

The Internationalisation of Criminal Evidence

Beyond the Common Law and Civil Law Traditions

Although there are many texts on the law of evidence, surprisingly few are devoted specifically to the comparative and international aspects of the subject. The traditional view that the law of evidence belongs within the common law tradition has obscured the reality that a genuinely cosmopolitan law of evidence is being developed in criminal cases across the common law and civil law traditions.

By considering the extent to which a coherent body of common evidentiary standards is being developed in both domestic and international jurisprudence, John Jackson and Sarah Summers chart this development with particular reference to the jurisprudence on the right to a fair trial that has emerged from the European Court of Human Rights and to the attempts in the new international criminal tribunals to fashion agreed approaches towards the regulation of evidence.

John D. Jackson is a barrister at law and Professor of Criminal Law at the School of Law, University College Dublin.

Sarah J. Summers is currently Oberassistentin in criminal law and criminal procedure at the Law School in the University of Zurich, Switzerland, and a researcher at the Max Planck Institute for Foreign and International Law, Freiburg in Breisgau, Germany.

The Law in Context Series

Editors: William Twining (University College London), Christopher McCrudden (Lincoln College, Oxford) and Bronwen Morgan (University of Bristol).

Since 1970 the Law in Context series has been in the forefront of the movement to broaden the study of law. It has been a vehicle for the publication of innovative scholarly books that treat law and legal phenomena critically in their social, political and economic contexts from a variety of perspectives. The series particularly aims to publish scholarly legal writing that brings fresh perspectives to bear on new and existing areas of law taught in universities. A contextual approach involves treating legal subjects broadly, using materials from other social sciences, and from any other discipline that helps to explain the operation in practice of the subject under discussion. It is hoped that this orientation is at once more stimulating and more realistic than the bare exposition of legal rules. The series includes original books that have a different emphasis from traditional legal textbooks, while maintaining the same high standards of scholarship. They are written primarily for undergraduate and graduate students of law and of other disciplines, but most also appeal to a wider readership. In the past, most books in the series have focused on English law, but recent publications include books on European law, globalisation, transnational legal processes and comparative law.

Books in the Series

Anderson, Schum & Twining: *Analysis of Evidence*
Ashworth: *Sentencing and Criminal Justice*
Barton & Douglas: *Law and Parenthood*
Beecher-Monas: *Evaluating Scientific Evidence: An Interdisciplinary Framework for Intellectual Due Process*
Bell: *French Legal Cultures*
Bercusson: *European Labour Law*
Birkinshaw: *European Public Law*
Birkinshaw: *Freedom of Information: The Law, the Practice and the Ideal*
Cane: *Atiyah's Accidents, Compensation and the Law*
Clarke & Kohler: *Property Law: Commentary and Materials*
Collins: *The Law of Contract*
Cowan: *Housing Law and Policy*
Cranston: *Legal Foundations of the Welfare State*
Dauvergne: *Making People Illegal: What Globalisation Means for Immigration and Law*
Davies: *Perspectives on Labour Law*
Dembour: *Who Believes in Human Rights?: The European Convention in Question*
de Sousa Santos: *Toward a New Legal Common Sense*
Diduck: *Law's Families*
Fortin: *Children's Rights and the Developing Law*
Glover-Thomas: *Reconstructing Mental Health Law and Policy*
Gobert & Punch: *Rethinking Corporate Crime*

Goldman: *Globalisation and the Western Legal Tradition: Recurring Patterns of Law and Authority*

Harlow & Rawlings: *Law and Administration*

Harris: *An Introduction to Law*

Harris, Campbell & Halson: *Remedies in Contract and Tort*

Harvey: *Seeking Asylum in the UK: Problems and Prospects*

Hervey & McHale: *Health Law and the European Union*

Holder & Lee: *Environmental Protection, Law and Policy*

Jackson and Summers: *The Internationalisation of Criminal Evidence*

Kostakopoulou: *The Future Governance of Citizenship*

Lewis: *Choice and the Legal Order: Rising above Politics*

Likosky: *Transnational Legal Processes*

Likosky: *Law, Infrastructure and Human Rights*

Maughan & Webb: *Lawyering Skills and the Legal Process*

McGlynn: *Families and the European Union: Law, Politics and Pluralism*

Moffat: *Trusts Law: Text and Materials*

Monti: *EC Competition Law*

Morgan & Yeung: *An Introduction to Law and Regulation: Text and Materials*

Norrie: *Crime, Reason and History*

O'Dair: *Legal Ethics*

Oliver: *Common Values and the Public–Private Divide*

Oliver & Drewry: *The Law and Parliament*

Picciotto: *International Business Taxation*

Reed: *Internet Law: Text and Materials*

Richardson: *Law, Process and Custody*

Roberts & Palmer: *Dispute Processes: ADR and the Primary Forms of Decision-Making*

Rowbottom: *Democracy Distorted: Wealth, Influence and Democratic Politics*

Scott & Black: *Cranston's Consumers and the Law*

Seneviratne: *Ombudsmen: Public Services and Administrative Justice*

Stapleton: *Product Liability*

Stewart: *Gender, Law and Justice in a Global Market*

Tamanaha: *Law as a Means to an End: Threat to the Rule of Law*

Turpin and Tomkins: *British Government and the Constitution: Text and Materials*

Twining: *Globalisation and Legal Theory*

Twining: *Rethinking Evidence*

Twining: *General Jurisprudence: Understanding Law from a Global Perspective*

Twining: *Human Rights, Southern Voices: Francis Deng, Abdullahi An-Na'im, Yash Ghai and Upendra Baxi*

Twining & Miers: *How to Do Things with Rules*

Ward: *A Critical Introduction to European Law*

Ward: *Law, Text, Terror*

Ward: *Shakespeare and Legal Imagination*

Wells & Quick: *Lacey, Wells and Quick: Reconstructing Criminal Law*

Zander: *Cases and Materials on the English Legal System*

Zander: *The Law-Making Process*

The Internationalisation of Criminal Evidence

Beyond the Common Law and Civil Law Traditions

JOHN D. JACKSON AND SARAH J. SUMMERS



CAMBRIDGE
UNIVERSITY PRESS

Cambridge University Press & Assessment

978-1-107-01865-5 — The Internationalisation of Criminal Evidence

John D. Jackson, Sarah J. Summers

Frontmatter

[More Information](#)



CAMBRIDGE
UNIVERSITY PRESS

Shaftesbury Road, Cambridge CB2 8EA, United Kingdom

One Liberty Plaza, 20th Floor, New York, NY 10006, USA

477 Williamstown Road, Port Melbourne, VIC 3207, Australia

314–321, 3rd Floor, Plot 3, Splendor Forum, Jasola District Centre, New Delhi – 110025, India

103 Penang Road, #05–06/07, Visioncrest Commercial, Singapore 238467

Cambridge University Press is part of Cambridge University Press & Assessment, a department of the University of Cambridge.

We share the University's mission to contribute to society through the pursuit of education, learning and research at the highest international levels of excellence.

www.cambridge.org

Information on this title: www.cambridge.org/9781107018655

© John D. Jackson and Sarah J. Summers 2012

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 & Assessment.

First published 2012

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

Library of Congress Cataloging-in-Publication data

Jackson, John D., 1955–

The internationalisation of criminal evidence : beyond the common law and civil law traditions / John D. Jackson, Sarah J. Summers.

p. cm. – (Law in context)

ISBN 978-1-107-01865-5 (hardback)

1. Evidence, criminal. I. Summers, Sarah J. II. Title.

K5465.J33 2012

345'.06 – dc23 2011039976

ISBN 978-1-107-01865-5 Hardback

ISBN 978-0-521-68847-5 Paperback

Cambridge University Press & Assessment 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.

For my mother and father, Kathy, Jane and Alex (John Jackson)

For my family and for Sararard Arquint (Sarah Summers)

Contents

Foreword	<i>page</i> xiv
Preface and acknowledgements	xvi
Abbreviations	xix
Table of international cases	xxii
Part I Evidentiary contexts	1
1 Evidence across traditions	3
1.1 Introduction: the convergence debate	3
1.2 Comparative evidence scholarship	9
1.3 The rationalist tradition and the rights tradition	14
1.4 Towards shared evidentiary principles	19
1.5 Beyond the common and civil law traditions	27
2 The common law tradition	30
2.1 Introduction: free proof and the common law	30
2.2 Common law conceptions of the law of evidence	34
2.3 Evidence law adrift?	38
2.4 Challenges to free proof	40
2.4.1 The epistemic challenge	41
2.4.2 The scientific challenge	45
2.4.3 The constitutional challenge	50
2.5 Conclusion	55
3 Evidential traditions in continental European jurisdictions	57
3.1 Introduction	57
3.2 The development of criminal evidence law and the movement towards ‘freedom of proof’	58
3.3 The importance of the nineteenth-century procedural reforms	66
3.4 Freedom of proof and restrictions on the doctrine in modern evidence law	69
3.5 Excluding or prohibiting the use of evidence	72

x	Contents	
	3.6 Recent developments in evidence law	74
	3.7 Conclusion	76
4	The international human rights context	77
	4.1 Introduction	77
	4.2 The evolution of evidentiary human rights norms	79
	4.2.1 The right to a fair trial	79
	4.2.2 The equality of arms principle	83
	4.2.3 The right to an adversarial trial	86
	4.3 The process of proof and the regulation of the investigation/pre-trial phase	95
	4.3.1 Defence rights and the importance of the procedural environment	97
	4.3.2 Potential for pre-trial activities to impinge on defence rights	99
	4.4 Towards convergence or realignment?	101
	4.5 Conclusion	106
5	Evidence in the international criminal tribunals	108
	5.1 Towards an international system of justice	108
	5.2 Problems of legitimacy	110
	5.2.1 Function and purpose of international criminal trials	111
	5.2.2 The evidentiary context	112
	5.2.3 Reaching agreed rules of procedure and evidence	115
	5.3 Common law foundations	116
	5.4 The ad hoc tribunals	119
	5.5 Rubbing points between the common law and the civil law	124
	5.6 The need for realignment	131
	5.6.1 The right to equality of arms	133
	5.6.2 The right to an adversarial trial	136
	5.7 Towards the future and the International Criminal Court	140
	5.8 Conclusion	145
Part II	Evidentiary rights	149
6	Fair trials and the use of improperly obtained evidence	151
	6.1 Introduction	151
	6.2 Theories explaining the exclusion of improperly obtained evidence	153
	6.3 Evidence obtained by way of torture, inhuman or degrading treatment	158
	6.3.1 Evidence obtained by way of torture	160
	6.3.2 Evidence obtained by way of inhuman or degrading treatment	163

6.3.3	Fairness and evidence obtained by recourse to torture or ill-treatment	166
6.4	Deception, coercion, traps and tricks	169
6.4.1	Wiretapping and covert surveillance	171
6.4.2	De facto ‘interrogation’ of suspects in custody	175
6.4.3	De facto ‘questioning’ of suspects not in custody	179
6.4.4	Fairness and the use of evidence obtained by deception and coercion	181
6.5	Entrapment	188
6.6	Fruit of the poisonous tree	191
6.7	Conclusion: improperly obtained evidence, fairness and the under-regulated pre-trial/investigative process	194
7	The presumption of innocence	199
7.1	Introduction	199
7.2	The meaning of the presumption of innocence	200
7.2.1	The presumption as an evidentiary protection	200
7.2.2	Treating defendants as innocent	205
7.2.3	Substantive innocence	208
7.3	The presumption of innocence and the rationalist tradition	211
7.4	The presumption and fair trial standards	215
7.5	The scope of the presumption of innocence under human rights law	217
7.6	Reversal of the burden of proof	221
7.7	Avoiding prejudice	228
7.7.1	An independent and impartial tribunal	229
7.7.2	Participatory rights	233
7.7.3	The right to a reasoned judgment	237
7.8	Conclusion	239
8	Silence and the privilege against self-incrimination	241
8.1	The historical and transnational importance of the right of silence	241
8.2	The scope of the privilege in international law	246
8.2.1	The international instruments	246
8.2.2	<i>Funke v. France</i>	248
8.2.3	Charged with a criminal offence	250
8.2.4	Incrimination	251
8.2.5	Compulsion	252
8.2.6	Defiance of the will of the suspect	253
8.3	Exception to the rights against self-incrimination and of silence	256
8.3.1	The public interest	256
8.3.2	Other factors	258
8.3.3	Inferences from silence	260

xii	Contents	
	8.4 Rationale of the privilege and the right of silence	266
	8.5 The right of silence as a necessary condition for active defence participation	273
	8.6 Incorporating fair trials standards from the point of being called to account	277
	8.7 Conclusion	283
	9 Defence participation	285
	9.1 Introduction: legal representation and self-representation	285
	9.2 The right to effective legal assistance	289
	9.2.1 Early legal assistance	289
	9.2.2 Communication with counsel	289
	9.2.3 Right to private communication and legal professional privilege	291
	9.2.4 Balancing away the privilege	293
	9.3 The right to full disclosure of evidence	295
	9.3.1 The case against the accused	295
	9.3.2 The scope of the right to disclosure: <i>Jespers</i> and <i>Edwards</i>	297
	9.3.3 Uncertainties as to scope	301
	9.3.4 An absolute right?	304
	9.4 Common law shortcomings	307
	9.5 Beyond disclosure: access to evidence outside the possession of the prosecution	310
	9.5.1 Defence investigations	310
	9.5.2 Application to the court	312
	9.6 Public interest immunity	316
	9.6.1 The principle of judicial scrutiny	317
	9.6.2 Adversarial argument	319
	9.7 Conclusion	323
	10 Challenging witness evidence	325
	10.1 Introduction	325
	10.2 Justifying the right to challenge incriminatory witness evidence	327
	10.3 The regulation of the right to challenge witness evidence: the human rights perspective	334
	10.3.1 The importance of the witness evidence: the sole or decisive test	338
	10.3.2 An adequate and proper opportunity to challenge the witness	342
	10.3.2.1 The significance of the procedural environment: principal versus preliminary proceedings	342

xiii	Contents	
	10.3.2.2 The circumstances of witness hearing: the importance of an impartial judge and the right to counsel	345
	10.3.2.3 Obligation to organise the witness examination hearing	349
	10.3.2.4 Restrictions on the defence’s opportunity to challenge the witness	351
	10.3.2.5 The substantive sufficiency of the opportunity to challenge the witness	356
	10.3.3 Defence obligations, waiver and forfeiture	359
	10.3.4 Challenging expert witnesses	361
	10.4 Conclusion	362
11	Towards a theory of evidentiary defence rights	367
	11.1 Beyond tradition	367
	11.2 Prospects for evidentiary defence rights	371
	11.3 Victims’ rights and participation	372
	11.4 State security and terrorism	380
	11.5 Cost and expedition	384
	11.6 Legal culture and tradition	387
	Index	392

Foreword

Prior to the middle of the twentieth century, criminal procedure was essentially a branch of national law. It had developed into two systems regarded as fundamentally different: the ‘sport-match model’ of the common law which was party-driven and where the judge’s role was akin to that of an umpire; and the ‘drill model’ of the civil law whereby the judge was responsible for finding the true facts. As far as evidence was concerned, the common law was characterised by detailed regulations and exclusionary rules, whereas the continental system adhered more strongly to the principle of free proof. These systems appeared to be irreconcilably opposed to each other, which is one of the reasons why it proved extremely difficult to pass treaties on mutual assistance in criminal matters between the United States and European states – Switzerland managed to conclude such a treaty in 1975, while it took until 2003 for Germany to achieve the same result.

Two developments in particular led to this branch of the law assuming importance at an international level: the emergence of international criminal proceedings, starting with the Nuremberg and Tokyo trials and culminating in the establishment of a permanent International Criminal Court on the one hand, and the development of a regional and international case law on the basis of human rights’ instruments on the other. Regarding international criminal tribunals, it was necessary to find solutions which would be truly international and could find acceptance both in countries adhering to the common law system and those following the European continental tradition. In the area of human rights, it was initially the European Commission and Court of Human Rights which were faced with the challenge of applying fair trial standards in a way that would make sense in the United Kingdom, Ireland and Malta, as well as in France, Germany and Italy.

This book dares to take up the formidable task of providing a theoretical foundation for this development, focusing on the law of evidence. John Jackson and Sarah Summers approach the task with awe-inspiring thoroughness and profound depth. They begin by analysing the current state of criminal proceedings in a historical and comparative perspective and go on to analyse the possibilities of an international law of evidence which exists between the two poles: ‘a new framework is being built across the different legal cultures [which]

is not rooted in one more than the other'. Rather than sticking to traditional concepts they find the solution in the respect for fairness, that is, the active participation of the defence in the proceedings as a whole. While this approach is generally shared by the European Court of Human Rights, they uncover a surprising amount of inherent contradictions and other shortcomings in its case law.

This book provides a rare insight into the workings of criminal proceedings, the interests and values involved and their interplay. It will set a foundation for further studies both in the area of criminal procedure, international as well as domestic, but also in the field of internationally binding rules of fundamental rights. No scholar undertaking research in these matters can ignore this monumental work.

Judge Stefan Trechsel
The Hague, January 2011

Preface and acknowledgements

Although the law of evidence has traditionally been treated as a common law subject confined to national borders, there has been a growing awareness across the common law and civil law world about the need for different systems to adopt common approaches towards criminal evidence as national systems cooperate with each other to combat transnational crime. The subject is also attracting growing recognition in international human rights law as bodies such as the European Court of Human Rights (ECtHR) have begun to develop common evidentiary standards to be applied across national boundaries. At the same time, the conflicts that led to grave crimes against humanity in the Balkans, Rwanda and other conflict zones have compelled the international community to bring those responsible to justice by developing systems of procedure and evidence that are acceptable across different legal traditions.

This book examines these attempts to find common approaches towards issues of criminal evidence across different national boundaries and legal traditions. Each of us has been following these developments for some time. As a teacher of the law of evidence at Queen's University Belfast John Jackson became interested in them as he witnessed the impact that the ECtHR was having on common law systems of evidence. Sarah Summers began to become interested in criminal evidence when she was working on her published doctoral thesis on the development of fair trials rights in Europe. Although originally from Scotland, she presently teaches criminal law and procedure at the University of Zurich. We decided to bring our experience of common law and civil law jurisdictions together to examine the evolution of common evidentiary standards in Europe and in the international criminal tribunals. We have tried to reflect case law and other legal developments up to the end of December 2010.

John would like to thank the British Academy for the award of a two-year research leave fellowship from 2006 to 2008 which enabled much of the work to be carried out and to thank the School of Law at University College Dublin for enabling him to continue the work through to its final stages. He would also like to thank Laura McMahon for research assistance, Jill Hunter and her

colleagues in the University of New South Wales School of Law for all their hospitality while he held a professorial visiting fellowship there in February and March 2007 and Giovanni Sartor, Ana Vrdoljak and other colleagues in the Department of Law at the European University Institute for their hospitality while he was a senior Fernand Braudel fellow there from September 2007 to June 2008.

Sarah would like to thank the School of Law at the University of Zurich for enabling her to work on this project and Andreas Donatsch and Christian Schwarzenegger in particular for their support.

Thanks are due to Mirjan Damaška, William Twining and Stefan Trechsel for providing inspiration for the project. We owe debts to many scholars whose work and comments provided us with important insights as our work progressed. It would be difficult to name all of them, but we are particularly grateful to: Ron Allen, Sararard Arquint, Gideon Boas, Rosemary Byrne, Craig Callen, Antonio Cassese, Mirielle Delmas-Marty, Gary Edmond, Lindsay Farmer, Richard Friedman, Mark Findlay, Hock Lai Ho, Jill Hunter, Máximo Langer, Robin Löf, Jim Murdoch, Andrew Paizes, Hannah Quirk, Mike Redmayne, Michael Risinger, Andrew Roberts, Paul Roberts, P. J. Schwikkard, Chris Taylor, Peter Tillers and John Spencer.

We would like to thank Jean Allain for introducing us to a number of practitioners at the international criminal tribunals and Michael O'Boyle for facilitating John's visit to the European Court of Human Rights in April 2008. A number of practitioners and judges gave up their time to talk to us about the approaches of different international courts and tribunals. We would like to thank particularly Graham Blewitt, Nicolas Bratza, Teresa Doherty, Norman Farrell, Fabricio Guerglia, David Hunt, Gabrielle MacIntyre, Catherine Marchi-Uhel, Peter Murphy, Egbert Myjer, Geoffrey Nice, Michael O'Boyle, Kate O'Regan, Eugene O'Sullivan, Alphons Orie, Navaneethem Pillay, Ken Roberts, Phillip Weiner, Stefan Trechsel and Boštjan Zupančič.

We were able to air ideas emerging from our work on a number of occasions and we would like to thank all those who participated in workshops and seminars at the Schools of Law at the University of Aberdeen, the University of Cape Town, University College Dublin, the University of New South Wales, Nottingham Trent University, Queen's University Belfast and the National University of Singapore, at the Department of Law at the EUI and at the Dutch Supreme Court. As our work began to take shape a number of scholars generously gave up their time to comment on draft chapters. Robert Bloom, Sean Doran, Fiona de Londras, Ed Imwinkelried, Máximo Langer, Yassin M'Boge, Hannah Quirk, Paul Roberts and Chris Taylor read one or more chapters and the book has benefited from their assistance.

We would also like to thank the staff at Cambridge University Press, and in particular Sinead Moloney, for their patience as we broke a number of deadlines in trying to complete the work and for working so hard to ensure the book

was published. Finally, we would like to thank our partners and families for showing remarkable forbearance as the project ate up more time than we ever imagined.

John D. Jackson
University College Dublin
Sarah J. Summers
University of Zurich

Abbreviations

AC	Appeal Cases
ACHR	American Convention on Human Rights
ACtHR	American Court of Human Rights
AJ	Alberta Judgments (Canada)
All ER	All England Law Reports
BCLR	Butterworths Constitutional Law Reports (South Africa)
BGE	Decisions of the Federal Court (Switzerland)
BGH	Federal Court (Germany)
BGHSt	Federal Criminal Court (Germany)
BHRC	Butterworths Human Rights Cases
BVerfG	Federal Constitutional Court (Germany)
CC	Criminal Code
CCC	Canadian Criminal Cases
CCP	Code of Criminal Procedure
CD	Collection of Decisions of the European Commission of Human Rights
Ch	Chapter
CJ	Chief Justice
CLR	Commonwealth Law Reports
Cox CC	Cox’s Criminal Cases
CR	Criminal Reports (Canada)
Cr App R	Criminal Appeal Reports
Crim LR	Criminal Law Review
dec.	decision
DLR	Dominion Law Reports (Canada)
DPP	Director of Public Prosecutions
DR	Decisions and Reports of the European Commission of Human Rights
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECommHR	European Commission of Human Rights
ECR	European Case Reports

ECtHR	European Court of Human Rights
EHRR	European Human Rights Reports
EIO	European Investigation Order
EU	European Union
EUI	European University Institute
EWCA	Court of Appeal of England and Wales
EWHC	High Court of England and Wales Decisions
GC	Grand Chamber, ECtHR
HCJAC	High Court of Justiciary, Appeal Court (Scotland)
HM	Advocate Her Majesty's Advocate, His Majesty's Advocate
HMSO	Her Majesty's Stationery Office
HRC	Human Rights Committee, United Nations
IACtHR	Inter-American Court of Human Rights
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the Former Yugoslavia
ILRM	Irish Law Reports Monthly
IR	Irish Reports
LJ	Lord Justice
NICC	Northern Ireland Crown Court
NStZ	Neue Zeitschrift für Strafrecht
OJ	Official Journal of the European Union
OTP	Office of the Prosecutor, ICTY
PACE	Police and Criminal Evidence Act 1984
QB	Queen's Bench Division, Law Reports
R	Regina
RPE	Rules of Procedure and Evidence, ICTY
SCC	Supreme Court of Canada
SCCR	Scottish Criminal Case Reports
SCR	Supreme Court Reports (Canada)
SCSL	Special Court for Sierra Leone
SCT	Supreme Court Reporter
SLT	Scots Law Times
TFEU	Treaty on the Functioning of the European Union
UK	United Kingdom
UKHL	House of Lords, United Kingdom
UKPC	UK Privy Council Decisions
UKSC	UK Supreme Court
UN	United Nations
UNCAT	UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment
US	United States

USA	United States of America
USSC	US Supreme Court
WLR	Weekly Law Reports
YB	Yearbook of the European Convention on Human Rights

Table of international cases

A and others v. United Kingdom [GC], no. 3455/05, 19 February 2009 297

Abas v. Netherlands (dec.), no. 27943/95, 26 February 1997 250, 251

AG v. Malta (dec.), no. 16641/90, 10 December 1991 224

AH v. Finland, no. 46602/99, 10 May 2007 340

Airey v. Ireland, 9 Oct. 1979, Series A no. 32 184

AL v. Finland, no. 23220/04, 27 January 2009 340

Alban-Cornejo v. Ecuador, 22 November 2007, Series C no. 171 380

Aliev v. Ukraine, no. 781/1997, 7 August 2003, UN Doc.
 CCPR/C/78/D/781/1997 277

Al-Khawaja and Tahery v. United Kingdom, nos. 26766/05 and 22228/06,
 20 January 2009 92, 95, 330, 336, 337, 339, 345, 354, 360

Allan v. United Kingdom, no. 48539/99, ECHR 2002-IX 175, 176, 177, 178,
 179, 183, 255, 256, 258, 266

Allen v. United Kingdom (dec.), no. 76574/01, ECHR 2002-VIII 251

AM v. Italy, no. 37019/97, ECHR 1999-IX 340, 353

Ambrosini, de Massera and Massera v. Uruguay, no. R.1/5, 15 August 1979,
 Doc. A/34/40, 124 219

Amutgan v. Turkey, no. 5138/04, 3 February 2009 281

AP, MP and TP v. Switzerland, 29 August 1997, Reports 1997-V, 1477 210,
 220

Arenz v. Germany, No. 1138/2002, 24 March 2004, UN Doc.
 CCPR/C/80/D/1138/2002 (2004) 82

Artico v. Italy, 13 May 1980, Series A no. 37 359

Artner v. Austria, 28 August 1992, Series A no. 242-A 87, 89, 90, 338

Arutyunyan v. Uzbekistan, no. 917/2000, 29 March 2004, UN Doc.
 CCPR/C/80/D/917/2000 (2004) 82

AS v. Finland, no. 40156/07, 28 September 2010 340, 354

AS v. Poland (dec.), no. 39510/98, 9 October 2003 349

Asch v. Austria, 26 April 1991, Series A no. 203 87, 89, 90, 338, 340

Atlan v. United Kingdom, no. 36533/97, 19 June 2001 85, 300, 304

Austria v. Italy (Pfunders Case) (report), no. 788/60, 30 March 1963, (1963) 6
 YB 740 218, 234, 235

Averill v. United Kingdom, no. 36408/97, ECHR 2000-VI 362

<i>B v. Austria</i> , 28 March 1990, Series A no. 175	96
<i>Baegen v. Netherlands</i> (report), attached to the judgment of 27 October 1995, Series A no. 327-B	351, 352
<i>Barberà, Messegue and Jabardo v. Spain</i> , 6 December 1988, Series A no. 146	82, 86, 218, 219, 343, 369
<i>Bates v. United Kingdom</i> (dec.), no. 26280/95, 16 January 1996	224
<i>Bayer v. Austria</i> (dec.), no. 13866/88, 2 April 1990	357
<i>Beckles v. United Kingdom</i> , no. 44652/98, 8 October 2002	262
<i>Berhani v. Albania</i> , no. 845/05, 27 May 2010	82
<i>Berry v. Jamaica</i> , no. 330/1988, 7 April 1994, UN Doc. CCPR/C/50/D/330/1988 (1994)	159, 247
<i>Blastland v. United Kingdom</i> (dec.), no. 12045/86, (1987) 52 DR 273	340
<i>Bleier v. Uruguay</i> , no. 30/1978, 29 March 1982, UN Doc. CCPR/C/OP/2, 138 (1990)	160
<i>Bochaton v. France</i> , No. 1084/2002, 1 April 2004, UN Doc. CCPR/C/80/D/1084/2002 (2004)	82
<i>Bocos-Cuesta v. Netherlands</i> , no. 54789/00, 10 November 2005	335, 353
<i>Boddaert v. Belgium</i> , 12 October 1992, Series A no. 235-D	96
<i>Bonev v. Bulgaria</i> , no. 60018/00, 8 June 2006	349
<i>Bönisch v. Austria</i> , 6 May 1985, Series A no. 92	74, 84, 232
<i>Borgers v. Belgium</i> , 30 October 1991, Series A no. 214-B	84
<i>Brandstetter v. Austria</i> , 28 August 1991, Series A no. 211	74, 84, 86
<i>Brennan v. United Kingdom</i> , no. 39846/98, ECHR 2001-X	103, 280, 291, 292
<i>Bricmont v. Belgium</i> , 7 July 1989, Series A no. 158	234
<i>Brozicek v. Italy</i> , 19 December 1989, Series A no. 167	297
<i>Brusco v. France</i> , no. 1466/07, 14 October 2010	297
<i>Buck v. Germany</i> , no. 41604/98, 28 April 2005	185
<i>Bulacio v. Argentina</i> , 18 September 2003, Series C no. 100	380
<i>Bykov v. Russia</i> [GC], no. 4378/02, 10 March 2009	170, 171, 179, 180, 181, 182, 183, 256
<i>Cabal v. Australia</i> , no. 1020/2001, 7 August 2003, UN Doc. CCPR/C/78/D/1020/2001 (2003)	219
<i>Caka v. Albania</i> , no. 44023/02, 8 December 2009	335
<i>Caldas v. Uruguay</i> , no. 43/1979, 21 July 1983, UN Doc. Supp no. 40 (A/38/40) at 192 (1983)	290
<i>Camilleri v. Malta</i> (dec.), no. 51760/99, 16 March 2000	82, 358
<i>Campbell and Fell v. United Kingdom</i> , 28 June 1984, Series A no. 80	292
<i>Can v. Austria</i> (report), 12 July 1984, Series B no. 79	290, 291
<i>Cantoral-Benavides v. Peru</i> , 18 August 2000, Series C no. 69	247
<i>Cardot v. France</i> (report), attached to the judgment of 19 March 1991, Series A no. 200	346
<i>Castillo Petruzzi and others v. Peru</i> , 17 September 1997, Series C no. 33	290
<i>Castillo Petruzzi and others v. Peru</i> , 30 May 1999, Series C no. 52	248

<i>CG v. United Kingdom</i> , no. 43373/98, 19 December 2001	349
<i>Chadwick v. United Kingdom</i> , no. 54109/00, 18 November 2003	367
<i>Chahal v. United Kingdom</i> , 15 November 1996, Reports 1996-V, 1831	161, 321
<i>Chalkley v. United Kingdom</i> , no. 63831/00, 12 June 2003	173
<i>Chappell v. United Kingdom</i> , 30 March 1989, Series A no. 152-A	185
<i>Cimen v. Turkey</i> , no. 19582/02, 3 February 2009	281
<i>Colozza v. Italy</i> , 12 February 1985, Series A no. 89	296
<i>Compass v. Jamaica</i> , no. 375/1989, 19 October 1993, UN Doc. CCPR/C/49/D/375/1989	336
<i>Condron v. United Kingdom</i> , no. 35718/97, ECHR 2000-V	238, 262
<i>Constantin and Stoian v. Romania</i> , nos. 23782/06 and 46629/06, 29 September 2009	170
<i>Conteris v. Uruguay</i> , no. 139/1983, 17 July 1985, UN Doc. Supp. No. 40 (A/40/40) 196 (1985)	160, 290
<i>CPH v. Sweden</i> (dec.), no. 20959/92, 2 September 1994	352
<i>Croissant v. Germany</i> , 25 September 1992, Series A no. 237-B	288
<i>Cuartero Casado v. Spain</i> , nos. 1399/2005, 25 July 2005, UN Doc. CCPR/C/84/D/1399/2005 (2005)	82
<i>Cuscani v. United Kingdom</i> , no. 32771.96, 24 September 2002	90, 361, 367
<i>Dankovsky v. Germany</i> (dec.), no. 36689/97, 29 June 2000	348, 352
<i>De Cubber v. Belgium</i> , 26 October 1984, Series A no. 86	230
<i>Delcourt v. Belgium</i> , 17 January 1970, Series A no. 11	81, 84
<i>Delta v. France</i> , 19 December 1990, Series A no. 191-A	82, 87, 137, 229, 343
<i>Deweere v. Belgium</i> , 27 February 1980, Series A no. 35	83, 96, 219, 279
<i>Dikme v. Turkey</i> no. 20869/92, ECHR 2000-VIII	187
<i>Dombo Beeher BV v. Netherlands</i> , 27 October 1993, Series A no. 274	84
<i>Doorson v. Netherlands</i> , 26 March 1996, Reports 1996-II, 446	91, 337, 351, 355, 356, 358, 361, 376
<i>Dudko v. Australia</i> , no. 1347/2005, 29 August 2007, UN Doc. CCPR/C/90/D/1347/2005 (2007)	84
<i>Eckle v. Germany</i> , 15 July 1982, Series A no. 51	96, 279
<i>Edwards and Lewis v. United Kingdom</i> [GC], nos. 39647/98 and 40461/98, ECHR 2004-X	85, 190, 319, 321
<i>Edwards v. United Kingdom</i> , 16 December 1992, Series A no. 247-B	85, 135, 152, 228, 300, 302
<i>Engel and others v. Netherlands</i> , 8 June 1976, Series A no. 22	82, 210, 229, 234
<i>Errol Simms v. Jamaica</i> , no. 541/1993, 3 April 1995, UN Doc. CCPR/C/53/D/541/1993 (1995)	82
<i>Eurofinacom v. France</i> (dec.), no. 58753/00, 7 September 2004	189, 190
<i>Fayed v. United Kingdom</i> , 21 September 1994, Series A no. 294-B	250
<i>Feldbrugge v. Netherlands</i> , 29 May 1986, Series A no. 99	86

<i>Ferrantelli and Santangelo v. Italy</i> , 7 August 1996, Reports 1996-III, 937	
230, 335, 350	
<i>Fitt v. United Kingdom</i> [GC], no. 29777/96, ECHR 2000-II	304, 319, 320
<i>FK v. Austria</i> (dec.), no. 16925/90, 11 May 1994	357
<i>Foucher v. France</i> , 18 March 1997, Reports 1997-II, 452	83
<i>Fox, Campbell and Hartley v. United Kingdom</i> , 30 August 1990, Series A	
no. 182	185, 381
<i>Fuenzalida v. Ecuador</i> , no. 480/1991, UN Doc. CCPR/C/57/D/480/1991	
(1996)	313
<i>Funke v. France</i> , 25 February 1993, Series A no. 256-A	83, 103, 241, 248,
249, 250, 251, 253, 255, 266	
<i>Gäfgen v. Germany</i> , no. 22978/05, 30 June 2008	158, 192
<i>Gäfgen v. Germany</i> [GC], no. 22978/05, 1 June 2010	158, 192, 193
<i>Ganga v. Guyana</i> , no. 912/2000, 1 November 2004, ICCPR, A/60/40 vol. II	
247	
<i>García Ruiz v. Spain</i> [GC], no. 30544/96, ECHR 1999-I	152
<i>Garner v. United Kingdom</i> (dec.), no. 38330/97, 26 January 1999	335, 349,
350	
<i>Georgios Papageorgiou v. Greece</i> , no. 59506/00, ECHR 2003-VI	313
<i>Gladyshev v. Russia</i> , no. 2807/04, 30 July 2009	165, 166
<i>Glover v. United Kingdom</i> (dec.), no. 39835/03, 23 November 2004	301
<i>Göçmen v. Turkey</i> , no. 72000/01, 17 October 2006	165
<i>Goodwin v. United Kingdom</i> , 27 March 1996, Reports 1996-II	305
<i>Gordon v. Jamaica</i> , no. 237/1987, UN Doc. CCPR/C/46/D/237/1987 (1992)	
234, 313	
<i>Gossa v. Poland</i> , no. 47986/99, 9 January 2007	337
<i>Grant v. Jamaica</i> , no. 353/1988, UN Doc. CCPR/50/D/353/1988 (1994)	
313	
<i>Gregory v. United Kingdom</i> , 25 February 1997, Reports 1997-I, 296	231,
232	
<i>Guesdon v. France</i> , no. 219/1986, 25 July 1990, No. 219/1986, UN Doc.	
CCPR/C/39/D/219/1986 (1990)	83
<i>H v. France</i> , 24 October 1989, Series A no. 162-A	361
<i>H v. United Kingdom</i> (dec.), no. 15023/89, 4 April 1990	226
<i>Haas v. Germany</i> (dec.), no. 73047/01, 17 November 2005	349
<i>Hacı Özen v. Turkey</i> , no. 46286/99, 12 April 2007	165, 166, 186, 187, 198
<i>Hadjianastassiou v. Greece</i> , 16 December 1992, Series A no. 252	82, 104,
237	
<i>Håkan Wester v. Sweden</i> (dec.), no. 31074/96, 14 January 1998	335, 343,
349, 358	
<i>Halford v. United Kingdom</i> , 25 June 1997, Reports 1997-III, 1004	171
<i>Hardy v. Ireland</i> (dec.), no. 23456/94, 29 June 1994	226
<i>Harutyunyan v. Armenia</i> , no. 36549/03, 28 June 2007	161, 163, 167, 198
<i>Hauschildt v. Denmark</i> , 24 May 1989, Series A no. 154	230

<i>Hayward v. Sweden</i> (dec.), no. 14106/88, 6 December 1991	340
<i>Heaney and McGuinness v. Ireland</i> , no. 34720/97, ECHR 2000-XII	250, 251, 252, 257, 258, 261
<i>Heglas v. Czech Republic</i> , no. 5935/02, 1 March 2007	171, 180, 183
<i>Hiro Balani v. Spain</i> , 9 December 1994, Series A no. 303-B	238
<i>HK v. Netherlands</i> (dec.), no. 20341/92, 6 January 1993	335, 349, 350
<i>Holm v. Sweden</i> , 25 November 1993, Series A no. 279-A	231
<i>Hols v. Netherlands</i> (dec.), no. 25206/94, 19 October 1995	253
<i>Hopia v. Finland</i> (dec.), no. 30632/96, 25 November 1999	358
<i>Howarth v. United Kingdom</i> , no. 38081/97, 21 September 2000	279
<i>Huikko v. Finland</i> (dec.), no. 30505/96, 11 May 1999	358
<i>Hulki Günes v. Turkey</i> , no. 28490/95, ECHR 2003-VII	187
<i>I v. Switzerland</i> , no. 13972/88 (dec.), 31 May 1991	351
<i>İçöz v. Turkey</i> (dec.), no. 54919/00, 9 January 2003	158
<i>IJL, GMR and AKP v. United Kingdom</i> , nos. 29522/95, 30056/96 and 30574/96, ECHR 2000-IX	250, 251
<i>Imbrioscia v. Switzerland</i> , 24 November 1993, Series A no. 275	96, 100, 196, 279
<i>Incal v. Turkey</i> , 9 June 1998, Reports 1998-IV, 1547	230, 381
<i>Ireland v. United Kingdom</i> , 18 January 1978, Series A no. 25	159, 160
<i>Isgrò v. Italy</i> , 19 February 1991, Series A no. 194-A	347, 348
<i>Jalloh v. Germany</i> [GC], no. 54810/00, ECHR 2006-IX	158, 161, 162, 163, 164, 165, 166, 167, 186, 194, 197, 198, 254, 255, 257, 258, 259, 260, 266, 269, 341
<i>Janosevic v. Sweden</i> , No. 34619/97, ECHR 2002-VII	224, 225, 227
<i>Jasper v. United Kingdom</i> [GC], no. 27052/95, 16 February 2000	190, 304, 319, 320
<i>JB v. Switzerland</i> , no. 31827/96, ECHR 2001-III	251, 252, 254, 266
<i>Jespers v. Belgium</i> (report), no. 8403/78, 14 December 1981, (1981) 27 DR 61	85, 135, 297, 298, 299, 300, 302, 303, 304, 312, 314
<i>John Murray v. United Kingdom</i> [GC], 8 February 1996, Reports 1996-I, 30	96, 103, 237, 239, 253, 260, 264, 266, 279, 280, 282, 381
<i>Juan Santaella Telleria and others v. Venezuela</i> , nos. 448/01 and 666/01, 12 October 2005, Report No. 47/05, Ser.L/V/II.124 Doc. 5	82
<i>K v. Austria</i> , 2 June 1993, Series A no. 255-B	249
<i>Kamasinski v. Austria</i> , 19 December 1989, Series A no. 168	334
<i>Kaufman v. Belgium</i> (dec.), no. 10938, 9 December 1986, (1986) 50 DR 98	83, 369
<i>Kavanagh v. Ireland</i> , no. 819/1998, 4 April 2001, UN Doc. CCPR/C/71/D/819/1998 (2001)	98
<i>Kemmache v. France</i> (No. 3), 24 November 1994, Series A no. 296-C	82
<i>K-F v. Germany</i> , 27 November 1997, Reports 1997-VII, 2657	185
<i>Khamidov v. Russia</i> , no. 72118/01, 15 November 2007	82

<i>Khan v. United Kingdom</i> , no. 35394/97, ECHR 2000-V	152, 164, 167, 169, 171, 172, 173, 174, 175, 178, 179, 182, 183, 184, 185, 186, 187, 341, 364
<i>Khudobin v. Russia</i> , no. 59696/00, ECHR 2006-XII	189, 190
<i>King v. United Kingdom (No. 2)</i> (dec.), no. 13881/02, 17 February 2004	252
<i>KJ v. Denmark</i> (dec.), no. 18425/91, 31 March 1993	350
<i>Klimentyev v. Russia</i> , no. 46503/99, 16 November 2006	335
<i>Koç v. Turkey</i> (dec.), no. 32580/96, 23 September 2003	158
<i>Kok v. Netherlands</i> (dec.), no. 43149/98, 4 July 2000	355
<i>Kokkinakas v. Greece</i> , 25 May 1993, Series A no. 260-A	202
<i>Kopp v. Switzerland</i> , 25 March 1998, Reports 1998-II	292
<i>Kostovski v. Netherlands</i> , 20 November 1989, Series A no. 166	87, 88, 90, 97, 137, 140, 234, 243, 355
<i>Krasnikiu v. Czech Republic</i> , no. 51277/99, 28 February 2006	336
<i>Kyprianou v. Cyprus</i> , no. 73797/01, ECHR 2005-VIII	230
<i>Labita v. Italy</i> [GC], no. 26772/95, ECHR 2000-IV	160
<i>Lagerblom v. Sweden</i> , no. 26891/95, 14 January 2003	288
<i>Lamy v. Belgium</i> , 30 March 1989, Series A no. 151	303
<i>Lanza and Perdomo v. Uruguay</i> , no. R.2/8, Doc. A/35/40, 111	219
<i>Lavents v. Latvia</i> , no. 58442/00, 22 November 2002	229
<i>Le Compte, Van Leuven and De Meyere v. Belgium</i> , 23 June 1981, Series A no. 43	230
<i>Lee Davies v. Belgium</i> , no. 18704/05, 28 July 2009	185, 368
<i>Levinta v. Moldova</i> , no. 17332/03, 16 December 2008	161, 162, 194
<i>Lindqvist v. Sweden</i> (dec.), no. 26304/95, 22 October 1997	360
<i>Little v. Jamaica</i> , no. 283/1988, 1 November 1991, UN Doc. CCPR/C/43/D/283/1988 (1991)	290
<i>Lhuberas v. Uruguay</i> , no. 123/1982, 25 March 1983, UN Doc. Supp no. 40 (A/39/40) at 175 (1984)	290
<i>Loayza Tamayo Case v. Peru</i> , 17 September 1997, Series C no. 33	220
<i>Lucà v. Italy</i> , no. 33345/96, ECHR 2001-II	91, 336, 338
<i>Lückhof and Spanner v. Austria</i> , nos. 58452/00 and 61920/00, 10 January 2008	252
<i>Lüdi v. Switzerland</i> , 15 June 1992, Series A no. 238	87, 188, 355
<i>M v. Norway</i> (dec.), no. 14483/88, 10 February 1992	360
<i>MA and BS v. Norway</i> (dec.), no. 29185/95, 22 October 1997	340
<i>Magee v. United Kingdom</i> , no. 28135/95, ECHR 2000-VI	280, 281, 282
<i>Malone v. United Kingdom</i> , 2 August 1984, Series A no. 82	171
<i>Mamaç and others v. Turkey</i> , nos. 29486/95, 29487/95 and 29853/96, 20 April 2004	280
<i>Mantovanelli v. France</i> , 18 March 1997, Reports 1997-II, 424	74
<i>Marais v. Madagascar</i> , no. 49/1979, 24 March 1983, UN Doc. Supp no. 40 (A/38/40) at 141 (1983)	290
<i>Martínez Muñoz v. Spain</i> , no. 1006/2001, 30 October 2003, UN Doc. CCPR/C/79/D/1006/2001 (2001)	82