# 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

Lize R. Glas*

*The European Court of Human Rights (ECtHR) has clarified when domestic procedures are fair, but it remains unclear when the ECtHR's own procedures are fair. Yet, clarifying the requirements of procedural fairness applicable to the ECtHR is important, especially in a context where doubts have been expressed about the fairness of some of the Strasbourg procedures. This article proposes that the fairness standards from the ECtHR's case law, which apply to domestic authorities, can be applied to the Strasbourg Court. These standards must however be adapted to or 'translated' into the ECtHR's context, because its context is so different from that of domestic authorities. This article therefore develops eleven principles of translation. The usefulness of the principles is tested by employing those principles to translate two fairness standards: the right to legal aid and the right to a reasoned judgment. Subsequently, the usefulness of the translated standards is evaluated by applying those translated standards to two aspects of the ECtHR's practice: the granting of legal aid and single-judge decisions.*

**Keywords:** European Convention on Human Rights, European Court of Human Rights, procedural fairness, right to a fair trial, legal aid, right to a reasoned judgment, single-judge decisions

## TABLE OF CONTENTS



* Assistant Professor of European law, Radboud University, Nijmegen, the Netherlands. The author can be reached at: l.glas@jur.ru.nl.

## I. Introduction

The European Court of Human Rights (ECtHR) verifies whether the states parties to the European Convention on Human Rights ('the Convention' or 'ECHR') abide by the rights protected in that document. Most complaints to the ECtHR concern the right to a fair trial (Article 6 ECHR).[1] In the resulting case law, the ECtHR has clarified when domestic civil and criminal procedures are fair. Another substantial part of the complaints concerns the right to an effective remedy (Article 13 ECHR).[2] The ECtHR has therefore also been able to elaborate on the requirements that a domestic remedy must fulfil in order to be effective. Although it is clear by which standards the

[1] ECtHR, 'Violation by Article and by State' <www.echr.coe.int/Documents/tats_violation_2016_ENG.pdf> accessed 28 September 2017 (282 of the in total 993 violations in 2016 concerned Article 6 ECHR).

[2] Ibid (135 of the in total 993 violations in 2016 concerned Article 13 ECHR).

fairness of domestic legal procedures must be assessed, it has not yet been established on which standards the fairness of the ECtHR's own procedures can be examined.

Yet, it is important to assess the fairness of the Strasbourg procedures and to establish where there is room for improvement. Fairness should be greatly relevant to the ECtHR considering that empirical research in the fields of social psychology and criminology teaches us that procedural fairness can matter more than a procedure's outcome to individuals.[3] Procedural fairness also matters to the ECtHR's legitimacy in the eyes of states parties, and legitimacy is in turn key to the effective implementation of the Court's judgments by them.[4] Moreover, as the ECtHR is tasked with safeguarding procedural fairness, defying procedural fairness would be unprincipled and hypocritical, and would give the states parties ammunition to criticise the ECtHR even more than they already do.[5]

---

[3] Eg, Søren Winter and Peter May, 'Motivation for Compliance with Environmental Regulations' (2001) 20 Journal of Policy and Analysis Management 675, 678; Tom Tyler, 'Procedural Justice', Blackwell Reference Online (2004) <www.blackwellreference.com/subscriber/uid=1008/tocnode.html?id=g9780631228967_chunk_g97806312289672 5&authstatuscode=202> accessed 28 September 2017; Kevin Burke and Steve Leben, 'Procedural Fairness: A Key Ingredient in Public Satisfaction' (2007) 44 Court Review 4; William Wells, 'Type of Contact and Evaluations of Police Officers: The Effects of Procedural Justice across Three Types of Police-citizen Contacts' (2007) 35 Journal of Criminal Justice 612, 612. See also, generally, Eva Brems and Laurens Lavrysen, 'Procedural Justice in Human Rights Adjudication: The European Court of Human Rights' (2013) 35 Human Rights Quarterly 176.

[4] Tom Barkhuysen and Michiel van Emmerik, 'Legitimacy of the European Court of Human Rights: Procedural Aspects' in Nick Huls, Maurice Adams and Jacco Bomhoff (eds), *The Legitimacy of Highest Courts' Rulings* (T.M.C. Asser Press 2009), 437; Brems and Lavrysen (n 3) 182; Kanstantsin Dzehtsiarou and Donal Coffey, 'Legitimacy and Independence of International Tribunals' (2014) 37 Hastings International and Comparative Law Review 269, 273; Lucas Lixinski, 'Procedural Fairness in Human Rights Systems', in Sarvarain et al (eds), *Procedural Fairness in International Courts and Tribunals* (British Institute of International and Comparative Law 2015) 325.

[5] See about the criticism, eg, Thorbjørn Jagland, 'The Convention Is Our Compass' (Parliamentary Assembly Session, Strasbourg, 25 January 2016) <www.coe.int/en/web/secretary-general/speeches/-/asset_publisher/gFMvl0SKOUrv/content/communication-on-the-occasion-of-the-first-part-of-the-2016-parliamentary-assembly-

In spite of the importance of procedural fairness to the ECtHR, and although the ECHR system as such is usually positively appraised, there are some doubts about the fairness of some of its procedures raised among scholars.[6] Legal aid, for example, is 'meagre, if not derisory',[7] compensation for costs is often 'significantly lower'[8] than the amounts claimed, and one cannot complain about blatantly unfair decisions. Furthermore, the ECtHR's procedures can be extremely protracted,[9] the reforms enhancing its

session> accessed 28 September 2017; Fiona de Londras and Kanstantsin Dzehtsiarou, 'Mission Impossible? Addressing Non-Execution through Infringement Proceedings in the European Court of Human Rights' (2017) 66 International & Comparative Law Quarterly 476, 474-478; For a description of the positive appraisal, see: Lize Glas, The Theory, *Potential and Practice of Procedural Dialogue in the European Convention on Human Rights System* (Intersentia 2016) 34-35.

6 Eg, Pietro Sardaro, 'Jus Non Dicere for Allegations of Serious Violations of Human Rights: Questionable Trends in the Recent Case Law of the Strasbourg Court' (2003) European Human Rights Law Review 601; Barkhuysen and van Emmerik (n 4) 442-444; Janneke Gerards, 'Inadmissibility Decisions of the European Court of Human Rights: A Critique of the Lack of Reasoning' (2014) 14 European Human Rights Law Review 148; Amnesty International, 'Amnesty International's Comments on the Interim Activity Report ...', 1 February 2014, IOR 61/005/2004, 6, 8; Lize Glas, 'Changes in the Procedural Practice of the European Court of Human Rights: Consequences for the Convention System and Lessons to be Drawn' (2014) 14 European Human Rights Law Review 671, 674-680; Lize Glas, 'The Functioning of the Pilot-Judgment Procedure of the European Court of Human Rights in Practice' (2016) 34 Netherlands Quarterly of Human Rights 41, 67-70; Nikos Vogiatzis, 'The Admissibility Criterion under Article 35(3)(b) ECHR: A 'Significant Disadvantage' to Human Rights Protection?' (2016) 65 International & Comparative Law Quarterly 185, 195; Janneke Gerards and Lize Glas, 'Access to Justice in the European Convention on Human Rights System' (2017) 35 Netherlands Quarterly of Human Rights 11, 29.

7 David Harris et al, *Law of the European Convention on Human Rights* (Oxford University Press 1995) 665.

8 Philip Leach, *Taking a Case to the European Court of Human Rights* (4th edn, Oxford University Press 2017) 614.

9 To illustrate, at the end of 2011, the overall average waiting time for communication of a case was 37 months (more recent figures are not readily available), see ECtHR Registry, 'Information on Cases Pending before the ECHR', DH-GDR(2012)005.

efficiency have caused a decline in reason-giving[10] and have led to frequent decision-making by registry staff.[11]

In light of the importance of procedural fairness for the ECtHR and of the existing doubts about the fairness of some aspects of its procedures, the question arises of the standards on which the ECtHR's procedural fairness can be assessed. Different authors refer to the standards that the ECtHR has developed in its case law under Articles 6 and 13 ECHR to comment on the fairness of its procedures.[12] This practice is appealing because the ECtHR's case law on Article 6 ECHR is extensive and therefore provides many insights. Additionally, the idea of following your own practice makes it attractive to apply the ECtHR's standards to the ECtHR itself. After all, if the ECtHR, as the guardian of the Convention rights, fails to do in practice what it advocates, its legitimacy would be at stake. Furthermore, because the ECtHR formulates minimum standards for 47 states whose diversity it aims to respect,[13] its standards have a level of generality that assumedly makes them applicable to other contexts as well.

However, I propose that the practice of applying the Convention standards to the ECtHR presents some difficulties because the ECtHR and its

---

[10] The overwhelming majority of decisions – about 350,000 from 2009-2015 – were not or hardly reasoned. This figure is the sum of all single-judge decisions in this period. See also Gerards (n 6).

[11] 23% of all complaints in 2014. See ECtHR, 'Report on the Implementation of the Revised Rule on the Lodging of New Applications' <www.echr.coe.int/Documents/Report_Rule_47_ENG.pdf> accessed 28 September 2017.

[12] Eg, Andrew Butler, 'Legal Aid before Human Rights Treaty Monitoring Bodies' (2000) 49 International & Comparative Law Quarterly 360, 368; *CLR on behalf of Valentin Câmpeanu v Romania* ECHR 2014-V, Concurring Opinion of Judge Pinto de Albuquerque, para 15, footnote 28; Gerards (n 6) 154; Helena De Vylder, 'Stensholt v. Norway: Why Single Judge Decisions Undermine the Court's Legitimacy' (*Strasbourg Observers*, 28 May 2014) <strasbourgobservers.com/2014/05/28/stensholt-v-norway-why-single-judge-decisions-undermine-the-courts-legitimacy-2/> accessed 28 September 2017; Edita Gruodytė and Stefan Kirchner, 'Legal Aid for Intervenors in Proceedings before the European Court of Human Rights' (2016) 2 International Comparative Jurisprudence 36, 37; Gerards and Glas 2014 (n 6) 16-17. Additionally, the ECtHR relies almost literally on Article 6(1) ECHR in Rule 63(1-2) of Court for formulating the exception to the rule that hearings shall be public.

[13] See section II.7.

procedures are very different from the domestic authorities and procedures to which these standards apply. These standards therefore need to be translated to the ECtHR's context, meaning that they must be adapted to suit the ECtHR's unique institutional context. This is what I aim to do (in section II): develop 'principles of translation' which can be relied upon to adapt fairness standards from the Strasbourg case law to suit the ECtHR's context.

In order to put the usefulness of these principles to the test, I employ them to translate two fairness standards: the right to legal aid and the right to a reasoned judgment (in sections III.1-2 and IV.1-2). Subsequently, I test the usefulness of the translated standards by using them to analyse the fairness of two aspects of the ECtHR's practice: the granting of legal aid and single-judge decisions (in sections III.3 and IV.3).

## II. Principles of Translation

I argue that the fairness standards in the ECtHR's case law can be used to evaluate the fairness of the ECtHR's procedures. However, these standards cannot be directly applied to the ECtHR because the context in which the ECtHR functions is rather different from the domestic context to which the ECHR standards apply. To illustrate these differences this section will analyse, for example, how the ECtHR unlike most domestic courts is neither a court of first, nor of last instance. Due to these differences, the standards must be 'translated'. This requires that the Convention standards are adapted so they suit the ECtHR's institutional context. Additionally, they must be stripped off features that are only of relevance to the domestic context, which is the context for which the ECtHR developed the standards. The process of translation therefore involves both taking into consideration the Court's context and 'disregarding' the domestic context to which the standards used to apply.

The question that follows is: how can the fairness standards be translated to the ECtHR's context? To answer this, I will present eleven principles of translation. The principles highlight the differences between the context of the domestic authorities and that of the ECtHR; they point out features of the domestic authorities' tasks and functioning that the ECtHR does not possess, and features of the ECtHR's tasks and functioning that the domestic

authorities do not possess. By taking into consideration the relevant differences that the principles help to identify, the fairness standards can be translated to suit the ECtHR's context.

I have developed the translation principles based on how the ECtHR's tasks and functioning are defined (and differ from the domestic authorities' task and functioning) in the Convention, the Rules of Court and the Strasbourg case law in relation to individual applications. Consequently, I did not take into consideration that the ECtHR exceptionally deals with inter-state cases[14] and that it can adopt advisory opinions,[15] because this is only incidental to its task and functioning, whereas deciding individual applications has become its 'daily bread'.[16]

This section will first present the principles of translation (sections II.1-11). Although I discuss the principles as eleven distinct principles in eleven different sections, they are sometimes related to each other, as I will point out where relevant. Subsequently, this section makes some general observations about the principles (section II.12).

### *1. Principle I: Subsidiary Protection*

The states parties to the Convention undertake to respect the Convention rights;[17] the ECtHR only verifies whether the contracting states abide by this obligation.[18] In other words, the states are primarily responsible for securing these rights, while the ECtHR is 'subsidiary to the national systems safeguarding human rights'.[19] As a consequence of the principle of subsidiarity, the role of the Strasbourg Court is different from the role of domestic authorities when protecting human rights, and the Strasbourg

---

[14] Article 33 ECHR.

[15] Article 47 ECHR.

[16] Luzius Wildhaber, 'Rethinking the European Court of Human Rights', in Jonas Christoffersen and Michael Rask Madsen (eds), *The European Court of Human Rights between Law and Politics* (Oxford University Press 2011) 208.

[17] Article 1 ECHR.

[18] Article 19 ECHR; *Weixelbraun v Austria* App no 33730/96 (ECtHR, 20 December 2011), para 27; Janneke Gerards, 'The Prism of Fundamental Rights' (2012) 8 European Competition Law Review 173, 184-186.

[19] *Kudla v Poland* ECHR 2000-XI, para 152; Article 1 Protocol 15 ECHR.

Court may defer to the national authorities when performing its role. Some of the other principles of translation will illustrate these consequences.

### *2. Principle II: Effective Protection*

Because the Convention 'is an instrument for the effective protection of individual human rights', the ECtHR interprets and applies the document 'in a manner which renders its rights practical and effective, not theoretical and illusory'.[20] In exceptional cases, the ECtHR goes beyond its subsidiary task to provide effective protection, as other principles of translation will clarify.

### *3. Principle III: Individual Justice*

The ECtHR will occasionally emphasise that its primary task is to provide justice to individuals.[21] However, individual justice is neither the ECtHR's sole task, as the next principle highlights, nor boundless for at least two reasons.[22] First, the ECtHR considers it incompatible with its role to deliver 'continually, individual decisions in cases where there is no longer any live Convention issue'.[23] To illustrate, the ECtHR may decide to reject pending applications after the ECtHR has already ordered general measures in a pilot judgment.[24] Second, a recently added admissibility criterion requires the ECtHR to declare cases inadmissible if the applicant has not suffered a significant disadvantage.[25] Therefore, the ECtHR no longer has to deal with all meritorious applications, but only with those alleging violations that 'attain a minimum level of severity'.[26]

---

[20] *Opuz v Turkey* ECHR 2009-III, para 165; See also *Magyar Helsinki Bizottság v Hungary* ECHR 2016, paras 120-121; *Al-Saadoon and Mufdhi v UK* ECHR 2010-II, para 127.

[21] *Rantsev v Cyprus and Russia* ECHR 2010-I, para 197; *Djokaba Lambi Longa v the Netherlands* App no 33917/12 (ECtHR, 9 October 2012), para 58.

[22] See also Glas 2014 (n 6) 674-680.

[23] *E G and Others v Poland* App no 50425/99 (ECtHR, 23 September 2008). See also *Yuriy Nikolayevich Ivanov v Ukraine* App no 40450/04 (ECtHR, 15 October 2009), para 82; *Pantusheva and Others v Bulgaria* App no 40047/04 (ECtHR, 5 July 2011), para 57.

[24] Rule 61(6) of Court.

[25] Article 35(3)(b) ECHR. See for a future amendment Protocol 15 ECHR.

[26] *Korolev v Russia* App no 38112/04 (ECtHR, 21 October 2010).

### *4. Principle IV: General Justice*

Instead of focusing on its mission to provide individual justice, the ECtHR may consider that the core of its activity consists in 'passing public judgments that set human-rights standards across Europe'.[27] For that reason, the ECtHR may deal with a case even though the applicant has no interest in it anymore.[28] The ECtHR's task is therefore twofold: 'to render justice in individual cases by way of recognising violations' and 'to elucidate, safeguard and develop the rules instituted in the Convention thereby contributing in those ways to the observance by the states of the engagements undertaken by them'.[29]

### *5. Principle V: In Concreto Review*

The ECtHR normally determines *in concreto* whether the manner in which a law affected the applicant caused a violation.[30] Thus, applicants cannot bring an *actio popularis*: they cannot complain against domestic laws or practices 'simply because they appear to contravene the Convention'.[31] Instead, they must prove that they are a victim of or directly affected by a specific measure for the ECtHR to evaluate how such a measure affected them.[32]

However, the ECtHR's review is not always exclusively focused on the specific case brought before it, as it sometimes also looks into the domestic context that caused the violation. For instance, the ECtHR can emphasise that a structural problem causes many repetitive applications and that the

---

[27] *Kharuk and Others v Ukraine* App no *703/05* (ECtHR, 26 July 2012), para 23. See also *Goncharova and Others v Russia* App no 23113/08 (ECtHR, 15 October 2009), para 22; Gerards and Glas (6) 18.

[28] Article 37(1) ECHR. Eg, *Rantsev* (n 21), para 197. See also Explanatory Report to Protocol 14 ECHR, para 39.

[29] *Nagmetov v Russia* App no 35589/08 (ECtHR, 30 March 2017), para 64.

[30] *N C v Italy* App no 24952/94 (ECtHR, 18 December 2002), para 56; *Goranova-Karaeneva v Bulgaria* App no 12739/05 (ECtHR, 8 March 2011), para 43; CDDH, CDDH report on the longer-term future of the system of the European Court of Human Rights, CDDH(2015)R84 Addendum I 2015, 11 December 2015, para 91.

[31] *CLR on behalf of Valentin Câmpeanu* (n 12) para 101.

[32] *Roman Zakharov v Russia* ECHR 2015, para 164; Article 34 ECHR.

respondent state should address this problem.[33] This procedure, referred to as the pilot-judgment procedure, is a prime example of *in abstracto* review. In a pilot judgment, the ECtHR identifies a structural problem and orders the measures that the respondent state must take to remedy the problem.[34]

*6. Principle VI: Autonomy*

The ECtHR's jurisdiction extends to all matters concerning the interpretation and application of the Convention, including disputes concerning its own jurisdiction.[35] The ECtHR therefore decides autonomously over its jurisdiction. Moreover, it has 'full jurisdiction' once 'a case is duly referred to it'.[36] This means that the ECtHR is also autonomous in other respects. It may 'take cognisance of all questions of fact and law which may arise in the course of consideration of the case'.[37] Further, the ECtHR is 'master of the characterisation to be given in law to the facts of the case'[38] and decides autonomously on the scope of the facts that it examines and the evidence that it relies upon.[39] Because it is for the ECtHR to characterise the facts of a case, the ECtHR has decided, for example, on complaints under provisions that were not originally relied upon by the applicant.[40] It has also taken into consideration facts unknown to the highest

---

33 Robert Harmsen, 'The European Court of Human Rights as a 'Constitutional Court': Definitional Debates and the Dynamics of Reform', in John Morison, Kieran McEvoy and Gordon Anthony (eds), *Judges, Transition and Human Rights Cultures* (Oxford University Press 2011) 41. Eg, *Statileo v Croatia* App no 12027/10 (ECtHR, 10 July 2014), para 165.

34 Rule 61(3) of Court.

35 Article 32 ECHR.

36 *De Wilde, Ooms and Versyp v Belgium* (1971) Series A no 12, para 49.

37 Ibid. See also *Handyside v UK* (1976) Series A no 24, para 41; *Tønsbergs Blad AS and Haukom v Norway* App no 510/04 (ECtHR, 1 March 2007), para 53.

38 *Guerra and Others v Italy* ECHR 1998-I, para 44.

39 *UMO Ilinden – PIRIN and Others v Bulgaria (no 2)* App nos 41561/07 and 20972/08 (ECtHR, 18 October 2011), para 60.

40 Ibid. See also *Akdeniz v Turkey* App no 25165/94 (ECtHR, 31 May 2005), para 88; *A.K. and L. v Croatia* App no 37956/11 (ECtHR, 8 January 2013), para 94; *Jashi v Georgia* App no 10799/06 (ECtHR, 8 January 2013), para 60.

domestic judge.[41] Finally, the ECtHR autonomously defines the concepts referred to in the Convention, such as 'victim'.[42]

### *7. Principle VII: Deference to Domestic Authorities*

In conformity with the subsidiarity principle,[43] the domestic authorities enjoy a margin of appreciation in 'how they apply and implement the Convention'.[44] They also have discretion because they are in 'direct and continuous contact with the vital forces of their countries, their societies and their needs', and therefore 'better placed' to assess what is required in the circumstances of a specific case.[45] The margin of appreciation can be regarded as a 'tool to define relations between the domestic authorities and the [ECtHR]'.[46] The breadth of the margin depends on different factors,[47] including 'the nature of the Convention right in issue, its importance for the individual, the nature of the interference and the object pursued by the interference'.[48] Further, the margin is relatively broad when the states parties disagree on the relative importance of the interest at stake or how to best protect it.[49] Either way, the states do not have an unlimited power of discretion, as the margin of appreciation 'goes hand in hand with a European supervision'.[50]

---

41 *Salah Sheekh v the Netherlands* App no 1948/04 (ECtHR, 11 January 2007), para 136. Unless such facts alter the subject matter of the applicant's complaint, see *Tønsbergs Blad AS and Haukom* (n 39) para 54; *Procedo Capital Corporation v Norway* App no 3338/05 (ECtHR, 24 September 2009), para 42.

42 *Engel and Others v the Netherlands* (1976) Series A no 22, para 81; *L.Z. v Slovakia* App no 27753/06 (ECtHR, 27 September 2011), para 71.

43 Paolo Carozza, 'Subsidiarity as a Structural Principle of International Human Rights Law' (2003) 97 The American Journal of International Law 38, 70; *Mouvement raëlien suisse v Switzerland* App no 16354/06 (ECtHR, 13 July 2012), para 64.

44 Explanatory Report to Protocol 15 ECHR, para 9.

45 *Animal Defenders International v UK* App no 48876/08 (ECtHR, 22 April 2013), para 111.

46 *A and Others v UK* ECHR 2009, para 184.

47 *Dubská and Krejzová v the Czech Republic* ECHR 2016, para 178.

48 *S and Marper v UK* ECHR 2008-V, para 102.

49 Ibid.

50 *Ceylan v Turkey* ECHR 1999-IV, para 32.

*8. Principle VIII: No Fourth-Instance Court*[51]

Another consequence of the subsidiarity principle is that the ECtHR, in principle, does not deal with applications alleging that the decision of a domestic judge was erroneous on points of domestic law.[52] The ECtHR is 'not a court of appeal or a court which can quash rulings given by the courts in the States Parties to the Convention or retry cases heard by them'.[53] Nor does the ECtHR re-assess the facts relied upon by domestic judges, analyse whether they appraised the evidence correctly or whether the evidence was obtained unlawfully.[54] The ECtHR only deals with these matters 'unless and in so far as they may have infringed' the Convention rights.[55] It may, for example, establish whether unlawfully obtained evidence resulted in the infringement of the right to a fair trial (Article 6 ECHR).[56] Only in exceptional circumstances will the ECtHR question the domestic authorities' assessment of the facts or domestic law, namely when their

---

[51] The margin of appreciation and the fourth-instance doctrine both imply that the states have discretion due to the subsidiarity principle. The latter doctrine is nevertheless distinguished because it is to be preferred 'as far as the Court's review of errors of fact and errors of domestic law is concerned', see Johan Christoffersen, *Fair Balance: Proportionality, Subsidiarity and Primacy in the European Convention on Human Rights* (Martinus Nijhoff Publishers 2009), 238. The fourth-instance doctrine may therefore 'be seen as part of the larger construct of the margin of appreciation', see Oddný Mjöll Arnardóttir and Dóra Guðmundsdóttir, 'Speaking the same language? Comparing judicial restraint at the ECtHR and the ECJ', in Oddný Mjöll Arnardóttir and Antoine Buyse (eds), *Shifting Centres of Gravity in Human Rights Protection: Rethinking ECHR, EU, and National Legal Orders* (Routledge 2016), 173; The ECtHR does not always distinguish the two doctrines clearly, see Oddný Mjöll Arnardóttir, 'Rethinking the Two Margins of Appreciation' (2016) 12 European Constitutional Law Review 27, 32.

[52] Maija Dahlberg, '"It Is Not its Task to Act as a Court of Fourth Instance". The Case of the ECtHR' (2014) 2 European Journal of Legal Studies 77, 78; see also *Mehmet and Suna Yiğit v Turkey App no* 52658/99 (ECtHR, 17 July 2007), para 37; *Kononov v Latvia* App no 36376/04 (ECtHR, 24 July 2008), para 108; *L.H. v Latvia App no 52019/07 (ECtHR, 29 April 2014),* para 49.

[53] ECtHR Jurisconsult, 'Interlaken Follow-up. Principle of Subsidiarity', 8 July 2010, para 28.

[54] *Ramanauskas v Lithuania* ECHR 2008-I, para 52.

[55] *L H* (n 52), para 49.

[56] *Ramanauskas* (n 54), para 52.

assessment is 'flagrantly and manifestly arbitrary'.[57] In this respect, the ECtHR scrutinises allegations of a violation of the right to life (Article 2 ECHR) or the prohibition of torture (Article 3 ECHR) particularly thoroughly.[58]

*9. Principle IX: No First-Instance Court*

Unlike the 'fourth-instance doctrine', which is a common term in literature, the term 'first-instance doctrine' is not used very often to delineate the ECtHR's role. Nevertheless, this doctrine exists in the Strasbourg case law. In one case, the ECtHR stated that:

> [the ECtHR] cannot emphasise enough that [the ECtHR] is not a court of first instance; it does not have the capacity, nor is it appropriate to its function as an international court, to adjudicate on large numbers of cases which require the finding of basic facts or the calculation of monetary compensation – both of which should, as a matter of principle and effective practice, be the domain of domestic jurisdiction.[59]

The ECtHR has further elaborated the point of compensation explaining that its 'principal task is to secure the respect for human rights, rather than to compensate applicants' losses minutely and exhaustively'.[60] Consequently, it may choose not to award compensation, also because a public judgment finding a violation may already provide redress.[61] It can also award standardised amounts in repetitive cases.[62] Moreover, even when the ECtHR awards individualised amounts, it is guided by the principle of equity, which 'involves flexibility and an objective consideration of what is just, fair and

---

[57] *Kononov* (n 52), para 108. See also *Sokurenko v Russia App no* 33619/04 (ECtHR, 10 January 2012), para 52.

[58] *Aktaş v Turkey* App no 24351/94 (ECtHR, 24 April 2003), para 271; *Savriddin Dzhurayev v Russia* App no 71386/10 (ECtHR, 24 April 2013), para 53.

[59] *Demopoulos and Others v Turkey* App no 46113/99 (ECtHR, 1 March 2010), para 69; See also *Winterwerp v the Netherlands* (1979) Series A no 33, para 46; *Kazali and Others v Cyprus* App no 49247/08 (ECtHR, 6 March 2012), para 132.

[60] *Kharuk and Others* (n 27), para 23; *Salah Sheekh* (n 41), para 70.

[61] *Varnava and Others v Turkey* ECHR 2009-V, para 224.

[62] Eg, *Witkowska-Toboła v Poland* App no 11208/02 (ECtHR, 4 December 2007), para 78; *Ryabov and Others* App no 4563/0 (ECtHR, 17 December 2009), paras 21-22; *Kharuk and Others* (n 27) paras 24-25.

reasonable in the circumstances of the case'.[63] The ECtHR therefore does not 'function akin to a domestic tort mechanism court in appointing fault and compensatory damages between civil parties'.[64] Consequently, from the perspective of compensation, the ECtHR's task to provide individual justice is not boundless either.

The applicant is required to exhaust domestic remedies before bringing the case. This requirement enables domestic courts to engage in fact-finding before a case reaches Strasbourg and prevents the ECtHR from becoming a fact-finding court of first instance.[65] However, because the ECtHR intends to provide effective protection,[66] it often considers the circumstances of a case[67] and applies this requirement[68] with a 'degree of flexibility and without excessive formalism'.[69] Accordingly, the applicant must only exhaust remedies that are 'likely to be effective, adequate and accessible' and whose existence is 'sufficiently certain' in theory and practice.[70]

### *10. Principle X: No Criminal or Civil Court*

The ECtHR not only excludes acting as a court of first or fourth instance, but it has also reiterated that its 'role is not to rule on criminal guilt or civil liability but on the responsibility of the Contracting States under the Convention'.[71] This implies, for example, that there 'are no procedural barriers to the admissibility of evidence or pre-determined formulae for its assessment',[72] that the ECtHR does not deliver 'guilty or non-guilty verdicts on the individual' and that it does not determine the required penalty.[73] With

---

63 *Varnava and Others* (n 61), para 224.

64 Ibid.

65 Article 35(1) ECHR.

66 See section II.2.

67 *D H and Others v the Czech Republic* ECHR 2007-IV, para 116.

68 And some other admissibility requirements, see *Harkins v UK* App no 71537/14 (ECtHR, 15 June 2017), para 53.

69 *D H and Others* (n 67) para 116. See also *Aksoy v Turkey* ECHR 1996-VI, para 53; *Ananyev and Others v Russia* App no 42525/07 (ECtHR, 10 January 2012), para 95.

70 *Scoppola v Italy* (no 2) App no 10249/03 (ECtHR, 17 September 2009), para 70.

71 *Zamferesko v Ukraine* App no 30075/06 (ECtHR, 15 November 2012), para 44.

72 Ibid.

73 *Cestaro v Italy* App no 6884/11 (ECtHR, 7 April 2015), para 207.

reference to the principle of effectiveness, the ECtHR will intervene in the above matters in exceptional circumstances, including when there is a 'manifest disproportion between the gravity of the act and the punishment imposed'.[74]

### *11. Principle XI: No Involvement in Execution Matters*

The primary obligation of the states parties does not only mean that they have discretion regarding the protection of the Convention rights,[75] but also that they have discretion regarding the manner of execution of a judgment finding a violation.[76] This discretion applies at an individual level and the level of general execution measures.[77] In principle, the ECtHR therefore does not make 'consequential orders or declaratory statements' as to how a state should execute a judgment.[78]

Exceptionally, the ECtHR goes beyond its subsidiarity task by indicating which individual or general measures a state must take, sometimes even in the operative provisions – the binding part – of a judgment.[79] It thus leaves less room for a state to decide how to execute a judgment. According to the ECtHR, the purpose of these indications is 'to aid or encourage the national authorities in taking the steps required to execute a judgment';[80] in other words, to provide effective protection. More precisely, the ECtHR may specify individual measures due to the urgent need to end a violation[81] or the

---

74 *Gäfgen v Germany* ECHR 2010-IV, para 123.

75 See sections II.7 and II.8.

76 Article 46(1) ECHR; *Salah Sheekh* (n 41) para 73.

77 *Salah Sheekh* (n 41) para 73.

78 *Ülkü Ekinci v Turkey* App no 27602/95 (ECtHR, 16 October 2002), para 179.

79 Eg *Assanidze v Georgia* ECHR 2004-II, para 14(1) operative provisions; *Broniowski v Poland* ECHR 2004-V, para 4 operative provisions.

80 ECtHR, 'Contribution of the ECtHR to the Brussels Conference', 26 January 2015 <www.echr.coe.int/Documents/2015_Brussels_Conference_Contribution_Court_ENG.pdf> accessed 28 September 2017, para 14; See also *Scoppola (no 2)* (n 70) para 148; *Stanev v Bulgaria* ECHR 2012-I, para 255.

81 Eg, *Al-Saadoon and Mufdhi* (n 20), para 171; *M S S v Belgium and Greece* ECHR 2011-I, para 402; *Gluhaković v Croatia* App no 21188/09 (ECtHR, 12 April 2011), para 89.

nature of a violation.[82] The ECtHR proposes general measures in order to stimulate states to rapidly and effectively suppress a systemic problem,[83] which may otherwise undermine the effective functioning of the Convention system.[84] Another reason to propose general measures is because the ECtHR's task 'is not necessarily best achieved by repeating the same findings in large series of cases'.[85]

The ECtHR does not only abstain from indicating execution measures in principle, it also considers that it has no jurisdiction to verify whether a respondent state has complied with a judgment.[86] The Convention makes the Committee of Ministers responsible for this.[87] Nevertheless, applicants sometimes complain about the effects of general measures taken to execute a previous judgment. In these circumstances, the ECtHR becomes involved in supervising execution to some extent, although it evaluates only how the general measures affected the individual.[88] The ECtHR evaluates general measures more directly when it establishes whether a state has implemented the measures ordered in a pilot judgment, although its level of scrutiny is usually not very high.[89] In this way, the ECtHR does become involved in verifying whether a respondent state has executed a judgment or not.

---

[82] *Assanidze* (n 79) para 202; *Aleksanyan v Russia* App no 46468/06 (ECtHR, 22 December 2008), para 236; *Sławomir Musiał v Poland* App no 28300/06 (ECtHR, 20 January 2009), para 107. See, more elaborately, Glas (n 5) 387.

[83] *Burdov v Russia (no 2)* ECHR 2009-I, paras 126-127; *Karelin v Russia* App no 926/08 (ECtHR, 20 September 2016), para 94.

[84] *Scordino v Italy (no 1)* ECHR 2006-V, para 236.

[85] *Burdov (no 2)* (n 83), para 127.

[86] *UMO Ilinden – PIRIN and Others (no 2)* (n 39), para 66.

[87] Article 46(2) ECHR; *Kurić and Others v Slovenia* ECHR 2012-IV, para 406.

[88] Eg, *Von Hannover v Germany (no 2)* ECHR 2012-I, paras 124-126; *O H v Germany* App no 4646/08 (ECtHR, 24 November 2011), paras 51-55; *Gaglione and Others v Italy* App no 45867/07 (ECtHR, 21 December 2010), paras 40-45. See, more elaborately, Glas (n 5) 449-452.

[89] Eg, *Association of Real Property Owners in Łódź and Others v Poland* App no 3485/02 (ECtHR, 8 March 2011), para 81; *Hutten-Czapska v Poland* App no 35014/97 (ECtHR, 28 April 2008), paras 37-44; *Balan v Moldova* App no 44746/08 (ECtHR, 24 January 2012), para 19. See also Glas 2016 (n 6) 63-64.

### *12. General Observations on the Principles of Translation*

Sections II.1-II.11 presented eleven principles of translation. These principles underline that the ECtHR's task is fundamentally different from that of domestic courts and other domestic authorities. As already noted, the Strasbourg Court is neither a first/fourth-instance court, nor a criminal/civil court, and, unlike domestic authorities, it does not decide on execution matters. In essence, it is the ECtHR's task to establish whether the state was responsible for a violation of a Convention right in the circumstances of an individual case and to develop the Convention standards. When fulfilling this task, the ECtHR functions in an autonomous manner and grants a degree of discretion to the domestic authorities as to how they protect the Convention rights and specifically as to how they interpret domestic law, establish the facts and execute a judgment. These differences confirm that, as I already proposed above, it is necessary to translate the fairness standards developed in the ECtHR's case law for domestic authorities, to the ECtHR's context.

I submit that these eleven principles of translation cannot be applied mechanically, because, first, the features of the ECtHR's task and functioning are equivocal and, second, some features of the ECtHR do not apply in certain exceptional circumstances. The ECtHR's features are equivocal because the ECtHR provides subsidiary and effective protection. Yet, these two types of protection, subsidiarity and effective, are sometimes incompatible. Indeed, in order to provide effective protection, the judges might have to go beyond their subsidiary role. While the ECtHR provides mainly individual justice, it may also provide general justice. Exceptionally, the ECtHR does more than conducting *in concreto* review. This happens when the ECtHR engages *in abstracto* review. Furthermore, the ECtHR occasionally disregards the principle that it rejects tasks of a fourth-instance court when it questions the assessment of the facts or domestic law by domestic authorities. A last illustration of the ECtHR's diverse features is that the Court sometimes indicates execution measures or verifies whether execution measures have been implemented. It thus defies the principle that it does not become involved in execution matters.

In the following sections III and IV, I will use the principles of translation that I presented in this section. These principles will be used to translate the right to legal aid and the right to a reasoned judgment as the ECtHR has

developed them in its case law to standards that suit the Strasbourg Court's context.

## III. The Right to Legal Aid

The right to legal aid is a well-known fairness standard in the ECtHR's case law on Article 6 ECHR. While ECtHR's practice of granting legal aid 'has not attracted significant academic interest',[90] I have selected this standard for translation because a lack of legal aid may pose an important impediment to the applicant's ability to bring a case. Additionally, other authors claim that the available legal aid from the ECtHR is insufficient[91] and the translated standard can help verify this claim. Furthermore, the ECtHR's practice of granting legal aid is rather straightforward and therefore a good test case for applying the principles of translation.

This section first describes the application of the right at the national level in accordance to the ECtHR case law (section III.1). Then, it translates this standard to the ECtHR's context (section III.2). I thus propose some rules for how legal aid should be made available for Strasbourg cases. Lastly, this section describes the ECtHR's practice of granting legal aid and analyses that practice in light of the translated standards (section III.3).

### *1. The Convention Standard*

Article 6(3)(c) ECHR gives everyone charged with a criminal offence an automatic right to free legal aid on the condition that, first, one does not have sufficient means and, second, legal aid is required in the interest of justice.[92] Domestic authorities determine the requisite financial threshold[93] and the

---

[90] Butler (n 12) footnote 6. Butler is the exception. For an article about legal aid for interveners, see specifically Gruodytė and Kirchner (n 12).

[91] Harris (n 7) 665.

[92] *Artico v Italy* (1980) Series A no 37, para 34; *Monnell and Morris v UK* (1987) Series A no 115, para 67.

[93] Open Society Justice Initiative, 'European Court of Human Rights Jurisprudence on the Right to Legal Aid', 2007, <www.legalaidreform.org/european-court-of-human-rights/item/39-european-court-of-human-rights-jurisprudence-on-the-right-to-legal-aid-by-open-society-justice-initiative-and-the-public-interest-law-institute> accessed 28 September 2017, para 5.

applicant must prove a lack of sufficient means by providing 'some indications' for this.[94] To establish if legal aid is in the interest of justice, the ECtHR considers the potential severity of the sanction, the complexity of the case, and the applicant's personal situation, including the applicant's capacity to defend himself or herself on account of, for example, the language used during court proceedings.[95] When the applicant might be deprived of his or her liberty, legal aid is required in any case.[96] Because legal aid must be effective, the mere nomination of a lawyer does not necessarily ensure Convention compliance.[97]

Article 6 ECHR does not explicitly lay down a right to legal aid in civil cases. The ECtHR has nevertheless accepted that the right to a fair trial may be engaged in civil cases under two interrelated circumstances.[98] First, the right to access to court may be breached if assistance is indispensable for effective access to court but not granted. Second, not providing legal aid may raise the question of whether the procedure was fair,[99] because a fair trial requires that one can present a case effectively and that one enjoys equality of arms with the opposing side.[100] The states are not obliged to make legal aid available in all civil cases, since the Convention does not lay down such a right explicitly.[101] Whether legal aid is required depends on, *inter alia,* the importance of what is at stake for the applicant, the complexity of the law and the procedure, whether legal representation is required, and on the

---

[94] *Pakelli v Germany* (1983) Series A no 64. See also David Harris et al, *Law of the European Convention on Human Rights* (3rd edn, Oxford University Press 2014), 478; Maurits Barendrecht et al, 'Legal Aid in Europe: Nine Different Ways to Guarantee Access to Justice?', 21 February 2014 <www.hiil.org/data/sitemanagement/media/Report_legal_aid_in_Europe.pdf> accessed 28 September 2017, para 156.

[95] ECtHR, *Guide on Article 6 of the European Convention on Human Rights. Right to a Fair Trial (criminal limb)* (Council of Europe 2014), para 292.

[96] *Benham v the UK* ECHR 1996-III, para 61.

[97] *Artico* (n 92) para 33.

[98] *P, C and S v UK* ECHR 2002-VI, para 88.

[99] Ibid, paras 89 and 91.

[100] *Airey v Ireland* (1979) ECHR Series A no 32, para 26; *Steel and Morris v UK* ECHR 2005-II, para 59.

[101] *Airey* (n 100) para 26; *Urbšienė and Urbšys v Lithuania* App no 16580/09 (ECtHR, 8 November 2016), para 45.

applicant's capacity to represent himself or herself effectively.[102] Importantly, the right of access to court is not absolute and can be limited providing that the limitation respects the essence of the right, pursues a legitimate aim and is proportionate.[103] Factors concerning the administration of justice, including the limited public funds available, the necessity of expedition and the rights of others can be reasons to limit the right.[104] Because the right is not absolute, it is also acceptable to make legal aid conditional on the litigant's financial situation or his or her prospect of success.[105]

In sum, legal aid may be required in criminal and civil cases, although the applicable standards are stricter under the civil than the criminal limb of Article 6 ECHR.[106] Legal aid is required in criminal cases if the applicant has insufficient means and if legal aid is in the interest of justice. Whether legal aid should be granted in civil cases depends on various factors. Furthermore, the provision of legal aid in such cases may be limited and subjected to conditions. The ways this standard can be adapted to the ECtHR's context is addressed in the next section.

### *2. The Convention Standard Translated to the ECtHR's Context*

As section III.1 clarified, Article 6 ECHR requires that legal aid is made available in certain criminal and civil cases. Strasbourg cases are neither criminal nor civil (see principle X – 'no criminal or civil court'). The question therefore arises whether legal aid should be made available in Strasbourg cases at all, especially considering that the Convention is silent on this matter, even though its Section II specifically regulates procedural matters and rights. This consideration does not need to be a bar to legal aid, since the Convention is also silent on legal aid in civil cases and the ECtHR has nevertheless recognised that legal aid must sometimes be granted in such cases. I propose that legal aid should also be available in Strasbourg proceedings, in order to provide effective access to the ECtHR and to

---

[102] *Airey* (n 100) para 26; *P, C and S* (n 98) para 89; *Steel and Morris* (n 100) para 60.
[103] *P, C and S* (n 98) para 90; *Steel and Morris* (n 100) para 62.
[104] *P, C and S* (n 98) para 90.
[105] *Steel and Morris* (n 100) para 62.
[106] OSJI (n 93) para 2.

guarantee the fairness of these proceedings by ensuring that the applicant can present his or her case effectively, regardless of the means available.[107] Translated into Convention terms, legal aid may be necessary to ensure effective protection of the individual applicant (see principles II 'effective protection'; and III 'individual justice').

Other reasons to provide legal aid in Strasbourg cases can be found in the four factors that help determine whether legal aid is necessary in civil cases, as these factors argue in favour of legal aid in Strasbourg cases.[108] First, the importance of what is at stake for the applicants is great in Strasbourg cases. After all, they complain about a violation of their human rights, although the gravity of a violation may differ depending on the nature of the alleged violation and the right at stake. Second, the complexity of the applicable law is considerable too, because the ECtHR has produced an elaborate and nuanced body of case law that is often only available in English or French.[109] Moreover, it is often also useful to have knowledge of the relevant domestic (case) law. Third, legal representation before Strasbourg is required after the ECtHR has communicated an application to the respondent state.[110] Fourth, the capacity of applicants to represent themselves is very limited, considering that the Strasbourg procedure is so exceptional and different from domestic procedures (see principles VIII 'no fourth-instance court; IX 'no first-instance court'; and X 'no criminal or civil court'). Their capacity is also limited due to the complexity of the applicable law, as was noted above, and the vulnerability of many applicants.

---

[107] In *Young, James and Webster v UK* (1982) Series A no 55, para 15 the ECtHR also noted, albeit in the context of Article 50 ECHR (currently Article 41 ECHR): 'It is important that applicants should not encounter undue financial difficulties in brining complaints under the Convention'.

[108] See section III.1.

[109] The applicant is also required to communicate with the ECtHR in one of those languages after communication. Before that, (s)he can correspond with the ECtHR in one of official languages of the Contracting Parties, see Rule 34(2) of Court.

[110] Unless the President of the (Grand) Chamber decides otherwise. The requirement of representation also applies to hearings. Rules 36(1-3), 71 of Court.

Now that it is clear that legal aid should be made available in Strasbourg cases,[111] the ensuing question is under which conditions it should be granted. I propose that, in line with the subsidiarity principle, domestic authorities should be primarily responsible for providing legal aid, and that the ECtHR should only grant legal aid from its own budget[112] when it is not available at the domestic level from domestic resources (see principle I 'subsidiarity protection'). I do not propose that the ECtHR should require domestic authorities to provide legal aid in Strasbourg cases; I only propose that domestic authorities themselves should take responsibility for providing legal aid in Strasbourg cases. In response to my proposal, one could critically remark that the subsidiarity principle relates to the protection of the Convention rights and that there is no Convention right to legal aid in Strasbourg cases.[113] I argue, however, that the basic idea underlying the Convention applies here too: the ECtHR should not do what domestic authorities can do.[114] Further, although there is no Convention right to legal aid in Strasbourg cases, the ECtHR also protects the Convention rights, albeit in second instance, by supervising the effects of the states parties' implementation of the Convention in individual cases. Therefore, providing legal aid in such cases is only logical.

I suggest that the actual granting of legal aid by the ECtHR should at least be made conditional on the fulfilment by the applicant of the requirements that apply to criminal cases. This implies that legal aid should only be made available if the applicant has insufficient means and can provide some evidence for this. Domestic authorities are better placed to verify this and should therefore be responsible for it (see principle VII 'deference to

---

[111] Shelton comes to the same conclusion for international human rights cases generally but uses arguments based on, *inter alia,* the law of restitution. See Dinah Shelton, *Remedies in International Human Rights Law* (Oxford University Press 2006) 368-370. See also Donna Gomien, David Harris and Leo Zwaak, *Law and Practice of the European Convention on Human Rights and the European Social Charter* (Council of Europe Publishing 1996), 52.

[112] The Court annual budget covers legal aid, see <www.echr.coe.int/Documents/Budget_ENG.pdf> accessed 17 October 2017.

[113] The ECtHR adopted a new procedure because the backlog of clearly inadmissible cases had been eliminated.

[114] ECtHR, 'Interlaken Follow-up, 8 July 2010', para 2 <www.echr.coe.int/Documents/2010_Interlaken_Follow-up_ENG.pdf> accessed 28 September 2017.

domestic authorities'). The foregoing also implies that legal aid must be in the interest of justice, which can be individual justice (see principle III 'individual justice') or general justice (see principle IV 'general justice'). Legal aid will usually be in the interest of individual justice, considering the complexity of the Strasbourg case law and the applicants' limited capacity to defend themselves. Legal aid can also be for the sake of general justice if the case potentially results in a judgment that solves important questions of the application or interpretation of the Convention.[115]

In civil cases, the ECtHR accepts that legal aid may be granted provided that the case has some prospect of success. It is proposed to accept this as a permissible condition for Strasbourg cases as well, considering that, as in civil cases, the Convention does not expressly lay down a right to legal aid. For the same reason, the provision of legal aid may be limited for reasons relating to the administration of justice, including limited public funds. Limitations must, however, respect the essence of the standard, pursue a legitimate aim and be proportional.

To conclude, based on the right to legal aid from the Strasbourg case law and the principles of translation, I have developed a fairness standard for the ECtHR. The summarised standard is that the ECtHR should take care of making legal aid available when domestic authorities fail to do so, in accordance with the subsidiarity principle. The ECtHR should only provide legal aid when the applicant has insufficient means (as verified by domestic authorities), when legal aid is in the interest of individual or general justice, and when the case has some prospect of success. The Strasbourg Court may limit the provision of legal aid for reasons relating to the administration of justice, as developed in the following section, which uses the translated standard in order to analyse the Court's practice.

### *3. The Translated Standard Applied to the ECtHR's Practice*[116]

One part of the standard, as translated in the previous section, requires that legal aid should be available in Strasbourg cases and that domestic authorities

[115] Cf Articles 30 and 43(2) ECHR.

[116] The ECtHR may award costs and expenses under Article 41 ECHR if the applicant requests just satisfaction and when the ECtHR finds a violation of the Convention.

should provide this before the ECtHR does. Practice is not in full conformity with the translated standard as legal aid is rarely available from domestic resources.[117] Although this article is concerned with scrutinising the ECtHR, it now appears that the translated standards may also point out where there is room for improvement at the domestic level. For its part, the ECtHR explains in its practical guide on legal aid that legal aid is available: Chamber Presidents may, at the applicant's request or on their own motion, grant legal aid for the reimbursement of part of the legal costs and expenses in proceedings before the ECtHR.[118] Importantly, the granting of legal aid does not mean that the ECtHR appoints a representative; finding a representative remains the applicant's responsibility.[119] It is unclear whether the ECtHR, as proposed, only grants legal aid if the domestic authorities do not.

Further, I suggested in section III.2 that the ECtHR should grant legal aid when the applicant fulfils three conditions. First, the applicant should have insufficient means. The ECtHR indeed only grants legal aid if this is the case,[120] and makes domestic authorities responsible for verifying this, as I proposed.[121] Second, legal aid should be in the interest of justice. The ECtHR seems to employ a different standard: it provides legal aid when it is 'necessary for the proper conduct of the case'.[122] The conditions can, however, also be regarded as comparable, because if something is necessary for the proper conduct of the case, it is probably also in the interest of individual justice. Whether this is the case depends on the ECtHR's interpretation of what is necessary for the proper conduct of the case. It is unknown if considerations of general justice play a role. Third, the ECtHR should provide legal aid if the applicant has some prospect of success. The ECtHR indeed applies this condition because the applicant can only request legal aid after the ECtHR

---

This possibility is not considered in this section because it is only available after the ECtHR adopted a judgment and when the ECtHR finds a violation.

[117] Butler (n 12) 365; Leach (n 8) 27.

[118] Court, 'Legal Aid. Practical Guide', #1895316, 11 March 2015, 2. The Chamber Presidents decide more precisely.

[119] Ibid.

[120] Rule 101(b) of Court.

[121] Rule 102(1) of Court.

[122] Rule 101(a) of Court.

communicated a case to the respondent state,[123] which means that a case has some prospect of success; clearly inadmissible cases are not communicated.[124]

Finally, it was proposed that additional limitations apply to legal aid made available by the ECtHR. Two limitations already apply, as I will now explain.

First, the ECtHR 'usually' only grants legal aid 'in cases involving complex issues of fact and law and not in cases of a repetitive nature'.[125] Because public funds are limited at any rate, this limitation can be justified. Moreover, the ECtHR applies well-established case law to repetitive cases and the procedure may be relatively straightforward for such cases.[126] Two reasons for requiring legal aid therefore do not apply here: complexity of the law, as the ECtHR applies well-established case law, and the limited ability of the applicants to represent themselves, as both the law and the procedure are not very complex. Because two reasons for requiring legal aid do not apply to repetitive cases, not providing legal aid can be justified.

The second limitation is that the amounts allocated are low; these amounts are merely a contribution towards the legal costs.[127] This is also apparent from the fact that the legal aid rates consist of a lump sum per case (€850) and fixed amounts for additional tasks.[128] Limiting the amounts may be necessary considering the limited public funds available and may be a way to discourage

---

[123] Rule 101 of Court.

[124] Eg Article 27(1) ECHR; Rule 52A(1) of Court.

[125] Court, 'Information to applicants on the proceedings after communication of an application', #1723569, 1 June 2010; cf Leach (n 8) 50: 'if the domestic authority certifies a client's financial eligibility, then it is very likely that legal aid will be granted'.

[126] For a description of this procedure, see Leach (n 8) 45-46.

[127] Council of Bars and Law Societies of Europe, 'The European Court of Human Rights. Questions and Answers for Lawyers' (2014) 14 <www.echr.coe.int/Documents/Guide_ECHR_lawyers_ENG.pdf> accessed 28 September 2017.

[128] I.e. appearing at hearing and assisting in friendly settlement negotiations. Only traveling costs are reimbursed according to receipts, see ECtHR, 'Legal Aid Rates', 31 July 2013, #2588700; These costs are not made often because there are only few hearings. In the 1980s, this was no different. The ECtHR noted in *Le Compte, Van Leuven and De Meyere v Belgium* (1982) Series A no 54, para 23, that under the scale adopted by the former European Commission of Human Rights for the purposes of free legal aid 'no more than reduced fees can be paid'.

lawyers from employing high fees.[129] However, because the relatively low amount is the same in each case, it is hard to imagine that the amount is always proportional, considering that cases differ in complexity and procedures vary in length. Furthermore, the economic circumstances differ widely in the 47 states parties.[130] It is questionable whether the ECtHR respects the essence of the 'right' or standard, if the actual costs are multiples of what the applicant can receive in terms of legal aid.[131] That essence would not be guaranteed if the applicant did not have effective access to the ECtHR, and if the applicant was not able to present the case effectively because of limited means. Whether this happens depends on the circumstances in which the individual applicants find themselves and would require additional research to be established.

The discussion in this section demonstrates that applying the translated standard to the ECtHR's practice leads to various observations and an insightful analysis of the ECtHR's practice. The ECtHR provides legal aid but it is unclear if it only does so when the domestic authorities do not. Furthermore, the Strasbourg court provides legal aid in line with the limitations proposed. Yet – and this is the most important insight – it is questionable whether one of the limitations (the low amount) respects the essence of the standard in each case.

## IV. The Right to a Reasoned Judgment

This section concerns another notable standard from the ECtHR's case law on Article 6 ECHR: the right to a reasoned judgment. I have selected this standard because the ECtHR recently changed its practice of reasoning single-judge decisions. Its previous practice had been criticised heavily because single-judge decisions were not at all or hardly reasoned.[132] The translated standard can help verify whether the ECtHR's new practice is fair.

---

[129] *Young, James and Webster* (n 107) para 15.

[130] When awarding just satisfaction the ECtHR *does* 'normally take into account the local economic circumstances', see ECtHR, 'Practice Direction on Just Satisfaction', para 2.

[131] See also Harris (n 7) 665; Butler (n 12) 363, 368.

[132] *CLR on behalf of Valentin Câmpeanu* (n 12), Concurring Opinion of Judge Pinto de Albuquerque, para 15; Gerards (n 6); De Vylder (n 6).

This practice is, like that of legal aid, rather straightforward and therefore a good test case for using the translation principles in this short contribution.

This section follows the same structure as section III: it describes the right to a reasoned domestic judgment as formulated in the ECtHR case law on Article 6 ECHR (section IV.1) and then translates it to the ECtHR's context (IV.2). The last section describes the ECtHR's practice of reasoning single-judge decisions and analyses that practice in light of the standard (section IV.3).

### *1. The Convention Standard*

Reasoning a judgment is in the interest of the 'proper administration of justice'.[133] More specifically, it demonstrates to the parties that they have been heard. This, in turn, contributes 'to a more willing acceptance of the decision on their part',[134] justifies the activities of an authority and makes public scrutiny of the administration of justice possible.[135]

For the aforementioned reasons, the ECtHR requires by virtue of Article 6 ECHR that domestic judgments state 'adequately' the reasons on which they are based.[136] However, judges are not requested to give a 'detailed answer to every argument'.[137] The extent to which reasons must be given 'may vary according to the nature of the decision and must be determined in the light of the circumstances of the case'.[138] To determine the acceptable degree of variation, the ECtHR takes into consideration '*inter alia*, the diversity of the submissions that a litigant may bring before the courts and the differences existing in the Contracting States with regard to statutory provisions, customary rules, legal opinion and the presentation and drafting of

[133] *Tatishvili v Russia* ECHR 2007-I, para 58.

[134] *Taxquet v Belgium* ECHR 2010-VI, para 91.

[135] *Tatishvili* (n 133) para 58.

[136] See also *Hadjianastassiou v Greece* App no 12945/87 (ECtHR, 16 December 1992), para 33.

[137] *Van de Hurk v the Netherlands* (1994) Series A no 288, para 61; *Tatishvili* (n 133) para 58.

[138] *Buzescu v Romania* App no 61302/00 (ECtHR, 24 May 2005), para 63; See also *Ruiz Torija v Spain* (1994) Series A 303-A, para 30; CCEJ, 'Opinion No 11 on the Quality of Judicial Decisions', CCJE(2008)5, 18 December 2008, para 41; ECtHR, *Guide on Article 6 of the [ECHR]. Right to a fair trial (civil limb)* (2013 Council of Europe), para 241.

judgments'.[139] Domestic courts must at least reply expressly to submissions decisive for the outcome of proceedings.[140] They must also properly examine and respond to the main pleas, especially when the pleas concern Convention rights.[141]

In *Hiro Balani v Spain*, for example, the ECtHR found a violation of Article 6 ECHR on account of insufficient reasoning, when it remained unclear whether the domestic judges had neglected to consider a submission or whether they had intended to dismiss it.[142] In *Pronina v Ukraine*, the ECtHR concluded that the domestic judges had committed the same violation when they did not analyse the applicant's claim from the perspective of a constitutional provision on which the applicant had explicitly relied upon before every judicial instance.[143] As a final example, the ECtHR held in *Georgiadis v Greece* that a domestic court also causes a violation when it bases its decision on an unclear concept that requires assessing the facts (e.g. 'gross negligence') and without engaging in such an assessment.[144]

Lower domestic courts must indicate sufficiently clearly the grounds on which they base their decision,[145] so that the parties can appeal effectively.[146] In addition to the functions outlined above, judicial reasoning should therefore also facilitate a possible effective appeal.[147] If this function is not fulfilled, the ECtHR can find a violation of Article 6 ECHR.[148]

The manner of application of Article 6 ECHR to appellate courts depends on the features of the proceedings.[149] The ECtHR considers the entirety of the proceedings and the role of the appellate court therein.[150] When

---

[139] *Pronina v Ukraine* App no 63566/00 (ECtHR, 18 July 2006), para 23.

[140] ECtHR (n 138) para 241; *Ruiz Torija* (n 138), para 30.

[141] *Wagner and J M W L v Luxembourg* App no 76240/01 (ECtHR, 28 June 2007), para 96; See also ECtHR (n 138) para 242.

[142] *Hiro Balani v Spain* (1994) Series A 303-B, para 28; *Ruiz Torija* (n 138) para 29.

[143] *Ruiz Torija* (n 138), para 25.

[144] *Georgiadis v Greece* ECHR 1997-II, para 43.

[145] *Hadjianastassiou* (n 136), para 33.

[146] *Hirvisaari v Finland* App no 49684/99 (ECtHR, 27 September 2001), para 30.

[147] *Tatishvili* (n 133), para 58.

[148] *Suominen v Finland* App no 37801/97 (ECtHR, 1 July 2003), para 38.

[149] *Hansen v Norway* App no 15319/09 (ECtHR, 2 October 2014), para 73.

[150] Ibid.

dismissing an appeal, appellate courts may 'simply endorse the reasons for the lower court's decision'[151] or 'without further explanation' 'simply [apply] a specific legal provision to dismiss an appeal on points of law as having no prospects of success'.[152] Nevertheless, when an appeal court gives 'spare reasons', the notion of a fair procedure requires that the appeal court addresses the 'essential issues' submitted to it and that it does not, for example, 'merely endorse without further ado' the findings of a lower court.[153]

When rejecting an application for leave for appeal,[154] the judges are not required to give detailed reasons either and the reasons may even be implied from the circumstances.[155] Comparably, the former European Commission of Human Rights noted that, if granting leave depends on whether the appeal raises a legal issue of fundamental importance and whether the appeal has any chance of success, 'it may be sufficient [...] simply to refer to the provision authorising this procedure'.[156]

In other preliminary procedures for examining and admitting appeals on points of law, appellate courts are not required 'to give more detailed reasoning when it simply applies a specific legal provision to dismiss an appeal [...] as having no prospects of success, without further explanation'.[157] A good illustration of the relatively low standards imposed by the ECtHR is *Sawoniuk v UK*. The ECtHR here did not find a violation of Article 6 ECHR when the UK House of Lords refused a leave to appeal without giving any reasons, taking into consideration that there was no right of appeal, that the level of appeal was second and exceptional, that special requirements of public importance were imposed for leave and that the Court of Appeal had examined the first appeal exhaustively.[158] In a case where an appeal court's jurisdiction is not limited to questions of law and procedure but extends to

---

[151] *Garcia Ruiz v Spain* ECHR 1999-I, para 26.

[152] ECtHR (n 138) para 243; See also Harris (n 94) 431.

[153] *Helle v Finland* ECHR 1997-VIII, para 60.

[154] Ie the precondition for a hearing of the claims by superior courts and the eventual issuing of a judgment.

[155] *Kukkonen v Finland (no 2)* App no 20772/92 (ECtHR, 19 December 1997), para 24.

[156] *X v Germany* App no 8769/79 (European Commission for Human Rights, 16 July 1981).

[157] *Nersesyan v Armenia* App no 15371/07 (ECtHR, 19 January 2010), para 23.

[158] *Sawoniuk v UK* App no 63716/00 (ECtHR, 29 May 2001).

questions of fact, the ECtHR did not accept the 'no prospect of success reason'. The ECtHR was not convinced that the domestic court's refusal to admit for examination a civil appeal subjected to a filtering procedure addressed the 'essence of the issue to be decided by it [...] in a manner that adequately reflected its role at the relevant procedural stage as an appellate court entrusted with full jurisdiction and that it did so with due regard to the applicant's interests'.[159]

In short, domestic courts must reason their judgments adequately, because reasoning is in the interest of the proper administration of justice. The extent to which reasoning is required differs depending on various factors, including the level of jurisdiction. The way in which this standard may be applied to the ECtHR is the subject of the next section.

*2. The Convention Standard Translated to the ECtHR's Context*

The insight gained from the above description of the standard, i.e. that reasoning is in the interest of the proper administration of justice, is so general that it should also apply to the ECtHR's judgments.[160] The more specific reasons advanced by the ECtHR for requiring that domestic courts engage in adequate reasoning, as described in the previous section as well, can also be invoked in the ECtHR's context. Demonstrating to the parties that the ECtHR has heard them is particularly important because the ECtHR provides, *inter alia,* individual justice (see principle III 'individual justice'). Further, justifying its activities is of great relevance to the ECtHR because the ECtHR is not involved in execution matters (see principle XI 'no involvement in execution matters'). The ECtHR explains in its Article 6 case law that reasoning helps the parties involved in a case to accept the outcome of domestic proceedings. Comparably, the persuasiveness of the ECtHR's judgments is an important means by which the Strasbourg Court can help ensure that states indeed execute its judgments.[161]

---

[159] *Hansen* (n 149) para 81.

[160] See also De Vylder (n 6).

[161] See here, Laurence Helfer and Anne-Marie Slaughter, 'Toward a Theory of Effective Supranational Adjudication' (1997) 107 The Yale Law Journal 273, 308; Gerards (n 6) 154-155; Dzehtsiarou and Coffey (n 4) 273.

However, one of the more specific reasons advanced by the ECtHR for requiring that domestic courts reason their judgments does not apply to the ECtHR itself: lower domestic courts reason their judgments to make an effective appeal possible. Since the ECtHR is not a first-instance court whose judgments can be appealed (see principle IX 'no first-instance court'), this reason is hardly relevant. Nevertheless, the ECtHR may restore or reopen a case that it struck out or declared inadmissible previously because of an administrative error.[162] Although restoral or reopening happens only exceptionally, reason-giving can be important to make restoral or reopening possible.[163]

An additional justification for the ECtHR to reason its judgments thoroughly, is that its task of providing general justice requires judgments that elucidate the Convention standards, something that inevitably necessitates good reasoning (see principle IV 'general justice'). In short, it is clearly important that the ECtHR provides reasons for its judgments and decisions.[164] The Convention also reflects this, as it requires that '[r]easons shall be given for judgments as well as decisions declaring applications admissible or inadmissible'.[165]

A more complex matter is the extent to which the ECtHR should engage in reason-giving. Generally, what the ECtHR expects of domestic courts can also be expected of the ECtHR: that it provides adequate reasons. The expectation that the Court provides adequate reasons does not imply that it gives a detailed answer to each argument, nor that it replies expressly to submissions that are not decisive for the outcome of a case. Further, the ECtHR accepts that the extent to which a domestic court gives reasons for a judgment varies. This flexibility can be accepted for the ECtHR's judgments as well.

---

[162] Article 37(2) ECHR; Eg *Noé and Others v Hungary* App no 24515/09 (ECtHR, 13 March 2012).

[163] De Vylder (n 6).

[164] See also Helfer and Slaughter (n 161) 318-322; Gerards (n 6) 154; *CLR on behalf of Valentin Câmpeanu* (n 12), Concurring Opinion of Judge Pinto de Albuquerque, para 15; De Vylder (n 6).

[165] Article 45(1) ECHR.

The question now is which variables can be used to determine the acceptable degree of variation. For domestic courts, the ECtHR takes into consideration, *inter alia*, the nature of the decision. Applicants to the ECtHR complain about a violation of their human rights, which may imply that reason-giving is always of great importance. Nevertheless, it was also established that the ECtHR's task of providing individual justice is not boundless: it only reviews complaints about violations of a minimum level of severity and its task is not to endlessly repeat its findings in cases where there is no longer a live Convention issue (see principle III 'individual justice'). Besides, it is not the ECtHR's task to calculate monetary compensation as precisely as domestic first-instance courts (see principle IX 'no first-instance court') or to solve issues that are more appropriately solved by domestic civil or criminal courts (see principle X 'no criminal or civil court'). The ECtHR can therefore formulate its reasoning regarding these matters comparably less elaborately than regarding matters that concern the core of its task: providing effective human rights protection. The Strasbourg Court must, however, reason its judgments relatively thoroughly if its judgments set standards that help clarify the meaning of the Convention provisions and that are therefore of relevance to other states as well (see principle IV 'general justice').

Section IV.1 described that the ECtHR has formulated separate standards for appellate courts, which may engage in limited or even no reason giving depending on whether they endorse a lower court's decision. Because the ECtHR is not a fourth-instance court (see principle VIII 'no fourth-instance court'), it cannot pretend to endorse the highest domestic court's judgment. Domestic appellate courts can also give limited reasons if they dismiss an appeal or request for leave to appeal because the appeal has no prospect of success. The ECtHR is often confronted with applications that have little prospect of success. It can therefore be imagined that the ECtHR, like domestic courts, may simply refer to a relevant legal provision when confronted with such applications. It may do so, especially considering that its task of providing individual justice is not boundless (see principle III 'individual justice'). As in the case of higher domestic courts, the ECtHR would need to engage in more elaborate reasoning if necessary to address the essence of the complaint.

This section explored the way in which the fairness standard of the right to a reasoned judgment can be translated to the ECtHR's context. The translated standard requires the ECtHR to give adequate reasons. The extent to which giving reasons is required depends on the type of complaint and the content of the complaint and the judgment. The ECtHR can just refer to a relevant Convention provision if a complaint has little prospect of success. The next section will apply the translated standard to evaluate the ECtHR's practice of reasoning single-judge decisions.

### *3. The Translated Standard Applied to the ECtHR's Practice*

When deciding a case, the ECtHR sits in different formations, as a single judge, Committee (three judges), Chamber (seven judges) or Grand Chamber (seventeen judges).[166] As explained above, this section focuses on single judges. In this context, judges examine applications that can be decided without communication to the respondent state.[167] This is possible when an application on its own already discloses that it is inadmissible or should be struck out, unless there is a special reason to the contrary.[168] A manifestly inadmissible application is, for example, an application that an applicant re-submits outside the six-month time limit.[169] If a single judge cannot determine the application, a Committee or Chamber examines it.[170] Single judges, in other words, dismiss applications that clearly have no prospect of success. As such, the judges do not need to reason their decisions as elaborately as other formations of the ECtHR and can simply refer to the relevant legal provision for dismissal.

Before June 2017, single judges rejected applications 'in a global manner'.[171] They used to state without specifying the relevant criterion that 'the [ECtHR] found that the admissibility criteria set out in Articles 34 and 35

[166] Article 26(1) ECHR.
[167] Article 27(1) ECHR; Leach (n 8) 44.
[168] Rule 49(1) of Court.
[169] Harris (n 94) 119.
[170] Article 27(3) ECHR; Rule 52A(3) of Court.
[171] ECtHR, 'Launch of new system for single judge decisions with more detailed reasoning', ECHR 180 (2017), 1 June 2017.

have not been met'.[172] In other words, no reasons for dismissal were given at all. Thus, this practice did not conform with the translated standard. To recall, in *Sawoniuk v UK*, the ECtHR once accepted that the UK House of Lords did not give any reason at all.[173] However, because the circumstances of that case were so particular and different from those in which single judges adopt a decision, they cannot be an excuse for them to do the same.

Since June 2017, the ECtHR changed its policy: single judges now have to include a reference to a specific inadmissibility criterion.[174] They may continue to issue global rejections, however, when 'applications contain numerous ill-founded, misconceived or vexatious complaints'.[175] This practice seems to comply with the translated standard: as a rule, single judges must refer to the specific legal provision for dismissing an application that clearly has no prospect of success. Considering that the ECtHR's task of providing individual justice is limited, especially with respect to 'ill-founded, misconceived or vexatious complaints',[176] it also seems to be acceptable that the ECtHR does not refer to a specific inadmissibility ground when dismissing an application containing such complaints.

In this section, as in section III.3, the translated fairness standard could be usefully applied to analyse an aspect of the ECtHR's practice. The analysis has led to the conclusion that the ECtHR's current practice of providing limited reasons in single-judge decisions is in line with the translated standard.

## V. Conclusion

The introduction asked on which standards the ECtHR's procedural fairness can be assessed. The analysis in sections III and IV demonstrates that it is useful to apply the standards developed in the ECtHR case law to the ECtHR's own proceedings, provided they are translated to the ECtHR's unique context. Translation is, however, not always necessary. The reasons

[172] See, for example, Lize Glas, *ECHR Case Files. The Case Files of the Lawyer and of the Intervener before the European Court of Human Rights* (Ars Aequi 2017) 213.

[173] *Sawoniuk v UK* (n 158).

[174] See n 113.

[175] ECtHR (n 171).

[176] Ibid.

behind the need to require a standard can be directly applied to the ECtHR's context when they are of a general nature (e.g. reasoning is in the interest of the proper administration of justice). The same analysis also demonstrates the usefulness of the principles of translation that I developed in this article. The usefulness is apparent because all but two principles (*in concreto* review and autonomy) were relied upon in sections III.2 and IV.2. Moreover, the translated standards could be used to analyse the ECtHR's practice in sections III.3 and IV.3. Because only two standards were translated (the right to legal aid and the right to a reasoned judgment), the fact that two principles were not used does not necessarily lead to the conclusion that they are irrelevant. This conclusion can only be drawn when more standards are translated and when these principles still remain unused then.

As for the two practices of interest, the provision of legal aid and reasoning by single judges, the ECtHR largely follows its own practice, although parts of the ECtHR's practice remain unknown. It is, for example, unclear how judges exactly interpret the 'necessary for the proper conduct of the case' standard for legal aid. To establish this, additional research would be required.

Nevertheless, this article has highlighted two problematic aspects of the practice of legal aid. First, only few states provide for legal aid in Strasbourg cases from domestic resources. The translated standards can therefore also function to point out that there is room to improve the states parties' practice. Second, the ECtHR uses fixed amounts for legal aid. It is unlikely that these amounts are proportional and respect the essence of the standard in each case, although, again, additional research would be required to establish what the exact consequences of the fixed amounts are for the ability of applicants to bring a case.

The ECtHR alone cannot address those two difficulties. It cannot ensure that the states parties provide legal aid to applicants for Strasbourg cases from domestic resources.[177] However, the Parliamentary Assembly (PACE) and the Committee of Ministers could issue a (non-binding) recommendation to the states parties to the Convention to call upon them to

[177] The ECtHR cannot find a violation of Article 6 ECHR because Strasbourg cases do not fall within the scope of Article 6 ECHR.

provide sufficient budget for legal aid to Strasbourg applicants.[178] ECtHR also cannot increase its own budget, so it can allocate more legal aid if necessary. The Council of Europe bears the expenditure on the ECtHR[179] and its member states finance the organisation.[180] Therefore, the problem of the modest legal aid is, also according to the ECtHR, a 'problem lying within the competence of the organs of the Council of Europe'.[181] This is also a point that the PACE and the Committee of Ministers could raise,[182] although the latter is unlikely to be in favour of increasing the ECtHR's budget, considering that the budget has been hardly increased during the few past years.[183] Nevertheless, this is a point worth raising, so as to ensure that the ECtHR indeed follows its own practice.

---

[178] See for other recommendations of the Committee of Ministers to the states parties regarding the Convention: Committee of Ministers, 'General Recommendations and Resolutions' <www.coe.int/en/web/execution/recommendations> accessed 28 September 2017. The resolution of the Committee of Ministers on domestic legal aid and advice does not concern legal aid for Strasbourg cases, see: Committee of Ministers, 'Resolution (78) 8 On Legal Aid and Advice', 2 March 1978.

[179] Article 50 ECHR.

[180] ECtHR, 'ECHR Budget' <www.echr.coe.int/Documents/Budget_ENG.pdf> accessed 28 September 2017.

[181] *Luedicke, Belkacem and Koç v Germany* (1980) Series A no 36, para 15.

[182] It did so more generally in an explanatory memorandum annexed to a resolution, see Marie-Louise Bemelmans-Videc, 'Effective implementation of the European Convention on Human Rights: the Interlaken process', Doc 12221, 27 April 2010, para 10.

[183] The ordinary budget increased from €67,206,800 in 2012 to €71,279,600 in 2017, see Council of Europe, *Council of Europe Programme and Budget 2012-2013* (Council of Europe 2011) 3; Council of Europe, *Council of Europe Programme and Budget 2017-2016* (Council of Europe 2015) 3. This is an increase of 5,71%, while the prices increased with 3,9% in 2017 compared to 2012 in the euro area, making the actual increase even smaller, see <www.in2013dollars.com/2012-euro-in-2017?amount=67206800> accessed 28 September 2017. To also illustrate the unwillingness of the Committee of Ministers and the states parties generally in this regard, in the draft version of the Interlaken Declaration it was proposed to invite the Committee of Ministers to 'determine whether additional budgetary means need to be provided to the ECtHR and to the Committee of Ministers in order to ensure that the [case-law] backlog can be reduced and that new cases can be decided within a reasonable time'. This text was deleted from the final version, see Bemelmans-Videc (n 182), para 10.