

THE IMPACT OF THE ECHR  
ON DEMOCRATIC CHANGE  
IN CENTRAL AND EASTERN EUROPE

High hopes were placed in the ability of the European Convention on Human Rights (ECHR) and the European Court of Human Rights to help realise fundamental freedoms and civil and political rights in the postcommunist countries. This book explores the effects of the Strasbourg human rights system on the domestic law, politics, and reality of the new member states. With contributions by past and present judges of the European Court of Human Rights and assorted constitutional courts, this book provides an insider view of the relationship between Central and Eastern European states and the ECHR, and examines the fundamental role played by the ECHR in the process of democratisation, particularly the areas of the right to liberty, the right to property, freedom of expression, and minorities' rights.

IULIA MOTOC is a judge at the European Court for Human Rights and Professor of Law at the University of Bucharest, Romania. She has also served as a judge at the Constitutional Court of Romania and as the Vice-Chair of the UN Human Rights Committee.

INETA ZIEMELE is a judge of the Constitutional Court of Latvia and a professor at the Riga Graduate School of Law. She is a former judge and Section President at the European Court of Human Rights.

Cambridge University Press

978-1-107-13502-4 – The Impact of the ECHR on Democratic Change in Central and Eastern Europe

Edited by Iulia Motoc, Ineta Ziemele

Frontmatter

[More Information](#)

THE IMPACT OF THE  
ECHR ON DEMOCRATIC  
CHANGE IN CENTRAL  
AND EASTERN EUROPE

Judicial Perspectives

Edited by

IULIA MOTOC AND INETA ZIEMELE



CAMBRIDGE  
UNIVERSITY PRESS

Cambridge University Press  
978-1-107-13502-4 – The Impact of the ECHR on Democratic Change in Central and Eastern Europe  
Edited by Iulia Motoc, Ineta Ziemele  
Frontmatter  
[More Information](#)

## CAMBRIDGE UNIVERSITY PRESS

University Printing House, Cambridge CB2 8BS, United Kingdom

Cambridge University Press is part of the University of Cambridge.

It furthers the University's mission by disseminating knowledge in the pursuit of education, learning, and research at the highest international levels of excellence.

[www.cambridge.org](http://www.cambridge.org)

Information on this title: [www.cambridge.org/9781107135024](http://www.cambridge.org/9781107135024)

© Cambridge University Press 2016

This publication is in copyright. Subject to statutory exception and to the provisions of relevant collective licensing agreements, no reproduction of any part may take place without the written permission of Cambridge University Press.

First published 2016

*A catalogue record for this publication is available from the British Library*

*Library of Congress Cataloguing in Publication data*

Names: Motoc, Iulia, editor. | Ziemele, Ineta, editor.

Title: The impact of the ECHR on democratic change in central and eastern Europe : judicial perspectives / edited by Iulia Motoc and Ineta Ziemele.

Description: Cambridge, United Kingdom : Cambridge University Press, 2016. |

“First drafts of the papers were presented at the conference: The Impact of the European Convention on Human Rights and the Case Law on Democratic Changes and Developments in Eastern Europe, held at the European Court of Human Rights in Strasbourg on 18 February 2013.” – Introduction. | Includes bibliographical references and index.

Identifiers: LCCN 2015042945 | ISBN 9781107135024 (hardback)

Subjects: LCSH: Human rights – Europe, Eastern – Congresses. |

New democracies – Europe, Eastern – Congresses. | Convention for the Protection of Human Rights and Fundamental Freedoms (1950 November 5) – Influence – Congresses. | BISAC: POLITICAL SCIENCE / Political Freedom & Security / Human Rights.

Classification: LCC KJC5132.A6 I477 2015 | DDC 320.943–dc23

LC record available at <http://lcn.loc.gov/2015042945>

ISBN 978-1-107-13502-4 Hardback

Cambridge University Press has no responsibility for the persistence or accuracy of URLs for external or third-party internet websites referred to in this publication, and does not guarantee that any content on such websites is, or will remain, accurate or appropriate.

## CONTENTS

- List of contributors* page ix  
*Table of cases* xiii  
*Foreword by Dean Spielmann* xxv
- 1 Introduction** 1  
 IULIA MOTOC
- 2 Comments on the early years and conclusions** 6  
 LUZIUS WILDHABER
- 3 Albania: Albania's long path towards European human rights standards** 13  
 LEDI BIANKU
- 4 Armenia: The supremacy of the European Convention on Human Rights: Armenia's path** 39  
 ALVINA GYULUMYAN AND DAVIT MELKONYAN
- 5 Azerbaijan: The directions of influence of the case law of the European Court of Human Rights in Azerbaijan** 57  
 KHANLAR HAJIYEV
- 6 Bosnia and Herzegovina: Impact of the case law of the European Court of Human Rights on postconflict society of Bosnia and Herzegovina** 80  
 FARIS VEHAHOVIĆ
- 7 Croatia: Commitment to reform: Assessing the impact of the ECtHR's case law on reinforcing democratization efforts in Croatian legal order** 110  
 KSENIJA TURKOVIĆ AND JASNA OMEJEC

- 8 Czech Republic: Democratic tradition, legitimacy of confiscation, and translation of the case law of the ECtHR in the light of the Convention in the Czech Republic** 136  
ALEŠ PEJCHAL
- 9 Estonia: Impact of the European Court of Human Rights' (case law) on democracy and rule of law: Some reflections from Estonian perspective** 153  
JULIA LAFFRANQUE
- 10 Hungary: The legal order of Hungary and the European Convention on Human Rights** 176  
KÁROLY BÁRD
- 11 Latvia: Consolidating democratic changes in Latvia: The various roles of the European Convention on Human Rights** 201  
MĀRTIŅŠ MITS
- 12 Lithuania: The European Convention on Human Rights in the Lithuanian legal system: The lessons learned and perspectives for the future** 234  
DANUTĖ JOČIENĖ
- 13 Macedonia: The impact of the European Convention on Human Rights and the case law on the Republic of Macedonia** 266  
MIRJANA LAZAROVA TRAJKOVSKA AND ILO TRAJKOVSKI
- 14 Montenegro: The effect of the European Convention on Human Rights on the legal system of Montenegro** 289  
NEBOJŠA B. VUČINIĆ
- 15 Poland: Human rights between international and constitutional law** 305  
LECH GARLICKI AND IRENEUSZ KONDAK
- 16 Romania: Romania and the European Convention on Human Rights: A dialogue of judges** 330  
IULIA MOTOC AND CRINA KAUFMAN

## CONTENTS

vii

- 17 **Russia: European Convention on Human Rights  
in Russia: Fifteen years after** 351  
ANATOLY I. KOVLER
- 18 **Serbia: The emergence of the human rights protection  
in Serbia under the European Convention on Human  
Rights: The experience of the first ten years** 373  
DRAGOLJUB POPOVIĆ AND TANASIJE MARINKOVIĆ
- 19 **Slovakia: How the Convention has helped Slovakia in  
its transition to a consolidated democracy** 401  
MILAN BLAŠKO AND MICHAL KUČERA
- 20 **Slovenia: Just a glass bead game?** 425  
JAN ZOBEC
- 21 **Ukraine: Ukraine on the way to democracy: Role  
and achievements of the European Court of  
Human Rights** 457  
GANNA YUDKIVSKA
- 22 **Conclusions** 491  
INETA ZIEMELE
- Index* 503

## CONTRIBUTORS

**KÁROLY BÁRD** Professor, Chair of the Human Rights Program and Co-director of the clinical specialisation (Central European University), former Vice Minister of Justice and Deputy Secretary of State of the Ministry of Justice.

**LEDI BIANKU** Judge at the European Court of Human Rights since 2008.

**MILAN BLAŠKO** Deputy Section Registrar, Registry of the European Court of Human Rights.

**LECH GARLICKI** Professor of Law (University of Warsaw), former Judge of the Polish Constitutional Court (1993–2001). Former Judge and President of Section of the European Court of Human Rights (2002–12).

**ALVINA GYULUMYAN** Judge of the Armenian Constitutional Court and a former Judge and Vice-President of Section III of the European Court of Human rights (2003–14). Former judge of the Supreme Court of Armenia (1985–96), Judge of the Constitutional Court of Armenia (1996–2003), and President of the Association of Judges (1998–2003).

**KHANLAR HAJIYEV** Judge at the European Court of Human Rights since 2003. Former President of the Constitutional Court of Azerbaijan and the Supreme Court of Azerbaijan.

**DANUTĖ JOČIENĖ** Justice of the Constitutional Court of Lithuania (since March 2014), Associate Professor (Mykolas Romeris University). Former Judge and Vice-President of Section II of the European Court of Human Rights (2004–13).

**CRINA KAUFMAN LL.M** (Strasbourg), Legal Secretary and Head of Division, Registry of the European Court of Human Rights.

IRENEUSZ KONDAK Legal Secretary, Registry of the European Court of Human Rights.

ANATOLY I. KOVLER Advisor to the Constitutional Court of the Russian Federation. Former Judge at the European Court of Human Rights (1999–2012). Doctor of Juridical Sciences, Professor of Law, Distinguished Jurist of the Russian Federation.

MICHAL KUČERA Legal Secretary since 2001, Registry of the European Court of Human Rights.

JULIA LAFFRANQUE Judge at the European Court of Human Rights since 2011, Professor (University of Tartu), and former Judge at the Supreme Court of Estonia.

MIRJANA LAZAROVA TRAJKOVSKA Judge at the European Court of Human Rights since 2007, former Judge of the Constitutional Court of the Republic of Macedonia.

TANASIJE MARINKOVIĆ Assoc. Prof. Dr. (University of Belgrade). President of the Serbian Association of Constitutional Law.

DAVIT MELKONYAN Legal Secretary, Registry of the European Court of Human Rights, Associated Professor (Yerevan State University), and Adviser to the Speaker of the Parliament of Armenia.

MĀRTIŅŠ MITS Dr.jur. (Lund), Judge of the European Court of Human Rights since 2015, Associate Professor (Riga Graduate School of Law).

IULIA MOTOC LLM (Aix-Marseille), PhD (Aix-Marseille), Judge of the European Court of Human Rights since 2013, Professor (University of Bucharest). Former Judge of the Romanian Constitutional Court.

JASNA OMEJEC President of the Constitutional Court of Croatia.

ALEŠ PEJČHAL Judge at the European Court of Human Rights since 2012.

DRAGOLJUB POPOVIĆ Prof. Dr. Judge at the European Court of Human Rights (2005–15).

ILO TRAJKOVSKI Professor of Sociology, Politics, Citizenship and Human Rights (University of Saints Cyril and Methodius).

KSENIJA TURKOVIĆ Judge of the European Court of Human Rights since 2012.



## CONTRIBUTORS

xi

FARIS VEĦABOVIĆ Judge at the European Court of Human Rights since 2012, former Vice-President of the Constitutional Court of the Federation of Bosnia and Herzegovina.

NEBOJŠA B. VUČINIĆ Judge of the European Court of Human Rights since 2008, Professor of International Law and Human Rights Law (University of Montenegro).

LUZIUS WILDHABER President of the European Court of Human Rights (1998–2007), Professor (University of Basel and Yale Law School).

GANNA YUDKIVSKA PhD, Judge of the European Court of Human Rights since 2010, Associate Professor (Academy of Advocacy of Ukraine).

INETA ZIEMELE PhD (*Cantab.*) Judge, Constitutional Court of Latvia, Professor (Riga Graduate School of Law), former Judge and President of Section, European Court of Human Rights (2005–14).

JAN ZOBEC Judge of the Slovenian Constitutional Court.

## TABLE OF CASES

A., B., & C. v. Ireland	<i>page</i> 321
Ādamsons v. Latvia	216, 222, 223, 316
Adži-Sprikoska v. Macedonia	272, 276, 284
Agazade & Mahmudov v. Azerbaijan	69–70
Ahlskog v. Finland	296
Airey v. Ireland	395, 482
Akdivar v. Turkey	395
Alajos Kiss v. Hungary	194–95
Alimuçaj v. Albania	25, 29–30
Ališić v. Slovenia	437–38
Aliyev v. Azerbaijan	68, 71
Alver v. Estonia	162, 172
Ananyev v. Russia	253, 369
Andrejeva v. Latvia	221, 223
Andreyev v. Estonia	163, 171–72
Anghelescu v. Romania	332
Animal Defenders v. United Kingdom	499
Arsovski v. Macedonia	279–80
Asadbeyli v. Azerbaijan	65–66
A/S Diena & Ozoliņš v. Latvia	225–26, 227
Ásmundsson v. Iceland	482
Association of Citizens Radko & Paunkovski v. Macedonia	272
Atanasiu v. Romania	334–35, 347–48, 349–50
Atanasovic v. Macedonia	270–71
Atanasovski v. Macedonia	286
Atanasov v. Macedonia	272
Babayev v. Azerbaijan	63, 77
Bączkowski v. Poland	261, 324–25, 327
Bajaldziev v. Macedonia	278

Bajrami v. Albania	25
Balitskiy v. Ukraine	468
Balliu v. Albania	22–23
Baranowski v. Poland	313, 483
Batasuna v. Spain	391
Batsanina v. Russia	366–67
Bayatyan v. Armenia	40, 42–45, 495
Bazjaks v. Latvia	209, 231
Belgium Linguistic Case	393
Bendenoun v. France	49
Berdajs v. Slovenia	438
Berhani v. Albania	22, 23, 33
Bijelić v. Montenegro and Serbia	290–91
Birgean v. Romania	332
Birutis v. Lithuania	245–46
Bocvarska v. Macedonia	279–80
Bodrožić v. Serbia	382
Bodrožić & Vujin v. Serbia	382
Boldea v. Romania	333
Borisov v. Lithuania	263
Boucke v. Montenegro	302
Božinovski v. Macedonia	286
Bragadireanu v. Romania	332–33
Brezny v. Slovakia	149
Brezovec v. Croatia	130
Broniowski v. Poland	xv, 10–11, 311–12, 326–27
Bruggemenn & Scheuten v. Germany	321
Brumărescu v. Romania	10–11, 331–32, 333–34
Brusco v. Italy	63, 295
Bukta v. Hungary	195
Bulena v. Czech Republic	146
“Bulves” AD v. Bulgaria	487
Burdov v. Russia	10–11, 360, 368, 369
Busuioc v. Moldova	48–49
Butkevičius v. Lithuania	252, 253
Caballero v. United Kingdom	51
Caka v. Albania	23, 32, 33
Calmanovici v. Romania	333
Campbell & Cosans v. United Kingdom	447–48

## TABLE OF CASES

xv

Canciovici v. Romania	332
Cani v. Albania	23
Castells v. Spain	196
Čavajda v. Czech Republic	150
Ceka v. Albania	19
Cenbauer v. Croatia	125
Centre for Legal Resources on Behalf of Campeanu v. Romania	335–37
Chahal v. United Kingdom	395
Charzyński v. Poland	295
Čiapas v. Lithuania	253
Csüllög v. Hungary	185–86
Daktaras v. Lithuania	251–52
Dalban v. Romania	333
Damjanac v. Croatia	130–31
Dammann v. Switzerland	347
Dauti v. Albania	20–21
Delfi AS v. Estonia	157, 172, 173, 497
Des Fours Walderode v. Czech Republic	144, 149
D.H. v. Czech Republic	xv, 147–48, 209
Djidrovski v. Macedonia	270
Dolca v. Romania	345
Doorson v. Netherlands	245
Driza v. Albania	21–22, 24, 30
Družstevní záložna Pria v. Czech Republic	148
Dudgeon v. United Kingdom	341
Dudova & Duda v. Czech Republic	346
Dumitru v. Romania	342
Dybeku v. Albania	20, 29–30
Eberhard & M. v. Slovenia	438
Editorial Board of Pravoye delo & Shektel v. Ukraine	480
El-Masri v. Macedonia	273, 276, 287
Estrikh v. Latvia	211–12
Fatullayev v. Azerbaijan	70, 495
Féret v. Belgium	391
Fetaovski v. Macedonia	276–77
Filipović v. Serbia	382
Flisar v. Slovenia	438
Fratanoló v. Hungary	186–87, 192, 199, 200
Frimu v. Romania	345

Gabrić v. Croatia	118
Garayev v. Azerbaijan	69
Garcia Alva v. Germany	188
Garzičić v. Montenegro	291–93, 303
Gaspari v. Slovenia	446–47
Gerasimov v. Russia	369
Ghavalayan v. Armenia	49–50
Giacometti v. Italy	296
Giedrikas v. Lithuania	260
Giuliani & Gaggio v. Italy	36
Gjonbocari v. Albania	22, 24
Goodwin v. United Kingdom	256, 395
Gorgi Georgiev v. Macedonia	273, 274
Gratzinger & Gratzingerová v. Czech Republic	143–44
Gratzinger v. Czech Republic	10–11
Grori v. Albania	20, 29–30
Grozdanoski v. Macedonia	278–79
Grzinčič v. Slovenia	295, 296
Gulijev v. Lithuania	247, 248
Hagyó v. Hungary	193
Harabin v. Slovakia	419
Hartman v. Czech Republic	145
Harutyunyan v. Armenia	42, 45
Haxhia v. Albania	23, 24
Hentrich v. France	262
Hill v. United Kingdom	283
Hirst v. United Kingdom	32, 71–72, 194–95, 421, 499
Holub v. Czech Republic	150
Horvat v. Croatia	116, 124
Huseyn v. Azerbaijan	65–66
Hutten-Czapska v. Poland	417
Ilaşcu v. Russia	10–11
Ilyushkin v. Russia	369
Insanov v. Azerbaijan	67–68
Intersplav v. Ukraine	487
Iosif v. Romania	347
Ireland v. United Kingdom	39
Ismayilov v. Azerbaijan	63–64, 77–78
Ivanov v. Ukraine	465

## TABLE OF CASES

xvii

Ivashchenko v. Ukraine	475
Jahn v. Germany	10–11
James v. United Kingdom	39
Jankauskas v. Lithuania	240, 253
Jankulovski v. Macedonia	271
Janowiec v. Russia	337
Janowski v. Poland	323–24
Jasar v. Macedonia	274, 286
Jasinskis v. Latvia	211
Jasiūnienė v. Lithuania	243–44
Jėčius v. Lithuania	50, 241, 252
Jehovah's Witnesses v. Austria	393
Jeličić v. Bosnia and Herzegovina	93–94
Jelić v. Croatia	129
J.L. v. Latvia	229
Jonika v. Lithuania	260
Julin v. Estonia	162
Jurevičius v. Lithuania	243–44
Kačapor v. Serbia	381
Kaçiu & Kotorri v. Albania	19–20
Kafkaris v. Cyprus	283
Kalashnikov v. Russia	10–11, 360, 367
Kalinkin v. Russia	369
Kauczor v. Poland	315
Kaverzin v. Ukraine	470–71
Kechko v. Ukraine	485–86
Kenedi v. Hungary	198, 397
K.H. v. Slovakia	408
Kharchenko v. Ukraine	466
Kitanovski v. Macedonia	280
Kocetkov v. Estonia	162
Kohlhofer & Minarik v. Czech Republic	148–49
Koky v. Slovakia	407–08
Kolk & Kislyiy v. Estonia	104
Kolosovskiy v. Latvia	214
Kononovs v. Latvia	228–29, 232, 495
Kononov v. Latvia	104
Kopecký v. Slovakia	415–16
Kopetzky v. Slovakia	10–11
Koprivica v. Montenegro	298–99, 302, 303

Koretskyy v. Ukraine	478–79
Kormoš v. Slovakia	412
Kornakovs v. Latvia	226
Kornev & Karpenko v. Ukraine	478
Kovačić v. Slovenia	437–38
Kovaleva v. Russia	364
Krčmář v. Czech Republic	141–42, 143
Kroon v. Netherlands	343
Kudła v. Poland	10–11, 125, 318, 319–20
Kuolelis, Bartoševičius & Burokevičius v. Lithuania	242
Kurić v. Slovenia	437–38, 444
Kutić v. Croatia	117
L. v. Lithuania	260–61
Labsi v. Slovakia	418
Lacko v. Slovakia	409
Ladent v. Poland	314
Laska & Lika v. Albania	23, 33
Lavents v. Latvia	209, 212, 231
Lazoroski v. Macedonia	272, 275
Leas v. Estonia	163, 164, 172
Leela Förderkreis E.V. v. Germany	447–48
Leger v. France	283
Lepojić v. Serbia	382, 395
Lesjak v. Slovenia	443
Liivik v. Estonia	168
Lingens v. Austria	48–49, 196, 461
Longa Yonkeu v. Latvia	221
Lüdi v. Switzerland	245
Lukanov v. Bulgaria	10
Lukenda v. Slovenia	436, 437–38, 440–42, 443
Luli v. Albania	22
Lungoci v. Romania	347
Lutsenko v. Ukraine	481
Majski v. Croatia	117
Maktouf & Damjanović v. Bosnia and Herzegovina	101–05
Malhous v. Czech Republic	10–11, 143, 149
Malininas v. Lithuania	247
Malisiewicz-Gasior v. Poland	323
Malkov v. Estonia	160–61
Malone v. United Kingdom	170

## TABLE OF CASES

xix

Mammadov (Jalaloglu) v. Azerbaijan	66–67
Manushaqe Puto v. Albania	25
Maresti v. Croatia	118–19
Marguč v. Slovenia	438
Marguš v. Croatia	130
Marini v. Albania	20, 24, 26
Markin v. Russia	359
Martin v. Estonia	163
Matko v. Slovenia	437–38, 439
Matoušek v. Czech Republic	150
Matyjek v. Poland	316
Mesesnel v. Slovenia	438
Metsaveer v. Estonia	163, 171–72
Michalko v. Slovakia	411
Mihăieş & Senteş v. Romania	345
Mijušković v. Montenegro	298
Mikhaylenko v. Ukraine	480–81
Mikulić v. Croatia	119
Miladinov v. Macedonia	275
Milenović v. Slovenia	438
Minasyan v. Armenia	50–51
Mishgjoni v. Albania	22
Mitreviski v. Macedonia	279
Mižigárová v. Slovakia	407
Mkrtchyan v. Armenia	53–54
Mocanu v. Romania	335–36, 337
Modinos v. Cyprus	341
M.R. & R.L. v. Estonia	158
Mullai v. Albania	21, 26
Mulosmani v. Albania	24
Multiplex v. Croatia	117
Muradverdiyev v. Azerbaijan	68
Nagla v. Latvia	226
Nagolica v. Croatia	63
Najafli v. Azerbaijan	70
Naletilić v. Croatia	104
Nasibova v. Azerbaijan	77–78
Nasteska v. Macedonia	279
Nevmerzhitskiy v. Ukraine	478
Niedbała v. Poland	313



Nikolaidis v. Montenegro	299
Nikolov v. Macedonia	278
Nogolica v. Croatia	296
Norris v. Ireland	341
Novik v. Ukraine	483
Novović v. Montenegro and Serbia	293
OOO (Link Oil SPB) v. Russia	364
Opuz v. Turkey	209
Oršuš v. Croatia	131
Osmjorkin v. Estonia	166–67
Osváthova v. Slovakia	411
Otto-Preminger Institute v. Austria	193
Ovsjannikov v. Estonia	161
Ozturk v. Germany	343
Öztürk v. Turkey	49
Palić v. Bosnia and Herzegovina	98–100
Panfile v. Romania	344–45
Pantea v. Romania	342
Papadakis v. Macedonia	279
Papamichalopoulos v. Greece	48
Parisov v. Macedonia	271–72, 286
Paskas v. Lithuania	251
Patyi v. Hungary	195
Paukštis v. Lithuania	244
Pavletic v. Slovakia	410–11
Paykar & Haghtanak v. Armenia	42, 54
Pello v. Estonia	163
Petkovski v. Macedonia	277, 284
Petra v. Romania	332
Pihlak v. Estonia	160–61
Pincová & Pinc v. Czech Republic	149–50
Piruzyan v. Armenia	51
Pocius v. Lithuania	247–48
Podkolzina v. Latvia	215, 221, 229
Poghosyan & Baghdasaryan v. Armenia	42, 46
Poghosyan v. Armenia	51
Poláček & Poláčková v. Czech Republic	143–44
Pređa v. Romania	335, 349
Predică v. Romania	332
Puhk v. Estonia	168

## TABLE OF CASES

xxi

Qufaj Co. Sh.p.k. v. Albania	18, 24, 29
Rainys & Gasparavičius v. Lithuania	249
Rakić v. Serbia	381
Ramanauskas v. Lithuania	246–47
Ramazanov v. Azerbaijan	71, 77–78
Ramhadi v. Albania	24–25, 30
Raudsepp v. Estonia	165
Refah v. Turkey	391
Rehbock v. Slovenia	437–39
Rekvényi v. Hungary	xxvi–xxvii, 10–11, 199, 347, 495
Republican Party of Russia v. Russia	359, 368
Rodić v. Bosnia and Herzegovina	100
Rodinná záložna, spořitelní a úvěrní družstvo v. Croatia	150–51
Rosin v. Estonia	163, 164
Rotaru v. Romania	10–11, 347
Rrapo v. Albania	19, 29, 35
Rusen v. Romania	347
Ryabykh v. Russia	360
Šabanović v. Montenegro and Serbia	298–99
Sakhnovskiy v. Russia	357
Salarcorcyan v. Armenia	49
Sašo Georgiev v. Macedonia	273, 280
Savenkovas v. Lithuania	253–54
Savez crkava riječ života v. Croatia	131
Savickas v. Lithuania	259, 260, 264–65
Savitskyy v. Ukraine	463–64, 480
SBC v. United Kingdom	51
S.C. Marolux S.R.L. & Jacobs v. Romania	347
Scoppola v. Italy	105
Šečić v. Croatia	131
Seřilyan v. Armenia	51
Sejdić & Finci v. Bosnia and Herzegovina	94–97, 108
Sejdovic v. Italy	32
Seyidzade v. Azerbaijan	72
Shabelnik v. Ukraine	483
Shchokin v. Ukraine	485, 486
Sheřtjorkin v. Estonia	153–54
Shkalla v. Albania	20, 24
Shub v. Lithuania	244–45
Siaurusevičius v. Lithuania	242

Sidabras & Džiautas v. Lithuania	249
Silickienė v. Lithuania	242
Šilih v. Slovenia	337, 437–38, 439–40
Simsić v. Bosnia and Herzegovina	103–04
Sindicatul “Păstorul cel Bun” v. Romania	346
Sisojeva v. Latvia	229
Skałka v. Poland	323
Skendžić & Krznarić v. Croatia	128, 129
Slavgorodski v. Estonia	157
Slivenko v. Latvia	213–14
Šobota-Gajić v. Bosnia and Herzegovina	100
Soldatenko v. Ukraine	477, 483
Sovtransavto v. Ukraine	10–11, 479–80
Špaček v. Czech Republic	141
Stakić v. Montenegro	293
Stanciu v. Romania	335, 348–49
Stanev v. Bulgaria	480–81
Stanford v. United Kingdom	283
Stoimenov v. Macedonia	279, 283
Stojanovski v. Macedonia	272, 275, 277, 279–80
Stojkovic v. Macedonia	286
Streletz, Kessler & Krenz v. Germany	10–11, 228–29
Suhadolc v. Slovenia	438
Sulaoja v. Estonia	160–61, 172
Sunday Times v. United Kingdom	347
Surbanoska v. Macedonia	272, 276
Taal v. Estonia	163, 164
Tammer v. Estonia	167, 172, 495
Tám v. Slovakia	410
Taron Hakobyan v. Armenia	51
Társaság & Szabadságjogokért v. Hungary	197–98, 397
Tautkus v. Lithuania	242, 263
Teixeira de Castro v. Portugal	483, 487
Ternovszky v. Hungary	186
Thlimmenos v. Greece	450
Thorgeirson v. Iceland	48–49, 196
Tkáčik v. Slovakia	410
Tomašić v. Croatia	118–19
Torreggiani v. Italy	253
Tričković v. Slovenia	437–38

## TABLE OF CASES

xxiii

Trijonis v. Lithuania	242
Tromso & Stensaas v. Norway	48–49
Tunis v. Estonia	162
Župa v. Czech Republic	151
Turek v. Slovakia	417–18
Tymoshenko v. Ukraine	481
Tysiac v. Poland	321
Ukrainian Media Group v. Ukraine	484–85
Užkauskas v. Lithuania	247–48
Vajnai v. Hungary	186–87, 189–90, 192, 199, 449, 495
Van Mechelen v. Netherlands	245
Varnava v. Turkey	100
Varnienė v. Lithuania	244
Vasilescu v. Romania	342
Vasilkovski v. Macedonia	272, 274–75, 286–87
Veeber (No. 2) v. Estonia	168
Vejdeland v. Sweden	391
Velinov v. Macedonia	275
Venskutė v. Lithuania	253
Vergelskiy v. Ukraine	484
Vernillo v. France	395
Veselinski v. Macedonia	270
Viașu v. Romania	334
Vides Aizsardzibas Klubs v. Latvia	225–26
Vikentijevik v. Macedonia	279–80
Vinčić v. Serbia	381
Vistiņš & Perepjolkins v. Latvia	214
Vlad v. Romania	335, 349
Vodárenská akciová spoločnosť v. Croatia	145–46
Vodeničarov v. Slovakia	410
Volkov v. Ukraine	471–73, 480
von Maltzan v. Germany	10–11
Voytenko v. Ukraine	465
Vronchenko v. Estonia	163, 164
Vukelić v. Montenegro	293, 296
Vyerentsov v. Ukraine	473–74, 490
Walker v. United Kingdom	346
Wingrove v. United Kingdom	193
Wizerkaniuk v. Poland	324
Wynne v. United Kingdom	283

Cambridge University Press

978-1-107-13502-4 – The Impact of the ECHR on Democratic Change in Central and Eastern Europe

Edited by Iulia Motoc, Ineta Ziemele

Frontmatter

[More Information](#)

xxiv

## TABLE OF CASES

Xheraj v. Albania	21, 28, 33, 48
X v. Latvia	213, 229
Youth Initiative for Human Rights v. Serbia	396–98
Zavřel v. Czech Republic	147
Ždanoka v. Latvia	xxvii, 221, 222, 223, 228, 229, 232
Živaljević v. Montenegro	293
Živić v. Serbia	381

## FOREWORD

It hardly needs to be said how extraordinary a time the years 1989, 1990, and 1991 were for Europe, as one totalitarian system after another collapsed and the cold war in Europe came to an abrupt and unexpected end. There were lives lost in some countries, but for most States the transition, though sudden and dramatic, was largely a nonviolent one. Inevitably, there followed a time of turmoil and uncertainty. The birth (or rebirth) of a democratic system cannot always be smooth or serene. Transition is a long process, whose duration and outcome cannot be predicted.

That moment in Europe's history was – to borrow a phrase from the war-time context – the Council of Europe's finest hour. A historic *rendezvous* between the nations of west and east, after decades of strict separation and ideological antagonism. With its strong and developed *acquis* in matters of democracy, human rights and the rule of law, the Council embodied for the peoples of Eastern Europe a future of freedom. The same applied to the European Court of Human Rights – I would say applied *a fortiori* – being the crowning achievement of the Council of Europe. The political decision was made by the organisation to adopt an open door approach to these candidate members – joining the Council, accepting its values and aims, integrating into its structures, and accepting its core human rights treaties would be *part* of their transition, not the reward for it. The challenges were therefore immense:

- for new democracies to rapidly accept and absorb a sophisticated body of norms and standards; and
- for the competent international institutions and organs to ensure proper application and observance.

There were dissenting voices too, who warned that this was too much, too fast. There was real concern at the capacity of the international mechanisms to respond to the new demands made on them. There was concern too for the rigour and integrity of European human rights standards.

The theme of the book is the *national* experience. But it is also worth asking – what was the impact of these tremendous changes on the Convention mechanism? Wojciech Sadurski has used the term ‘benign paradox’ when looking at the Convention system pre-1990s, the paradox lying in the system’s actual use compared to what its authors had intended.<sup>1</sup> Not many truly grave, gross, or flagrant violations of human rights came to Strasbourg during that time. In his view, ‘the Court settled on a role of a legal fine-tuner, acting at the boundaries of rights, setting up subtle tests of proportionality to examine restrictions aimed at legitimate ends.’ It established ‘standards which were admittedly exciting for academic lawyers, but rarely going so far as to reverse really important policy and legal choices adopted within national systems.’ This was to change radically after the 1990s.

Regarding the Court’s response to this great challenge, my first point is that it is plain today that any concern about diluting the standards of the Convention proved to be unfounded. There was no lessening or softening of States’ obligations under the Convention. There was no variable geometry. The principles developed during the Convention’s first phase, along with the principles of interpretation – above all the concern to ensure an effective and dynamic human rights guarantee – were applied in full to all new States. There was no probationary or honeymoon period.

Nor were these States subjected to stronger international scrutiny, or allowed lesser margins of appreciation. There was no double standard, no ‘east European case-law’. Just the case law applied to eastern European States: *Un poids et une mesure*. The ‘single standard’ approach is also to be seen in the fact that in its comparative surveys looking for the degree of consensus among the Contracting States, which is a common feature of our practice, the Court quite naturally included the new Contracting States. The risk of this holding back the development of human rights law, or leading to a generally broader margin of appreciation, has not materialised.

Yet the Court was not insensitive to the context of democratic transition, or to the needs of emergent democratic systems. This is clear from, for example, the early case of *Rekvényi v. Hungary*,<sup>2</sup> in which the Grand Chamber took account of the importance for the new democratic order in

<sup>1</sup> W. Sadurski, ‘Partnering with Strasbourg: Constitutionalisation of the European Court of Human Rights, the Accession of Central and East European States to the Council of Europe, and the Idea of Pilot Judgments’, *Human Rights Law Review*, 9 (3) (2009), 397–453.

<sup>2</sup> *Rekvényi v. Hungary*, No. 25390/94 [GC], ECHR 1999-III.

Hungary to break with the previous tradition of a politicised police force. I would also refer to *Ždanoka v. Latvia*,<sup>3</sup> in which the Grand Chamber accepted as valid the reasons behind the restriction on the applicant's political activities, which were a safeguard for that country's newly independent and democratic regime. In the *Broniowski*<sup>4</sup> case, to give a different type of example, the Court recognised the exceptional difficulty faced by governments managing the transition from a command economy to a free-market one, although it did, of course, find that the applicant's property rights had been infringed. What the new States brought to the system was the opportunity for the Court to apply the Convention to new situations, including flagrant and massive human rights violations. In terms of gravity of the cases decided, the European Court came to have more in common with the Inter-American Court of Human Rights, accustomed since its jurisdiction began in the late 1980s to traumatic situations.<sup>5</sup> It has been a quantitative *and* qualitative leap for European human rights law. These past twenty years have brought depth and detail to the Court's jurisprudence, specifying and concretising every Article of the Convention.

Of course, these are not the only types of cases taken against these States. There are the typical routine cases coming from the east as from anywhere else. Other cases reflect more the social situation of that part of Europe than its political development. I think for example of the complaints brought against different States by, or on behalf of, the Roma. In particular, the landmark ruling by the Grand Chamber in the *D.H.* case,<sup>6</sup> upholding a complaint of discrimination in the education of Roma schoolchildren.

The advent of the eastern European States transformed the life of the Court in other ways. It made this Court the largest international court in the world, and dramatically raised its international profile. It transformed the role of court president, adding a very important public relations role to the normal judicial aspect of it. It is a post that brings much travel, much contact, and much dialogue with national authorities. The Court today appreciates fully the importance of interacting constructively with the different national systems. The dialogue with national courts is pursued continuously, and I look forward to it being formalised in future through Protocol No. 16 on advisory opinions. Translation of the

<sup>3</sup> *Ždanoka v. Latvia*, No. 58278/00 [GC], ECHR 2006-IV.

<sup>4</sup> *Broniowski v. Poland*, No. 31443/96 [GC], ECHR 2004-V.

<sup>5</sup> J. L. Cavallaro and S. E. Brewer, 'Re-evaluating Regional Human Rights Litigation in the Twenty-First Century: The Case of the Inter-American Court', *American Journal of International Law*, 102 (2008), 768–827.

<sup>6</sup> *D.H. and others v. Czech Republic*, no 57325/00 [GC], ECHR 2007-IV.



Convention case law is steadily increasing, thanks to the assistance of the Human Rights Trust Fund, which also supports the Court's training programme for national lawyers, with the emphasis being placed on States that are considered in this book.

Let me record here my appreciation to the main organisers of the event that has led to this book. To my former colleague Ineta Ziemele, and to my current colleague at the Court, Iulia Antoanella Motoc. I express my gratitude for an excellent seminar in 2013, and the present publication that chronicles so well an extraordinary chapter in the protection of human rights in Europe.

*Dean Spielmann*  
*President of the European Court of Human Rights*  
(2012–2015)