

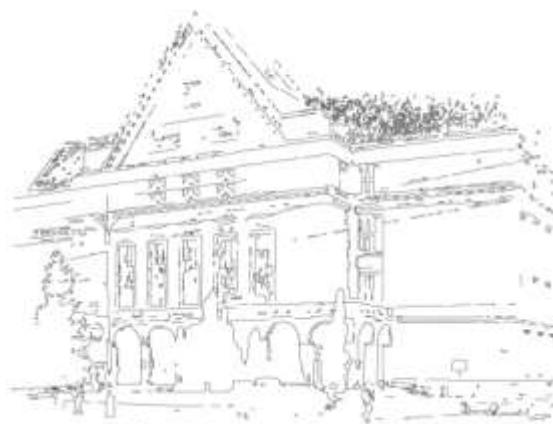
**CHARLES UNIVERSITY IN PRAGUE
FACULTY OF LAW**

**Strains and Challenges Facing the European Convention on
Human Rights System**

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STRAINS AND CHALLENGES FACING THE EUROPEAN CONVENTION ON HUMAN RIGHTS SYSTEM

Frédéric Krenc¹

Abstract

This contribution examines the principal challenges currently facing the European Convention on Human Rights system on the occasion of the Convention's 75th anniversary. It highlights the relevance, now more than ever, of the Convention as a framework for the protection of democracy, the rule of law, and human dignity in Europe. While clarifying the subsidiary role of the European Court of Human Rights in its positive dimension, it also addresses issues such as judicial independence, disinformation, and the Court's workload. Particular attention is paid to the need to preserve public trust in the Convention system and to safeguard its effectiveness in a rapidly changing environment and turbulent times. This contribution concludes by emphasising the historical responsibility vested in the Court to protect our common heritage. The contribution has been retained in the form of an edited conference presentation in order to preserve the original structure and style of the author's oral remarks.

Keywords: *European Convention on Human Rights; European Court of Human Rights; democracy; rule of law; subsidiarity; judicial independence; democratic values.*

Dear colleagues,
Dear friends,

Ladies and gentlemen,

It is both a privilege and a pleasure to take part in this important event to celebrate the 75th anniversary of the European Convention on Human Rights. Speaking here in Prague today has a special significance for me.

Let me warmly thank the Faculty of Law of Charles University in Prague and the University's Centre for Conflict and Post-Conflict Studies for this wonderful organisation. My deep gratitude goes to Veronika Bílková and Alla Tymofeyeva for their kind invitation. I would like to extend my sincere thanks to my esteemed colleague and dear friend, Judge Kateřina Šimáčková.

*

¹ An earlier version of this contribution was presented by Judge Krenc at the conference *Safeguarding Rights and a Changing World: 75 Years of the European Convention on Human Rights*, organized by the Faculty of Law of Charles University (Prague, Kampus Hybernská, 10 November 2025).

Signed in Rome on 4 November 1950, the European Convention on Human Rights was conceived as both a moral and legal response to the war. Its purpose is to guarantee an area of democracy founded on the rule of law and respect for human dignity in Europe.

To this end, the Convention enshrines rights and freedoms for every person falling within the “jurisdiction” of the Member States². Moreover, in order to ensure that these rights and freedoms are respected by the States, the Convention established an international control mechanism that is binding and based on the right of individual application³. When States fail to comply with their commitments, individuals whose rights have been violated may bring their case before the Court, which is empowered to issue binding judgments against the State concerned⁴. This external control grounded in individual applications is the added value of the system. It is what makes the Convention so unique⁵.

Today we are living in turbulent times. The Convention system is also facing unprecedented challenges, and I would like to briefly address some of them.

Reaffirming the relevance of the Convention in time of crisis and new threats

It is undeniable that the context in which the Convention was adopted in 1950 is no longer the same 75 years later. Nevertheless, I firmly believe that the scale of the challenges we face today does not call for a paradigm shift. On the contrary, it is important to reaffirm the relevance of the Convention in the current context. The Convention was indeed conceived and drafted by visionaries who were fully aware of the worst atrocities our continent has experienced, because they had lived through them. Drawing on their experience, they were determined to proclaim inalienable rights that would be applicable in all circumstances. The Convention was thus specifically designed to govern the most critical situations.

It establishes a framework for State action by setting out rights and freedoms and by allowing, for some of them, restrictions or even derogations, subject to strict conditions. Therefore, the Convention is not a “suicide pact”. It notably prevents the enemies of democracy from invoking it to achieve their aims⁶. It allows States to restrict certain rights on grounds related to the protection of public order and

² Article 1 of the Convention.

³ Articles 19 and 34 of the Convention.

⁴ Article 46 of the Convention.

⁵ See Fr. Krenc, *Une Convention et une Cour pour les droits fondamentaux, la démocratie et l'État de droit en Europe*, LGDJ-Anthemis, 2023.

⁶ Article 17 of the Convention.

national security⁷, and, exceptionally, to derogate from some of them “in time of war or other public emergency threatening the life of the nation”⁸.

Recalling the Court’s mission

As the ultimate guardian of this framework, the Court plays a crucial role.

The Court is first and foremost a *court of law*. The Court does not engage in politics. Its function is strictly judicial.

Secondly, the Court is an *international court*. It is neither a national court of first instance nor a court of fourth instance⁹. Its role is not to verify whether domestic law has been correctly interpreted or applied. As an international court, its function is to ensure compliance by the States with the international agreement they have ratified.

Last but not least, the Court is an *international court of human rights*. Its task is to ensure that States Parties respect the rights and freedoms enshrined in the Convention. In fulfilling this mission, the Court is called upon to provide the interpretation that best aligns with the object and purpose of the treaty, in accordance with Article 31 § 1 of the Vienna Convention on the Law of Treaties. The landmark judgment in *Golder v. the United Kingdom* is paradigmatic in this respect¹⁰. The Court is also tasked with giving the Convention its meaning “in the light of present-day conditions”¹¹, taking into account notably scientific and technological evolutions¹². The text of the Convention is not meant just for the society of 1950; it must be given meaning in the context of today’s society so that the rights it guarantees remain practical and effective, not theoretical or illusory¹³.

⁷ In particular Articles 8 to 11 of the Convention.

⁸ Article 15 of the Convention.

⁹ I had the opportunity to touch upon this subject in *Hurbain v. Belgium*, GC, 4 July 2023 (concurring opinion, § 12).

¹⁰ In *Golder* the Court inferred from Article 6 of the Convention a right of access to a court in civil matters, even though such a right did not appear, as such, in the text of Article 6: “It would be inconceivable, in the opinion of the Court, that Article 6 para. 1 should describe in detail the procedural guarantees afforded to parties in a pending lawsuit and should not first protect that which alone makes it in fact possible to benefit from such guarantees, that is, access to a court. The fair, public and expeditious characteristics of judicial proceedings are of no value at all if there are no judicial proceedings”. As the Court went on to clarify, “[t]his is not an extensive interpretation forcing new obligations on the Contracting States: it is based on the very terms of the first sentence of Article 6 para. 1 read in its context and having regard to the object and purpose of the Convention, a lawmaking treaty (...) and to general principles of law” (*Golder v. the United Kingdom*, 21 February 1975, §§ 35-36).

¹¹ *Tyrer v. the United Kingdom*, 25 April 1978, § 31.

¹² See *Big Brother Watch and Others v. the United Kingdom*, GC, 25 May 2021.

¹³ *Airey v. Ireland*, 9 October 1979, § 24.

Protecting our democratic values

Today the role of the Court is all the more crucial, at a time when the democratic ideal founded on the rule of law is under pressure. We constantly hear about “democratic erosion” and “rule of law backsliding”.

Democracy cannot be reduced to the mere holding of free elections. Within the meaning of the Convention, democracy goes beyond a purely formal or electoral concept. It is grounded in values, at the forefront of which are “pluralism, tolerance and broadmindedness”¹⁴. The equal dignity of individuals sits at the apex of these values¹⁵.

Concretely, a democratic society is one which guarantees the freedom to believe or not to believe¹⁶. It protects the expression of discordant views and ideas which “offend, shock or disturb”¹⁷. It affords protection to minorities, if necessary, against the wish of the majority and even against the law itself¹⁸.

In a democratic society same-sex couples can walk hand in hand in public without fear of insult or aggression¹⁹. In sum, a democratic society is one in which everyone feels at home, regardless of their origins, status, beliefs, or sexual orientation. It is a society which perceives diversity “not as a threat but as a source of enrichment”²⁰.

Democracy and the rule of law are intrinsically linked. There can be no democracy without the rule of law. The rule of law requires, as the Court made clear in *Golder*²¹, that individuals have access to a court to ensure respect for the law and for their rights. The Convention guarantees not only access to a domestic judge but also access to an international court, placing both reviews at the heart of the Convention system.

Countering disinformation

However, the Court’s action is being criticised, sometimes in quite forceful terms. Of course, the Court is not immune from criticism, nor should it be. Open debate is healthy, and I personally have no issue

¹⁴ *Navalnyy v. Russia*, GC, 15 November 2018, § 175; *Macaté v. Lithuania*, GC, 23 January 2023, §§ 214-215; *Fedotova and Others v. Russia*, 17 January 2023, § 179.

¹⁵ *Fedotova and Others v. Russia*, 17 January 2023, § 180.

¹⁶ *Kokkinakis v. Greece*, 25 May 1993, § 31.

¹⁷ *Handyside v. the United Kingdom*, 7 December 1976, § 49.

¹⁸ *Fedotova and Others v. Russia*, 17 January 2023, §§ 216-218; *Marckx v. Belgium*, 13 June 1979.

¹⁹ See *Sabalić v. Croatia*, 14 January 2021.

²⁰ *Fedotova and Others v. Russia*, 17 January 2023, § 180.

²¹ *Golder v. the United Kingdom*, 21 February 1975, § 34: “one can scarcely conceive of the rule of law without there being a possibility of having access to the courts”.

with this.

That being said, there is a fundamental distinction between criticising a judicial decision and questioning the legitimacy of the institution itself. In this regard, it should be recalled that the Court did not emerge spontaneously; it was conceived and established by the States themselves. Its legitimacy derives directly from State sovereignty, of which it is an expression. The States decided to create the Court and entrusted it with the task of interpreting the Convention²² in order to ensure, as stated in the Preamble, “the maintenance and further realisation of human rights and fundamental freedoms”. To maintain and to realise: this is the mandate conferred upon the Court.

What is – I must say – particularly troubling is to see the Court criticised for positions it has never in fact taken. Unfortunately, this is an increasingly trend. Repeated and amplified, such narratives seriously undermine public understanding of the Court’s role and risk eroding trust in an institution that is so essential to the protection of fundamental rights – precisely because it provides external scrutiny of States. To weaken the Court is to weaken the rights of all.

For example, contrary to what has sometimes been claimed, the Convention does not prohibit the removal of foreign nationals whose conduct poses a genuine threat to public order or national security²³. Nor does it preclude the detention of persons posing such a threat pending their removal²⁴. However, authorities are not granted a blank cheque. The principle of non-refoulement – which prohibits returning a foreign national to a country where they would face a real risk of torture or inhuman or degrading treatment – is one such non-negotiable guarantee, given the absolute character of Article 3 of the Convention²⁵.

We may also hear claims such as “human rights do not guarantee our security” or “human rights put the individual above society”. These allegations are incorrect, and I believe it is necessary to dispel certain misconceptions.

Regarding the first point, it is important to emphasise that the protection of human rights does not imply the sovereignty of the individual to the detriment of the community to which he or she belongs. In its case-law, the Court has stressed that the rights and freedoms enshrined in the Convention require reciprocal concessions on the part of individuals²⁶, and it has endorsed notions such as “living

²² Article 32 § 1 of the Convention.

²³ *X v. the Netherlands*, 10 July 2018; *A.M. v. France*, 29 April 2019; *U. v. France*, 15 February 2024.

²⁴ *N.M. v. Belgium*, 18 April 2023.

²⁵ *Chahal v. the United Kingdom*, GC, 15 November 1996, §§ 79-80; *Saadi v. Italy*, GC, 28 February 2008, §§ 124-127.

²⁶ *Bodson and Others v. Belgium*, 16 January 2025, §§ 104-105.

together”²⁷ and “social solidarity”²⁸. Although these concepts have been recognised in specific and distinct contexts, and while any overgeneralisation should be avoided, they confirm at least something obvious: the Convention does not promote the maximisation of individual desires without regard for others or for the wider community. On the contrary, the Convention is a source of obligations and responsibilities, including for individuals, in order to ensure that everyone can equally enjoy the rights it guarantees.

Furthermore, to pitch human rights against security makes little sense from the perspective of the Convention. It requires States, first and foremost, to take all appropriate measures to safeguard the life and physical integrity of individuals falling within their jurisdiction. A failure to comply with this positive obligation engages the State’s international responsibility before the Court – notably under Article 2, which guarantees the right to life, and Article 3, which prohibits torture and inhuman or degrading treatment. On numerous occasions, the Court has held States responsible under the Convention because of their inaction in the face of violence committed against individuals. The Court’s case law on domestic violence is a particularly clear illustration of this: the Convention cannot tolerate acts of violence that undermine human dignity without an adequate response from the authorities²⁹.

Promoting a positive subsidiarity

One of the most crucial challenges for the Court today is to properly apply the principle of subsidiarity on which the entire Convention is based. Much has been said and written about subsidiarity. In a nutshell, subsidiarity means that the task of securing the rights and freedoms defined in the Convention belongs first to the States, and that the Court intervenes only when they fail to do so. States have the primary responsibility, while the Court plays a secondary and, in that sense, subsidiary role.

This subsidiarity is both procedural and substantive. In procedural terms, subsidiarity is reflected in the obligation to exhaust domestic remedies before bringing a case to the Court³⁰. European protection cannot take precedence over national protection. This concretely means that domestic judges are the most important actors in the Convention system.

In its substantive dimension, subsidiarity means that the Convention constitutes a minimum threshold of protection that leaves the States to go further, by supplementing or enhancing that protection in

²⁷ *S.A.S. v. France*, GC, 1 July 2014, §§ 141-142.

²⁸ *Vavříčka and Others v. the Czech Republic*, GC, 8 April 2021, §§ 279 and 306.

²⁹ See, among others, *Opuz v. Turkey*, 9 June 2009; *Talpis v. Italy*, 2 March 2017; *Bălşan v. Romania*, 23 May 2017; *Vieru v. the Republic of Moldova*, 19 November 2024.

³⁰ Article 35 § 1 of the Convention.

accordance with their domestic rules and constitutional traditions³¹. The Convention is not an instrument designed to uniformise domestic legal systems. While preserving national autonomy and respecting the diversity that characterises the Council of Europe, by granting States a margin of appreciation in several fields, it seeks to preserve a common foundation of human rights, underpinned by shared values. To put it plainly, the Convention promotes unity in diversity³².

We know that since the entry into force of Protocol No. 15³³, the principle of subsidiarity has been included in the Preamble to the Convention. The challenge for the Court is now to take this principle seriously and to engage with its positive dimension, so that it remains a credible principle. This concept of “positive subsidiarity” is one that I have personally taken to heart³⁴. Subsidiarity is less about restraining the Court’s control than about emphasising the primary role of national authorities in implementing the Convention. Subsidiarity is not synonymous with regression. On the contrary, it is founded on the idea that human rights should develop and flourish within local contexts, at the level of individuals and domestic realities. It is a functional principle that promotes a decentralised application of the Convention within national legal systems, where the text is intended to be applied.

Preserving judicial independence and separation of powers

For subsidiarity to realise its full potential, it requires the existence, within all the member States, of a domestic judicial system which is genuinely independent. Judicial independence is not only the core pillar of the rule of law; it is also the prerequisite for subsidiarity to operate properly³⁵. Without an independent judicial system, the rights and freedoms guaranteed by the Convention would remain purely illusory.

Judicial independence refers to the necessary personal and institutional independence that is required for impartial decision-making. It characterises both a state of mind which denotes a judge’s imperviousness to external pressure as a matter of moral integrity, and a set of institutional and operational arrangements which must provide safeguards against undue influence of the other State

³¹ Article 53 of the Convention.

³² “*United around our values*”, 16-17 May 2023, Reykjavík Summit (4th Summit of Heads of State and Government of the Council of Europe).

³³ 1 August 2021.

³⁴ Fr. Krenc, “The European Convention on Human Rights: pillars, shifts, and challenges”, *Human Rights Law Review*, 2025, volume 25, issue 3, in particular 13-16, <https://doi.org/10.1093/hrlr/ngaf023>

³⁵ *Grzęda v. Poland*, GC, 15 March 2022, § 324: “the Convention system cannot function properly without independent judges”.

powers, both at the initial stage of the appointment of a judge and during the performance of his or her duties³⁶.

Today we are increasingly witnessing judges being targeted, sanctioned, and silenced. This trend is clearly mirrored in the Court's case-law. Whereas judicial independence was once only rarely addressed in the Court's jurisprudence, it has, in recent years, become an issue of central importance³⁷.

The independence of the Court itself is equally essential. Respecting the authority and independence of the Court means respecting its judgments. It also entails complying with its interim measures, which are intended to ensure the effectiveness of the right of individual application for the time necessary to examine the applicant's case³⁸.

However, while the Court is, and must remain, independent, it does not operate from an ivory tower. It is engaged in an ongoing and open dialogue with all the actors of the Convention system: executive authorities, parliamentarians, judges, lawyers, academics, NGOs, and of course the citizens who are those primarily concerned by the Convention. The Court is not disconnected from the world around it, and the Convention is not interpreted in a vacuum³⁹. The Court has always taken context into account when called upon to determine the meaning of the Convention. This interpretation unfolds within a judicial debate in which the applicant, the respondent State, as well as third-party interveners can present their position and their arguments. The Court's rulings are duly reasoned in that regard, taking also into consideration the international environment in which the Convention is evolving⁴⁰. Interpretation is not arbitrary. It requires rigour, method, and consistency.

Developing and maintaining a Court that matters

“Developing and maintaining a Court that matters”. Such was the address delivered in Ghent last May by the Court's Registrar, Marialena Tsirli⁴¹. I fully share this ambition.

³⁶ *Guðmundur Andri Ástráðsson v. Iceland*, GC, 1 December 2020, § 234.

³⁷ See, among others, *Baka v. Hungary*, GC, 23 June 2016; *Juszczyszyn v. Poland*, 6 October 2022; *Tuleya v. Poland*, 6 July 2023.

³⁸ *Mamatkulov and Askarov v. Turkey*, GC, 4 February 2005, §§ 125 and 128. See also *Paladi v. Moldova*, GC, 10 March 2009, §§ 84-106.

³⁹ *Ždanoka v. Latvia* (no. 2), 25 July 2024, § 55.

⁴⁰ *Nait-Liman v. Switzerland*, GC, 15 March 2018, §§ 174-175; *Demir and Baykara v. Turkey*, GC, 12 November 2008, §§ 85-86.

⁴¹ Speech delivered on the occasion of the 15th anniversary of the Strasbourg Observers Blog. Text available on <https://strasbourgobservers.com>

From a quantitative perspective, an ongoing challenge for the Court lies in the huge number of pending applications. Since its creation, the Court has ruled on more than one million applications. This reflects the great trust as well as the hope placed by applicants in the system.

Over time, the Court has become a victim of its own success. Several years ago, the very survival of the system was even at stake. Currently, 53,450 applications are pending⁴². We are far from the peak reached in 2011, when 161,000 applications were awaiting adjudication. Nevertheless, the caseload remains substantial.

It is essential that the Court be able to deliver judgments within a “reasonable time”, since behind every application are individuals who have turned to the Court as a last resort and are awaiting justice in their case. The Court has intensified its efforts in this regard and must continue to do so. It now rules on more than 35,000 cases each year⁴³.

Despite its heavy workload, the Court remains fully committed to delivering justice. Let me refer to the historic ruling of 9 July 2025 in *Ukraine and the Netherlands v. Russia*. The Grand Chamber unanimously held Russia responsible for gross and widespread human rights violations committed in the context of the conflict in Ukraine since February 2022 and even since 2014. In its findings, the Court stated – and I quote it as every word is important:

“(…) the events in Ukraine are unprecedented in the history of the Council of Europe. The nature and scale of the violence as well as the ominous statements concerning Ukraine’s statehood, its independence and its very right to exist represent a threat to the peaceful co-existence that Europe has long taken for granted. (...) These actions seek to undermine the very fabric of the democracy on which the Council of Europe and its member States are founded by their destruction of individual freedoms, their suppression of political liberties and their blatant disregard for the rule of law. In none of the conflicts previously before the Court has there been such near universal condemnation of the “flagrant” disregard by the respondent State for the foundations of the international legal order established after the Second World War and such clear measures taken by the Council of Europe to sanction the respondent State’s disrespect for the fundamental values of the Council of Europe: peace, as already underlined, but no less

⁴² As of 31 December 2025.

⁴³ The Court applies the prioritisation policy introduced in 2009 (and amended in 2017) with a view to accelerating the processing and adjudication of the most serious and urgent cases. In parallel, the “impact” case-processing strategy launched in 2021 by President Spano seeks to ensure the efficient handling of applications that do not concern the so-called “core rights” (Articles 2 and 3 of the Convention), but nevertheless raise issues of significant importance for the interpretation or application of the Convention, either for the respondent State or for the community of States Parties to the Convention.

importantly human life, human dignity and the individual rights guaranteed by the Convention”⁴⁴.

A “Court that matters” is a Court whose authority stems from the solidity of its judgments. It is a Court whose rulings emerge as key landmarks in the development of case-law when addressing contemporary challenges of crucial importance. Its decisions do not merely concern individual situations; they set standards, clarify principles, and guide domestic legal systems⁴⁵. From that perspective, the authority of the Court is measured by the significance of its Grand Chamber rulings, which carry greater weight, because of their inherently serious character and the more solemn forms they take⁴⁶.

A “Court that matters” is not a Court that is arrogant and seeks to impose its own vision of the world. It is a Court that, fully aware of the current context, remains within its judicial mandate in order to protect the democratic ideal and uphold the rule of law standards.

Reinforcing trust, turning to younger generations

I will now come to my final point which is particularly important in my view. It concerns the need to reinforce public trust in the Convention system. In this respect, the added value of the Convention must be explained and communicated in very accessible and tangible terms, illustrating how its mechanisms contribute concretely to improving the protection of fundamental rights and freedoms in everyday life. Beyond institutional dialogue with officials, emphasis should be placed on a direct connection with citizens.

Particular attention should be paid to the younger generations, whose engagement will determine the future resilience of the Convention system. Promoting awareness of the Convention among young people is essential to ensuring the vitality of democratic values and the rule of law. The future of the Convention lies in their hands.

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⁴⁴ *Ukraine and the Netherlands v. Russia*, GC, 9 July 2025, § 177.

⁴⁵ As the Court has declared: “[its] judgments in fact serve not only to decide those cases brought before the Court but, more generally, to elucidate, safeguard and develop the rules instituted by the Convention, thereby contributing to the observance by the States of the engagements undertaken by them as Contracting Parties” (*Ireland v. the United Kingdom*, 18 January 1978, § 154).

⁴⁶ I may refer on this point to my article “The Five-Judge Panel of the Grand Chamber of the European Court of Human Rights: Filtering Body, Judicial Policy Committee, or New Adjudicatory Formation?”, *European Convention on Human Rights Law Review*, 2025, 429-442.

Let me conclude.

While it was little known in its early days, the Convention has become, over the years, an instrument of crucial importance for the protection of human rights in Europe. It has transformed the daily lives of individuals and has led to many positive reforms, including the abolition of certain laws and practices that were discriminatory or violated the most basic human dignity⁴⁷.

Undeniably, the Convention owes its extraordinary development to the Court. As a result of its dynamic case-law, with its overarching principle of the effectiveness of rights⁴⁸, the Convention has been adapted to the numerous and profound changes in society and has proved itself apt to provide a legal response to the major challenges of our age.

Today the Convention is all the more vital as we live in troubling times, marked by the return of war, an alarming resurgence of conflicts, the decline of multilateralism, recurrent crises, contested elections, and unprecedented disinformation campaigns.

In such circumstances, the Court is vested with a historic responsibility. The role of the Court is not to substitute itself for the States, nor to deprive them of their sovereignty. Its role is to supervise compliance with an instrument which, drafted in the aftermath of the Second World War, affirms the promise of a peaceful, free and sustainable society in Europe.

The Convention is our common heritage. It constitutes both a legacy from the past and a hope for the future.

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⁴⁷ See J. Schukking, “A House of Stories: 75 years of protecting human rights through the European Convention on Human Rights”, *Netherlands Quarterly of Human Rights*, 2026, 1-11.

⁴⁸ See G. Serghides, *The Principle of Effectiveness and its Overarching Role in the Interpretation and Application of the ECHR*, Strasbourg, 2022.