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This factsheet does not bind the Court and is not exhaustive

## 75 years of the European Convention on Human rights

### Focus On: the Rule of Law

*This factsheet provides a brief focus on a thematic topic. For more detail on the Court's caselaw see the [Knowledge Sharing](#) website of the Court.*

#### Introduction

The rule of law is mentioned in the Preamble to the [European Convention on Human Rights](#) which speaks of like-minded European countries that have a “common heritage of political traditions, ideals, freedom and the *rule of law*” and who have agreed to secure the rights found in the Convention.

Although it has never been defined explicitly by the European Court of Human Rights, the drafters of the Convention understood it to mean “respect for the law” (*respect de la loi*) in combination with “primacy of law” (*prééminence du droit*) and State power being “bound by law” (*État de droit*) and not used arbitrarily.

As such, it is a fundamental principle of governance which requires that all persons and entities, public or private, should be accountable to laws, which should be foreseeable, be equally enforced, and that disputes arising from the application of those laws must be independently adjudicated.

#### Relevant Articles of the Convention

Cases which concern the rule of law have been submitted to the Court by applicants in many circumstances including: cases concerning respect for authority of a final judgment, access to justice, and the independence of the judiciary.

The provisions under the Convention and the Rules of Court which are often cited by applicants in such cases are:

Article 6 (right to a fair trial) and Article 13 (right to an effective remedy) of the Convention. However, other Articles of the Convention may also be invoked as the rule of law is inherent in all the Articles of the Convention.<sup>1</sup>

#### The Court's case-law

The Court examines each application brought before it on a case-by-case basis. It finds a violation of the Convention when a State, through its actions or omissions, has infringed the rights and freedoms

<sup>1</sup> [Former King of Greece and Others v. Greece](#) [GC], no. 25701/94, § 79, ECHR 2000-XII). The first reference to the rule of law in the Court's case-law came in 1975 in [Golder v. the United Kingdom](#) (no. 4451/70), where it asserted that being able to take a case to court for an individual was integral to the rule of law.

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guaranteed by the Convention in respect of individuals within its jurisdiction. Each year, the Court receives a large number of applications, many of which are rejected as they concern clearly inadmissible complaints. Admissible applications may result in a judgment, not all judgments delivered by the Court result in a finding of a violation.

The Court may examine a complaint only where the applicant falls within the jurisdiction of the respondent State, has been directly affected by a measure attributable to that State, and where the complaints submitted to it have first been raised before domestic courts. The Court's jurisdiction to verify that domestic law has been correctly interpreted and applied is limited; the Court will only intervene if the decisions of domestic courts are arbitrary or otherwise manifestly unreasonable (*Anheuser-Busch Inc. v. Portugal* [GC], 2007, §§ 83-87).

The Court has identified specific rights which are derived from the principle of the rule of law. That the **authorities should respect the authority of a final judgment**. The right to fair trial provided by Article 6 of the Convention would be meaningless if the authorities could disregard final court judgments or arbitrarily set them aside. Hence, the Court found violations of Article 6 in multiple cases where final judgments of the domestic courts remained unenforced for long time (*Scordino v. Italy* (no. 1) [GC], no. 36813/97, § 196, 29 March 2006), or where proceedings ended with a final judgment were arbitrarily reopened (*Wałęsa v. Poland*, no. 50849/21, §§ 222-226, 12 November 2023). Similarly, ordinary courts should respect rulings given by the constitutional court (*Sahin Alpaz v. Turkey*, no. 16538/17, §§ 117 et seq., 20 March 2018).

**Litigants should have access to court** in order to obtain a judicial determination of their dispute (*Wick v. Germany*, no. 22321/19, §§ 93-95, 4 June 2024). The domestic legislation may attach conditions for such access, but they should be interpreted without excessive formalism (*Justine v. France*, no. 78664/17, §§ 42–51, 21 November 2024). While Article 6 does not guarantee the right to challenge the legislation as such, it may require the courts to intervene if the authorities fail to put in effect commitments made by State undertook at the legislative level (see, in the context of the climate change litigation, *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* [GC], no. 53600/20, 9 April 2024). Access to ordinary courts may also be limited for the sake of respecting parliamentary autonomy (*Mugemangango v. Belgium* [GC], no. 310/15, 10 July 2020).

To uphold the rule of law, national courts should be **independent, impartial and be established by law**. These guarantees are interconnected (*Guðmundur Andri Ástráðsson v. Iceland* [GC], 1 December 2020, § 211). Most notably, in the past years the Court has given a substantial number of landmark judgments in connection with the rule-of-law crisis in Poland, caused by the legislative reforms which affected independence of the whole judiciary and the “lawfulness” of the newly established adjudicative bodies.<sup>2</sup> In adjudicating disputes, the **courts must give reasons** and address the essential arguments by the parties (*Melgarejo Martinez de Abellanosa v. Spain*, no. 11200/19, § 41, 14 December 2021), and the failure to do so may result in arbitrariness (*Aykhan Akhundov v. Azerbaijan*, 43467/06, 1 June 2023, §§ 86 et seq.) or even as a “denial of justice” (*Ballıktaş Bingöllü v. Turkey*, no. 76730/12, § 77, 22 June 2021,

In other contexts, the Court has been asked to examine the requirement that the authorities' action should have a lawful basis. In this sense, the rule of law principle is a *precondition* for any State action interfering with a substantive right (such as privacy, the freedom of expression, property, etc.). “Lawfulness” implies not only the existence of a legal basis for an interference, but also a certain *quality* of the law. In particular, laws must be made publicly accessible (*Roman Zakharov v. Russia*,

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<sup>2</sup> See *Xero Flor w Polsce sp. z o.o. v. Poland*, no. 4907/18, §§ 252 – 291, 7 May 2021, which concerned irregular appointments to the Polish Constitutional Court; *Advance Pharma Sp. z o.o. v. Poland*, no. 1469/20, 3 February 2022, §§ 294 – 351, which concerned the lack of independence of the Supreme Court of Poland; and *Tuleya v. Poland*, no. 21181/19, which concerned the disciplinary system for judges, which harmed their independence; and the Grand Chamber judgment in *Grzęda v. Poland*, no. 43572/18, 15 March 2022, §§ 257 et seq., where the Court held that the early ending of a judicial mandate without a possibility to contest it in court was contrary to Article 6.

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[GC], no. 47143/06, §§ 239 – 245, 4 December 2015). Laws should also be clear and foreseeable in their application. The law may leave discretion to the administration or judge, but that discretion should not be unfettered and the law must provide for safeguards against arbitrary interference ([NIT S.R.L. v. the Republic of Moldova](#) [GC], no. 28470/12, § 159, 5 April 2022).

Retroactive application of the criminal law is prohibited expressly by Article 7 of the Convention. However, in certain spheres – like the tax law – courts may reverse previously dominant jurisprudence, where there are compelling reasons in the public interest for doing so ([Vegotex International S.A. v. Belgium](#) [GC], no. 49812/09, §§ 95 et seq., 3 November 2022). More generally, legislation may be changed, in order to be adapted to the new social, economic, etc., conditions ([Béláné Nagy v. Hungary](#) [GC], no. 53080/13, § 88, 13 December 2016). Laws which are directed against specific persons are contrary to the rule of law ([Selahattin Demirtaş v. Turkey \(no. 2\)](#) [GC], no. 14305/17, § 269, 22 December 2020). Even during the national emergency, individuals affected by the emergency measures are entitled to a judicial review of their situation ([Pişkin v. Turkey](#), no. 33399/18, 15 December 2020).

The authorities cannot create give foreign powers a *carte blanche* to operate on or from their national territories without any checks and legal protection which the national law normally offers ([Al Nashiri v. Romania](#), no. 33234/12, 31 May 2018).

Finally, the Court's judgments are binding and essentially declaratory in nature. In general, the choice of the measures to be taken to [enforce the Court's judgment](#) remains with the States, subject to supervision by the Committee of Ministers, and provided that such means are compatible with the conclusions set out in the Court's judgments

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