

Index

- abortion, 18, 83
abstract constitutional control, 17
academic debate, 79, 97
administrative law, 73, 80, 202
advisory opinions, 98, 131, 156, 157, 159, 169, 170, 171, 172, 173, 174, 175, 176
anti-majoritarian, 56
arbitrariness, 185
Armenian Constitutional Court, 174
autonomy, 81, 85, 87, 89, 91

Bates, 110
Belarus, 31, 113
bill of rights, 12, 105, 111
blanket reference, 175
Bosphorus presumption, 37, 39, 115
Bratza, 125
Brighton Declaration, 156, 157, 158, 159, 160
Brownian motion, 45, 92, 93, 198, 200, 201, 202, 203, 206, 207
Brussels Declaration, 158

Cabral Barreto, 58, 59
choice of forum, 71
clone applications, 19, 137, 140
Committee of Ministers of the Council of Europe, 16, 93, 94, 135, 146, 163, 165, 166, 167, 169, 170
common values, 81, 82, 84, 95, 188
concurring opinions, 112, 116, 177
Conflict of Laws, 41, 70, 71
Constitution of Europe, 186, 193
constitutional court, 105, 192, 193, 194, 195, 196, 197
Constitutional Court of Turkey, 55
constitutional instrument of European public order, 1, 11, 28, 29, 30, 33, 37, 38, 39, 40, 44, 45, 60, 62, 64, 66, 68, 81, 96, 114, 141, 171, 191, 196, 199

constitutional justice, 105
constitutional pluralism, 65, 84
content analysis of the case law, 6
contract law, 73, 81
Copenhagen Declaration, 158, 159
Costa, 124, 125, 137
COVID-19, 111
Crimea, 151
criteria of admissibility, 24, 46–52
 6 months rule, 47, 48, 51
 manifestly ill-founded application, 47
 no significant disadvantage, 48, 50, 51
 repetitive application, 47
 victim status, 17, 49, 51

De Gaetano, 118, 119
deliberations, 203, 204, 205, 206, 207
democracy, 4, 24, 25, 52–7, 64, 65, 93, 128, 184, 185, 199, 205
denial of justice, 149
deportation, 42, 46, 83, 142, 146, 147, 148, 149
deprivation of liberty, 58, 59
dialogue, 87, 126, 140, 159, 171, 173, 191
dictatorship, 111
discretion, 17, 40, 47, 49, 64, 87, 100, 106, 108, 119, 121, 138, 175
discrimination, 60, 120
disorder, 66, 68
dissenting opinions, 96, 112, 116, 122, 137, 177
doctrine of effective human rights, 45

effective remedy, 139
elections, 25, 136
embeddedness, 111, 112
emergency, 116
empirical research, 178

- enforcement, 43, 70, 81, 85, 89, 93–4, 100, 103, 135, 138, 146, 147, 153, 163, 164, 166, 168, 182, 185, 206
- declaratory judgments, 138, 164
- general measures, 16, 138, 139, 150, 168, 169, 195
- individual measures, 16, 17, 168, 169
- equality before the law, 157
- equality of arms, 78
- erga omnes*, 87, 100
- espace juridique*, 24, 33, 36, 37, 56, 61
- essentially contestable concept, 64
- essentially contested concept, 183
- eternal clause, 184
- EU law, 37, 38
- European Court of Human Rights
 - technical function, 140
- European Commission on Human Rights, 203
- European consensus, 77, 86, 137, 186
- European Convention on Human Rights
 - abstract interpretation, 117, 120
 - legal realm of, 27
 - Preamble, 43, 52, 53, 83, 136, 160, 161, 181, 185, 210
 - substantive provisions, 24, 25, 105
 - violations enshrined in national constitutions, 17–19
- European Court of Human Rights
 - adjudicatory function, 97, 105
 - authority of, 10, 24, 25, 40, 44, 45, 46, 51, 84, 106, 125, 140, 150, 175
 - backlash, 3, 11, 124
 - backlog crisis, 154
 - Chamber, 32, 55, 162, 201, 205
 - constitutional function, 97, 104, 105, 106, 133, 134
 - Drafting Committee, 201, 202, 204
 - enforcement of judgments of, 16
 - Grand Chamber, 14, 15, 22, 55, 107, 157, 158, 171, 172, 183, 201, 202, 205
 - impact of, 1, 3, 7, 102, 119, 141, 159
 - judge-rapporteur, 201, 202, 204
 - legitimacy of, 3, 7, 8, 12, 13, 17, 20, 35, 40, 52, 84, 126, 129, 140, 166, 194, 195
 - meta-function, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 126, 128, 129, 131, 140, 163, 177, 181, 191, 195, 196, 197, 208, 210, 211
 - presidents, 15, 98, 123–8, 157
 - priority policy, 108
 - reforms, 130, 153, 209
 - Registry of, 44, 86, 103, 117, 203
 - Rules of Court, 130, 132, 133, 150, 151, 164
 - strategic actor, 14–15, 20, 97, 101, 102, 104, 112, 128, 153, 178, 207, 211
 - technical function, 97, 98, 99, 102, 104, 105, 106, 107, 109, 116, 128, 139, 210, 211
 - European public order, 208
 - analytical concept, 8, 46, 69, 85, 88, 130, 141, 171, 209, 210, 211
 - definition of, 7, 62–6, 85, 178, 181–4, 208
 - dualism of, 4
 - duality of, 208
 - legal meaning, 8, 22, 24, 35, 49, 52, 61, 69, 72, 130, 141, 155, 182, 209
 - rhetorical device, 44, 45, 55, 79, 98, 161, 198, 199, 207
 - shaping of, 5, 11, 160, 164, 171, 175, 176, 177, 179, 196, 208, 210
 - vagueness of, 65, 80, 129, 181, 208
 - European Union, 35, 36, 40, 89, 115
 - evolutive interpretation, 13, 74, 137, 157, 173
 - expulsion of aliens, 67, 148
 - expulsion of member states, 16, 94, 166
 - extradition, 42, 44, 46, 83, 90, 146, 149
 - extrajudicial writing, 96, 104, 109, 112, 123
 - fact-finding missions, 152
 - family life, 148
 - feedback loop, 173, 211
 - foreseeability, 156
 - fourth instance court, 113, 114
 - freedom of expression, 48, 52, 54, 66, 79, 83, 149
 - freedom of religion, 67, 162
 - French Civil Code, 80
 - French Council of State, 76, 80
 - French Court of Cassation, 174
 - friendly settlement, 58, 139, 199
 - fundamental concepts, 200
 - fundamental rights, 3, 28, 78, 127, 181, 182, 195
 - Greer, 3, 12, 79, 84, 87, 105, 109, 110, 160
 - hierarchy of human rights, 60, 66, 93, 95
 - high-level conferences, 154
 - Brighton, 156
 - Brussels, 158
 - Copenhagen, 158
 - Interlaken, 154
 - Izmir, 155
 - HUDOC, 22
 - human dignity, 185
 - human rights, 65, 79
 - absolute, 91, 93, 116
 - core, 5, 14, 44, 91, 182, 185, 189, 199
 - derogable, 91

- inflation, 4, 5
- minimalist approach to, 4–6
- non-derogable, 91, 181, 183
- practical and effective, 37, 42, 142
- Human Rights Committee, xxix, 43, 47, 202
- illiberal democracies, 3, 111
- in abstracto*, 113, 119
- individual applications, 3, 106, 107, 145
- infringement proceedings, 21, 131, 165, 166, 167, 168, 169, 176
- inhuman or degrading treatment or punishment, 49, 108, 151
- Inter-American Court of Human Rights, 43
- interference, 68
- interim measures, 21, 24, 25, 41–6, 61, 90, 131, 132, 141–53, 155, 176, 210
- effectiveness of, 142, 144, 152
- general, 142, 147, 148
- individual, 142, 147, 152
- legally binding, 143
- Interlaken Declaration, 154, 155, 156
- internal sources, 91
- International Court of Justice, 43
- international organisations, 23, 24, 35, 36, 37, 38, 41, 85, 115
- inter-state case, 29, 146, 148, 150, 151, 152, 176
- interviews, 64, 103, 177, 178, 179, 180, 198, 200, 205, 207
- Iraq, 32
- irreparable harm, 42, 142, 143, 146, 149
- Izmir Declaration, 155, 156, 157
- judicial activism, 109, 110, 126, 193
- judicial self-restraint, 109, 169, 174
- jurisdiction, 41, 46, 52, 60, 90, 99, 113, 116, 117, 160, 187
- conditional limitation, 113, 115
- territorial, 23, 24, 26, 27, 28, 29, 30, 31, 32, 34, 35, 36, 37
- unconditional limitation, 113, 114
- jurisprudence, 86, 102, 109, 180, 197
- jus cogens*, 83
- kettling, 59
- Kosovo, 24, 38
- legal aid, 149
- legal certainty, 62, 156, 208
- legal culture, 118, 205
- legislation by reference, 175
- legitimacy, 12, 16, 77, 87, 98, 118, 132, 142, 145, 146, 186, 196
- democratic, 12
- political, 101
- process, 99, 200, 203, 208
- legitimate aim, 67, 68, 121, 122
- level of abstraction, 65, 73, 77, 79, 83, 95, 111, 128, 182, 185, 188, 207, 208
- lifelong parole for prisoners, 122
- mala fide*, 41
- margin of appreciation, 9, 41, 54, 79, 80, 97, 109, 110, 111, 127, 131, 136, 137, 153, 156, 157, 159, 160, 161, 162, 176, 182, 185, 202, 204, 210
- marriage equality, 83
- meta-function, 97, 98, 100, 101, 104
- military conflict, 27, 30, 151
- minimalist effectiveness of the Court, 2, 152
- Moldovan Republic of Transnistria, 34
- moral questions, 73, 77
- morality, 13, 76, 77
- multi-tier constitutionalism, 190
- Nagorno-Karabakh, 29, 34, 151
- national authorities, 47, 106, 115, 119, 124, 127, 145, 155, 159
- national public order, 187, 188, 189, 190, 208
- NATO, 31
- Navalny, xxvi, 86, 149, 150
- non-execution of the final national judgments, 139
- old democracies, 53, 205
- ordre public*, 11, 22, 29, 38, 49, 51, 57, 58, 59, 65, 68, 69, 70, 71, 73, 74, 76, 78, 80, 81, 82, 89, 191
- pacta sunt servanda*, 40, 41
- Parliament, 75, 135
- Parliamentary Assembly of the Council of Europe, 75, 166
- pilot judgment procedure, 108, 131, 132, 133, 134, 137, 138, 139, 140, 164, 176, 210
- Pinto de Albuquerque, 11, 39, 40, 100, 103, 112, 122, 123, 132
- planning permissions, 68
- policing, 68
- pornography, 65
- Posner, 6
- principled disagreement, 88, 141, 163
- prisoner voting rights, 18, 88, 110, 115, 134, 135, 136, 137, 138, 141
- private international law, 37, 69–73, 78, 84, 85, 94, 198
- Protocol 12, 18
- Protocol 14, xv, 50, 51, 153, 154, 163, 164, 165, 169, 210
- Protocol 15, 127, 160, 161, 162, 210

- Protocol 16, 157, 159, 169, 170, 171, 172, 173, 175
public order, 2, 56, 63, 67, 68, 69, 72, 78, 82, 85, 93, 159, 181, 182, 196, 198, 208
content of, 74, 76
definition of, 95
exceptions, 69
international, 83
vagueness of, 6, 63, 73, 94
public policy, 70, 71, 74, 75, 76, 78, 82, 208
public powers, 33
qualified rights, 9, 25, 53, 62, 79, 121, 137
Raimondi, 52, 109, 126, 127
rebuttable presumption, 86
Representation of the People Act 1983, 135, 136
reputation, 11, 107, 135, 140, 165, 168
reputational damage, 94, 143, 165, 203
reserved domain, 155
restitutio in integrum, 42, 142
right to a fair trial, 39, 58, 66, 92, 114
right to education, 162
right to liberty and security, 25, 57, 92, 93
right to life, 151
right to property, 29, 36, 107, 115, 188
riots, 68
rule of law, 23, 39, 56, 57, 62, 64, 65, 83, 101, 181, 183, 184, 185, 199
rules of general character, 132, 137, 138, 139, 140, 174, 176
Sajó, 119, 122
Sampson, 148
Secretary General, 167
security, 66, 67, 68, 76, 198
Serghides, 120
Sicilianos, 52, 127, 128, 164
smart sanctions, 39, 89
societal convergence, 75
sovereignty, 37, 64, 71, 85, 106, 138, 140, 164
Soviet Union, 55
Spano, 102, 103, 111, 112, 160
Spielmann, 59, 107, 126, 171
Steiner, 51
subsidiarity, 103, 109, 111, 117, 125, 126, 127, 131, 153, 155, 156, 157, 158, 159, 160, 161, 163, 173, 175, 176, 193
age of, 160
super-qualified rights, 137
surrogacy, 172, 174
suspension of membership of the Council of Europe, 94, 163, 166
Swiss Federal Tribunal, 76
Tajikistan, 147
test of proportionality, 53, 54, 60, 80, 91, 115, 116, 122, 132
torture, 26, 49, 79, 107, 108, 148, 151, 152, 188
transitional states, 55
travaux préparatoires, 136
trump card, 47, 48, 51, 56
Turkish Republic of Northern Cyprus, 28, 29, 31, 34
Turković, 120, 121
UN Security Council, 39
United Nations, 35, 39, 43, 89
United Nations Committee against Torture, 43
United States of America, 32
universal suffrage, 64, 136
unruly horse, 70
vagueness and indeterminacy, 63, 64
Vienna Convention on the Law of Treaties, 11, 12, 119
Wildhaber, 12, 77, 84, 105, 106, 109, 110, 123, 124, 137
Wojtyczek, 117, 118, 119