europe-Judicial Protection

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Ευρωπαϊκή Ένωση
Ευρωπαϊκό Κοινωνικό Ταμείο

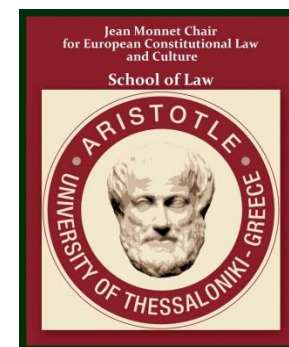


ΥΠΟΥΡΓΕΙΟ ΠΑΙΔΕΙΑΣ & ΘΡΗΣΚΕΥΜΑΤΩΝ, ΠΟΛΙΤΙΣΜΟΥ & ΑΘΛΗΤΙΣΜΟΥ
ΕΙΔΙΚΗ ΥΠΗΡΕΣΙΑ ΔΙΑΧΕΙΡΙΣΗΣ

Με τη συγχρηματοδότηση της Ελλάδας και της Ευρωπαϊκής Ένωσης



ΕΥΡΩΠΑΪΚΟ ΚΟΙΝΩΝΙΚΟ ΤΑΜΕΙΟ



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Bibliography

- *Dirk Ehlers, The European Convention for the Protection of Human Rights and Fundamental Freedoms, in Dirk Ehlers, European Fundamental Rights and Freedoms, De Gruyter Recht, Berlin, 2007 pages 48 ff.*



Guarantees and limitations (1/6)

❖ *Three stages of control:*

✓ the **scope of protection**,

✓ **interference** and

✓ **justification**

- The best way is: to determine the *applicability* of a specific guarantee and then *to examine the observance of the procedure* required.
- the Convention or relevant Protocol must first be found **applicable**.
- The ECHR itself applies to all Contracting States.



Guarantees and limitations (2/6)

- Article 57 of the ECHR → **reservation procedure.**
- The Convention Rights protect only against ***unjustified state interferences (or limitations).***
- ✓ The terms: “restrictions” and “interferences”.
- ❖ Interferences or limitations must be distinguished from **further shaping of the Convention rights by the national legislature.**
- However, normative shaping → an interference or limitation, if the national provisions fall below the minimum standard guaranteed by the Convention !



Guarantees and limitations (3/6)

❖ *Justification of the Interference or Limitation.*

- The Convention acknowledges Rights that are guaranteed **unreservedly** and ..
- Rights that are **subject to restrictions (the exception)**
- ✓ **An example:** the prohibition of torture and slavery → not open to any restrictions.
- *“The rights and freedoms in the ECHR may only be limited according to designated provisions in the Convention.”*



Guarantees and limitations (4/6)

- ❖ *Justification of the Interference or Limitation.*
 - **General Restriction Provisions.**
 - 15–17 of the ECHR.
 - Under **Article 15(1)**, any High Contracting Party may, in time of **war or other public emergency**, take measures derogating from its obligations under the Convention.
 - The derogation from the obligations under the Convention → conform to the principle of proportionality.
 - **Article 16 of the ECHR** allows the Contracting States to impose restrictions on political activities of aliens irrespective of the prohibition of discrimination.



Guarantees and limitations (5/6)

❖ *Justification of the Interference or Limitation.*

■ **General Restriction Provisions.**

• **Article 17.**

- The state may prohibit and punish an abusive exercise of fundamental rights but is precluded from imposing more stringent restrictions than those coming from the ECHR.
- Specific Provisions on the Restriction of Convention Rights.



Guarantees and limitations (6/6)

- ❖ *Justification of the Interference or Limitation.*
 - **Specific Provisions on the Restriction of Convention Rights.**
 - they permit a limitation of the particular right or freedom.
 - a) Requirement of a Legal Basis.
 - b) Pursuance of a Legitimate Aim.
 - c) Proportionality of the Interference.
 - **(the suitability of the state measure to the desired objective, its necessity and the adequateness of the measure in relation to the aim being pursued).**



Judicial Protection (1/9)

❖ *The European Court of Human Rights.*

- The ECtHR consists of a number of judges equal to that of the High Contracting Parties to the Convention (Article 20 ECHR) who are elected by the Parliamentary Assembly from a list of candidates nominated by the respective Contracting State (Article 22 ECHR).
- **Single Judge (new)- The three Judge Committee-The seven Judge Chamber-The Grand Chamber.**
- ***The Grand Chamber*** hears cases referred to it either after relinquishment of jurisdiction by a Chamber or when a request for referral has been accepted.
- no Advocates-General.



Judicial Protection (2/9)

- ❖ **The European Court of Human Rights.**
 - **inter-state cases** and **individual applications.**
 - The Committee of Ministers can also refer matters to the Court.
 - The ECtHR has jurisdiction to give → **advisory opinions** at the request of the Committee of Ministers on legal questions concerning the interpretation of the Convention and its Protocols as well as answer questions concerning the execution and interpretation of final judgments.



Judicial Protection (3/9)

❖ The European Court of Human Rights.

▪ The individual application.

▪ Prerequisites.

- Language: English or French or one of the official languages of the Contracting States.
- must be compatible with the Convention or the Protocols.
- ✓ The applicant must have → capacity to Take Legal Action and to be Party to the Proceedings.
- ✓ the respondent state must be bound by the Convention right concerned.
- ✓ everyone who is factually capable may take part in the proceedings.



Judicial Protection (4/9)

- ❖ **The European Court of Human Rights.**
 - **The individual application.**
 - **Other Prerequisites :**
 - ✓ *Legal standing* (there must have taken place a violation of Convention Human Rights).
 - ✓ *Exhaustion of Domestic Remedies* (the party must have appealed to the highest competent court).
 - ✓ Applications must be lodged with the Court *within six months* following the last judicial decision in the case, which will usually be a judgment by the highest court in the country concerned.



Judicial Protection (5/9)

- ❖ **The European Court of Human Rights.**
 - **The individual application.**
 - **Other Prerequisites :**
 - the application must have neither been the subject of any previous final decision by the ECHR nor be pending for decision before any other international court or tribunal.



Judicial Protection (6/9)

- ❖ **The European Court of Human Rights.**
 - **The different stages of proceedings before the Court (after the entry into force of the 14th Protocol).**
 - Two main stages: the admissibility stage and the merits stage.
 - A **single-judge formation** will declare an application inadmissible where inadmissibility is clear from the outset - its decisions cannot be appealed against.
 - A **Committee** will give a final decision or judgment in a case which is covered by well-established case-law of the Court.



Judicial Protection (7/9)

❖ The European Court of Human Rights.

▪ The different stages of proceedings before the Court.

- A Chamber will give notice of the case to the respondent Government for their observations. Written observations are submitted by both parties.
- The Court then decides if it is appropriate to hold a public hearing in the case, but this remains exceptional in relation to the number of applications examined.
- Ultimately, the Chamber delivers a judgment that will become final only after the expiry of a three-month period during which the applicant or Government may request the referral of the case to the Grand Chamber for fresh consideration.



Judicial Protection (8/9)

- ❖ **The European Court of Human Rights.**
 - **The different stages of proceedings before the Court.**
 - If the request for referral is accepted by the panel of the Grand Chamber, the case will be reconsidered and a public hearing will be held if necessary. **The Grand Chamber judgment will be final.**



Judicial Protection (9/9)

❖ *The European Court of Human Rights and national Courts.*

- Final decisions of the ECtHR, which are of **declaratory nature** → **binding**.
- The Court's decisions within the domestic legal systems must be determined according to national law.
- Administrative or other governmental acts incompatible with the Convention can be recalled !
- **Domestic court decisions must be compatible with the Convention and must pay due regard to the decisions of the ECtHR.**
- The ECtHR considers reparation under national law to be **insufficient**, if the applicant is required to again call upon the national courts for realising an existing entitlement to damages.



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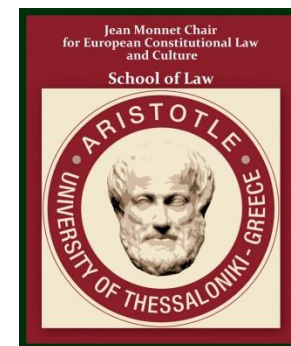
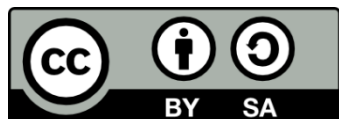
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The End

Ioannis Yannakelos

Thessaloniki, Spring 2013-2014





ΑΡΙΣΤΟΤΕΛΕΙΟ
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- το Σημείωμα Αδειοδότησης
- τη δήλωση Διατήρησης Σημειωμάτων
- το Σημείωμα Χρήσης Έργων Τρίτων (εφόσον υπάρχει)

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