

Index

- A droit à l'octroi, 5
- Access child, 62, 192, 194
- Access to justice
- accessibility, 116, 139–142
 - adversarial proceedings, 143–144
 - as a purpose, 34–37
 - burden of proof, 134–139
 - court fees, 143
 - definition, 34
 - documents and information, 137, 139–142
 - effective investigations, 31, 62, 71, 176, 211, 213
 - impartiality and independence, 132–134
 - incorporation, 147–148
 - legal assistance, 142–143
 - legislation, challenge, 148–162
 - national authority, 128–129, 144–146
 - personal right, 115
 - procedural and substantive perspective, 34–35
 - prospect success, 171–174
 - relationship Article 6, 35–37, 63–75
 - relationship redress, 31, 35, 128, 176
 - relationship substantive Articles, 31, 34–37, 61–63, 130–132, 228–231, 282
 - speed, 174–175
 - substance complaint, 162–171
- Accessibility, 78, 116, 121, 136, 141, 171
- Activist, courts, 244
- Additional guarantee, 286
- Admissibility criteria, 14, 86–91, 104–107, 267, 268
- Adversarial proceedings, 120, 137, 141, 143–144, 167
- Aggregate of remedies
- aggregate of proceedings, 111, 119, 129
 - and more procedural review, 289
 - in general, 117–120
 - Kudla case, 9
 - preventive and compensatory, 189
 - relationship exhaustion rule, 88
 - stricter application, xiv, 120, 129, 242, 267
- Allocation of authority, 257
- Alternative remedies, 137, 172
- Analogy, 294
- Apex courts, 271
- Apology, 39, 237
- Appeal, right to, 66–68, 74, 75, 185
- Arguable claim
- and manifestly ill-founded, 99, 102–104
 - and more procedural review, 268, 289
 - and scope substantive rights, 100–102, 109
 - and UDHR, 47
 - and victim requirement, 95
 - in general, 98–109
 - material scope, 5, 92
 - no abstract definition, 99
 - prima facie case, 99
 - procedural obligations substantive Articles, 226
 - prospect success, 99
 - purpose, 109
 - relationship exhaustion rule, 89
 - spectrum of standards, 102
 - threshold, 99, 104–106, 109
- Article 34, 93–95, 99, 174, 205
- Article 41, 9, 195, 201–203
- Article 46, 7, 15, 23, 161, 177, 282
- Autonomous law, 275
- Auxiliary right, 5, 48
- Bad faith, 287
- Balance of power, 252
- Ban, 165, 192
- Binding decision, 122, 144, 176, 178, 180, 186
- Bosphorus-doctrine, 286
- Burden of proof
- effective investigations, 31
 - exhaustion rule, 90
 - extradition, 138

- Burden of proof (cont.)
 general remedy, 173
 in general, 134–139
 lack of information, 140
 national security, 112
 proceedings the Court, 105, 135
 secret surveillance, 138
 substance complaint, 138
- Case law, development, 7–12, 52–61, 111, 120, 164, 177, 266–268
- Case load, 10, 52–61, 257, 266–268, 294
- Case-specific, 16, 130, 183, 193, 265, 293, 294
- Cassin, René, 47
- Cessation. *See* Continuous violations
- Choice theories, 248
- Claim-right, 246, 247
- Clearly-defined rules, 293, 299
- Cognitive framework, 244, 271
- Communitarianism, 251
- Compensation
 adequacy money, 39, 207
 amount, 38, 202–209
 Article 41, 202, 204, 206
 certainty and coherence, 208
 continuous violations, 188–195, 197
 economic loss, 206
 form, 197
 from whom, 209
 in general, 197–210
 in private law relationships, 201
 lack of fault, 126, 200
 non-pecuniary damages, 40, 123, 177, 198–202, 207
 purposes, 113, 203, 207
 reducing penalty, 197
 right to, 198, 208
 subject of, 207
- Compliance, inducing, 23, 32, 261–265, 280, 282, 285, 291, 294–297
- Conservative, judges, 244
- Constitutional function. *See* Court, functions
- Constitutional justice, 264–265
- Constitutional pluralism, 271–274, 280, 284, 296
- Continuous violations, 97, 186–194, 196, 197
- Core case against judicial review, 254
- Correct injustice
 adequacy money, 39, 207
 apology, 39, 238
 as a purpose, 38–40, 45, 131, 230, 298
 binding decision, 178
 compensation, 203, 207
 effective investigations, 228–231
 moral imbalance, 39
 primary aim, 38, 206
 punishment and liability, 236
 retribution, 42
 right to truth, 231–235
 subject of, 39
- Cosmopolitanism, 251, 274
- Court fees, 72, 124, 143
- Court, criticism, 24, 268
- Court, functions, 243, 261–265, 291
- Court, institutional autonomy, 266
- Court, political legitimacy, 107, 266, 268, 273, 296
- Declaratory relief, 39, 144–146, 176, 178–179, 198, 208, 237, 299
- Definition method, 48
- Democracy, 22, 243, 252–255, 260, 276
- Democratic concerns, 250, 252
- Denial of justice, 34
- Detention, conditions, 76, 121, 129, 134, 140, 143, 174, 187, 188
- Deterrence
 against whom, 41, 207
 and criminal law, 229
 and structural problems, 30, 203, 208, 239
 apology, 238
 as a purpose, 37–38, 40–42, 63, 207, 208, 231–235, 298
 binding decision, 122
 compensation, 203, 204
 effective investigations, 220, 228–231
 general, 30, 38, 41, 203, 239, 298
 guarantees and assurances, 210
 individual, 38, 40, 41
 individual prevention, 179–195
 prevent or compensate, 178
 rational actors, 41
 suspensive effect, 180, 180–184
- Dichotomies, false, 244
- Dignity, 272, 276
- Direct applicability, 8, 47, 247, 271
- Disciplinary punishment, 117
- Discretionary powers, 115
- Dispute settlement, as a function, 262
- DNA-test, compel, 191
- Domestic review, requirement Art. 13
 and Article 6, 36, 146
 and exhaustion rule, 88
 and prospect success, 171–174
 effective in theory and practice, 170
 evidence, 169
 form of proceedings, 163
 justification, 170
 national security, 167
 of facts, 137, 163–166
 of law, 164–166
 of legislation, 148–162
 stricter application, 24, 112, 164, 166

- substance complaint, 162–170, 237, 285, 290
 - UK problem, 53, 55, 160
 - Wednesbury principles, 164
- Double standard of interference, 5
- Double standards, 290
- Dual system of enforcement, 103
- Dualism, 271
- Dworkin, Ronald, 250, 276
- Effective in theory and practice
 - access documents and information, 124, 114
 - conditions of detention, 121
 - development, 267
 - different expressions, 121
 - establish facts, 121
 - examination of facts, 136, 137
 - excessive length of proceedings, 122
 - expulsions and extraditions, 123
 - in general, 120–127
 - level of compensation, 126
 - non-enforcement judgments, 122
 - non-legal remedies, 3
 - prospect success, 32, 126, 172
 - relationship exhaustion rule, 87–88
 - repetitive problems, 124, 127
 - substance complaint, 126, 170
 - truth, 231–235
- Effective investigations
 - access documents and information, 124
 - and other remedies, 227
 - and substantive Articles, 214–226
 - arguable claim, 226
 - as redress, 176, 229
 - criminal and civil, 227
 - initiative, 227
 - purposes, 228–235
 - truth, 212, 231–235
 - Turkish problem, 54, 212
- Enforcement
 - aggregate of remedies, 118
 - as a right, 5
 - in general, 240–241
 - obligatory, 116
 - of judgments, 54, 60, 83, 188, 189, 200, 267
 - relationship Article 6, 73
 - the national authority, 143
 - travaux préparatoires, 48, 49, 51
- Enumeration method, 49
- Equality, 23, 261, 272
- Equality of arms, 130, 137, 143
- European public order, 252, 262
- Excessive length of proceedings, 8, 54–61, 66–75, 119, 122, 145, 169, 175, 188, 197, 199, 204
- Exhaustion rule, 14, 61, 86–91, 298
- Final authority, 271, 274
- Freedom, 248, 272
- Full jurisdiction, 53
- General rules State responsibility, 39, 156, 180, 195, 210, 299
- Goal-realization norms, 246
- Good faith, 287, 289
- Habermas, Jürgen, 275
- Hierarchical structures, law, 271, 273
- Historical reading, Article 13, 52–61, 63–85, 267
- Historical reading, Convention, 266–268
- Historical reading, reform process, 268–271
- Hohfeld, Wesley Newcomb, 256
- Horizontal effect, 6, 201
- Human rights, foundations, 249
- Human rights, moral-based accounts, 250, 278
- Human rights, practice-based accounts, 250, 278
- Identification, 212, 221, 227, 233, 235–236
- Immunity-rights, 246
- Impartiality, 111, 132–134
- Incorporation, 147–148, 159
- Independence, 48, 111, 132–134, 213
- Individual applications, 12, 261, 265
- Individual justice, 203, 208, 265
- Individual relief, 262–264, 280
- Information, 3, 80, 113, 124, 138–142, 229, 234
- Inherent limitations, 92
- Interest theories, 248
- Interest-balancing method, 32
- Interpretation, disagreement, 21, 242, 243–245, 254, 292
- Inter-State complaints, 262
- Involvement, 116
- Irreversible damage, 112, 140, 166, 175, 180–185, 193
- Judicial activism, 246
- Judicial economy, 24, 257, 279
- Judicial philosophies, 244
- Judicial review, 52, 148–170, 252–255, 272, 287
- Kant, Immanuel, 250
- Kudla case, 8, 55, 66–69, 119, 122, 256
- Law making potential, 13, 24, 242
- Layton, Lord, 156
- Legal assistance, 64, 142–143
- Legal certainty, 18, 22, 229, 260–261, 280
- Legal culture, 244, 291
- Legal positivism, 250, 251, 278
- Legal realists, 251

- Legal system, 248
- Legality, 229, 260–261, 280
- Legislation, no right to challenge
 - application of legislation, 153–154
 - implementation of legislation, 154
 - in general, 148–162
 - judicial review, 155, 159
 - justification, 155–159
 - primary legislation, 152, 160
 - secondary legislation, 153
 - travaux préparatoires, 156
- Legislative initiatives, 246, 277
- Less strict and absorbed, 65–68, 77, 101, 131
- Lex specialis, 62, 65, 66, 70, 75, 76, 130
- Liability, 235–236
- Liberal, judges, 244
- Liberty, 26, 248, 257, 272
- Liberty-rights, 246

- Manifestly ill-founded
 - purpose, 109
 - relationship arguability, 102–104
 - threshold, 104–107
- Marbury v. Madison, 26
- Margin of appreciation
 - and new admissibility criteria, 107
 - and procedural review, 146, 282, 284, 285
 - and subsidiarity, 257
 - claim-right, 247
 - compensation, 202, 204, 206–208
 - development, 267
 - facts and evidence, 135
 - generally, 259–260
 - method of interpretation, 19
 - pluralism, 110, 290
 - preamble, 256
 - redress, 176
 - under Article 13, 110–114, 260, 266
- Material law, 275
- Maxwell-Fyfe, Sir David, 157
- Method of interpretation, 18–23, 245
- Monism, 271

- National authority
 - impartiality and independence, 132–134
 - in general, 128–129
 - judicial remedy, 47–51, 129
 - powers, 144–145
- National security, 112, 139, 140, 144, 166, 167
- Natural law, 250, 278
- New Member States, 54–56, 267
- Non-cognitivism, 250
- Nonet, Philippe, 275
- Non-repetition, individual guarantees and assurances, 210–211
- Normative convictions, 244

- Not necessary to examine
 - Article 5, 79–78
 - Article 6, 63–75
 - Articles 2 and 3, 75–76
 - Articles 8–11, 78–82
 - conflict, 62
 - development, 31, 59
 - effective investigations, 214–226
 - meaning, 130
- Notwithstanding that the violation has been committed by persons acting in an official capacity, 6, 48

- Optional clause, 51, 160, 266

- Peer review, 273
- Personal responsibility, 116, 117
- Personal right, 115–117
- Person-centered arguments, 258
- Pilot judgment procedure, 9, 15, 55, 114, 239, 249, 268, 282
- Pluralism, 256, 260, 262, 264, 271, 273, 274, 286, 290
- Policy preferences, 244
- Positive obligations, 37, 63, 213, 229, 246, 247, 282, 285
- Power-rights, 246
- Principled standards, 293
- Procedural fairness, 250
- Procedural justice, 34, 278, 280
- Procedural review
 - aggregate of remedies, 289
 - and admissibility criteria, 281
 - and bad faith, 287
 - and constitutional pluralism, 280
 - and court functions, 280
 - and democracy, 253, 279
 - and differences States, 24, 254, 276, 297
 - and judicial economy, 279
 - and legal positivism, 278
 - and margin of appreciation, 282, 285, 290
 - and moral-based accounts human rights, 278
 - and natural law, 278
 - and Pilot judgment procedure, 281
 - and primary legislation, 289
 - and prioritization policy, 281
 - and procedural safeguards, 290
 - and responsiveness, 286
 - and rule of law, 280
 - and standard-setting, 291
 - and subsidiarity, 279, 283
 - and substance complaint, 289
 - and substantive Articles, 282–284
 - and substantive outcomes, 278
 - arguable claim, 289
 - Bosphorus-doctrine, 288
 - clarify purposes, 289

- context, 280
- ex-officio use Article 13, 289
- meaning, 278
- more use Article 13, 283–291
- prospect success, 290
- Proceduralization, 63, 130, 267, 268, 275, 276, 282, 284, 297
- Process efficacy, 279
- Proof beyond reasonable doubt, 135
- Proportionality review, 162–170, 272, 289
- Prospect success, 32, 88, 99, 125, 171–174, 181, 205, 290
- Public authority, 252, 272
- Publication, 3, 139–142, 144
- Punishment, 31, 42–43, 212, 218, 227, 229, 233, 235–236
- Purposes
 - access to justice, 34
 - accountability and retribution, 42–43, 236
 - compensation, 203
 - conflict, 62
 - correct injustice, 38–40
 - degree goal realization, 31
 - deterrence, 40–42
 - different functions, 29
 - efficiency, 32
 - hierarchy between, 31
 - in general, 28–44
 - interest-balancing, 32
 - need for clarification, 29, 299
 - of compensation, 203, 208
 - of investigations, 228–231
 - redress, 37–44
 - relationship access to justice and redress, 30, 61
 - relationship compliance, 32
 - relationship substantive Articles, 31, 62, 131, 285
 - restorative justice, 44
 - retribution, 247
 - rights-maximizing, 32
 - undesired effects, 32
- Quash decision, 145, 191, 192, 194
- Rationality, 291
- Reasoning
 - and case load, 298
 - and constitutional pluralism, 296
 - and deference, 294
 - and democracy, 292, 295, 297
 - and exhaustion rule, 298
 - and procedural review, 296, 287, 299
 - case-specific, 293
 - claim-rights, 295
 - context, 296
 - development Article 13, 294, 296
 - incremental, 294
 - inducing compliance, 295
 - more principled and abstract, 291–299
 - predictability, 292
 - purposeful, 297, 299
 - vague rules, 292
- Redress
 - apology, 237
 - binding decision, 144, 176, 178
 - cessation, 180, 186–194
 - compensation, 197–210
 - declaratory relief, 178–179
 - effective investigations, 229, 230
 - enforcement, 240–241
 - guarantees, 210–211
 - margin of appreciation, 176
 - prevent or compensate, 178
 - purposes, 37–44, 298
 - relationship access to justice, 31, 128, 176
 - relationship substantive Articles, 31
 - re-opening, 238
 - restitution, 196
 - right to, 4, 5
 - specification, 177
 - suspensive effect, 180–185
 - temporal scope, 97
 - truth, 231–235
- Reflective equilibrium, 244, 277, 291
- Reflexive law, 275, 296
- Relativism, 251
- Remedial deterrence, 33
- Re-opening proceedings, 238
- Repetitive problems, 10, 54–58, 124–127, 137, 171, 173, 203, 267, 282
- Responsive law, 275
- Responsiveness, 273–276, 286, 296
- Restitutio in integrum, 38, 39, 195, 206
- Restitution, 39, 195–197
- Restorative justice, 43–44
- Restrained, judges, 244
- Retribution, 42–43
- Right, concept, 243, 245–249
- Rights, duty-bearer, 246
- Rights, legal, 245
- Rights, moral, 245
- Rights-maximizing approaches, 32
- Rule of law, 30, 68, 163, 178, 220, 229, 243, 249, 260–261, 280
- Rule of recognition, 250
- Ryssdal, Rolv, 256, 283
- Sanctions, 247
- Scope, limitations, 53
- Scope, material, 92–93, 95, 100
- Scope, personal, 93–95, 102
- Scope, temporal, 96–97, 102
- Scope, territorial, 20, 95–96, 102
- Self-executing. *See* direct applicability

Selznik, Philip, 275
 Semi-procedural review, 278
 Shared responsibility, 12, 258
 So lange doctrine, 273
 Social liberalism, 251
 Societal developments, 18, 274
 Solidarity, 251
 Sovereignty, 11, 252, 256, 273
 Spectrum of standards, 102, 104, 109
 Speed, 117, 119, 131, 174–175, 212
 Standard-setting, 262, 291
 State-centered arguments, 258
 Subsidiarity
 and more procedural review, 279
 approach to governance, 257
 Article 13 as an expression, 6
 as a tool to reinforce Art. 13, 9, 11, 62, 95,
 101, 108, 134, 161, 259
 as an independent argument, 256
 compensation, 206
 development, 267
 for whom, 7
 legal method, 256
 meaning, 12, 255–259, 296
 preamble, 296
 procedural, 279
 reform process, 271
 subsidiary review, 284
 substantive, 279
 UDHR, 47
 Substantive justice, 34, 250
 Substantive review, 280, 283
 Suspensive effect, 180–185
 Systemic problems. *See* Repetitive problems
 Systemic relief, 262, 264

Teitgen proposal, 46, 49, 157
 Teubner, Gunther, 257
 Transparency, 124, 139–142
 Travaux préparatoires, 19, 45–52
 Truth, right to, 231–235

 Ubi jus ibi remedium, 26
 Uncertainty
 arguability, 108
 compensation, 201, 207
 continuous violations, 97
 correct injustice, 39
 decision before planned action, 186
 deterrence, 40
 effective investigations, 213, 226
 forms of redress, 178
 in general, xiv, 8, 13, 16, 242
 personal responsibility, 116
 purposes, 29, 38, 60, 298
 relationship exhaustion rule, 91
 relationship restitution and
 compensation, 39
 restitutio in integrum, 39
 restitution, 197
 right to truth, 231
 suspensive effect, 184
 Universality, 272, 276
 Utilitarianism, 250, 251

 Victim requirement. *See* Article 34

 Weber, Max, 275
 Wednesbury principles, 164
 Welfare rights, 246
 Will theories, 248