

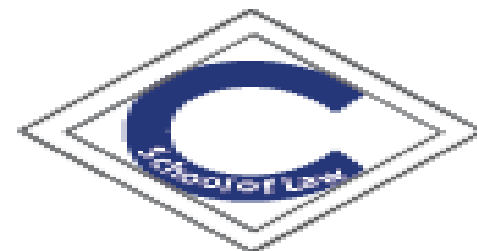
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The Court of Justice of the EU and the European Court of Human Rights: a complex interaction

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**Where do the normative frameworks
and activities of the European Union
(EU) and the Council of Europe (CoE)
in the field of human rights (HR)
overlap?**

European Union (EU) and Human Rights (HR)

- **1950s and 1960s:** the great void – silence of the Treaties – human rights was “the Council of Europe”
- **European Court of Justice since end 1960s:** “general principles of Community law” (IHG, Nold, ...)
- **Treaty recognition**
 - **Single European Act 1986** (preamble)
 - **1992: Maastricht Treaty on European Union** (Obligation to respect human rights)
 - **1997: Amsterdam Treaty** (Statement of principles/values of the EU)
- **1990s:**
 - Debates on joining the **European Convention on Human Rights** • Cf. ECJ, Opinion 2/94
 - **Human rights clauses** as “essential clauses” in cooperation, partnership and association agreements
 - ECJ, Portugal v. Council (1996): accepted

European Union and Human Rights

- **2000: Treaty of Nice**
 - Economic, financial and technical cooperation with (developed) third countries (now Art. 212 TFEU)
- **2000: EU Charter of Fundamental Rights**
- **2007: Regulation No 168/2007 on the EU Agency for Fundamental Rights (FRA)**

HR in the Lisbon Treaty

- **Preamble:** *“the universal values of the inviolable and inalienable rights of the human person”, “attachment to ... respect for human rights and fundamental freedoms” and to “fundamental social rights”*
- **Art. 2 TEU:** respect for human rights as foundational value
“The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.”
- **Art. 3(1) TEU:** *“promote ... its values”*; **3(2)** *“protect the rights of the child”*; **3(5)** *“protection of human rights, in particular the rights of the child”* in EU external relations
- **Art. 6 TEU** – four sources of HR protection
- **Art. 21(1) and (2)(b) TEU:** external relations objectives
- **Art. 67(1) TFEU:** *“area of freedom, security and justice with respect for fundamental rights”*
- **Art. 151(1) TFEU:** social policy, *“having in mind fundamental social rights”*

Article 6 TEU

- a three-limbed constitutional commitment to HR
- Art. 6(1): Legally binding **EU Charter of Fundamental Rights**
 - *“The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties.*
 - *The provisions of the Charter shall not extend in any way the competences of the Union as defined in the Treaties.*
 - *The rights, freedoms and principles in the Charter shall be interpreted in accordance with the general provisions in Title VII of the Charter governing its interpretation and application and with due regard to the explanations referred to in the Charter, that set out the sources of those provisions.”*
- One of the most wide-ranging human rights instruments in the world, but only applicable to EU/MS when implementing EU law

Article 6 TEU

- **Art.6(2): EU accession to the ECHR**

“The Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union’s competences as defined in the Treaties.” See also Protocol No 8 / Declaration and Art. 6(2)

- ECJ Opinion 2/13 of 18 December 2014: draft accession agreement **incompatible** with EU law

- **Art. 6(3): General principles of EU law**

“Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union’s law.”

EU's Implementation of HR commitments

- A commitment is **not** a competence
 - EU may not legislate across the board on HR
 - Some exceptions (non-discrimination, Arts. 18-19 TFEU)
 - Commitment: EU must use its competences in ways that protect and promote HR
- 3 cross-cutting challenges:
 - Delivery
 - Coherence
 - Effectiveness

Challenges in implementation

- Divide between internal and external policies (fundamental rights v. HR)
- Internal policies:
 - Legislation (e.g. non-discrimination directives; non-financial reporting directive; Public procurement; etc.)
 - ‘Strategic guidelines for the AFSJ’
 - Awareness-raising (FRA)
- External policies
 - Legislation and treaties (e.g. GSP+; HR clauses; CRPD)
 - Diplomacy (strategic partnerships; HR dialogues; engagement with UN and other IOs; EU Special Representative)
 - Strategic Framework and Action Plans on HR and Democracy

Challenge of delivery

- Turning the commitment to ‘universal and indivisible human rights’ into practice
 - Conceptualization
 - Values common to the EU Member States?
 - Implementation in foreign policy
 - Multilateral engagement
 - Bilateral engagement
 - HR dialogues
 - Conditionality

Challenge of coherence

- **COHERENCE** is policymaking that seeks to achieve common, identifiable goals that are devised and implemented in an environment of collaboration, coordination and cooperative planning among and within the EU Institutions, among the EU Institutions and Member States, as well as among EU Member States. This policymaking considers the internal (within EU borders) and external (with third countries or other partners) aspects of human rights policies, together with the vertical (policies handed to Member States by the EU) and horizontal relationships (policies among EU Institutions or among Member States). Additionally, human rights policymaking ensures the respect for the universality and indivisibility of human rights in each policy dimension.
- All-encompassing and requires constant monitoring
 - 1) Different manifestations
 - Horizontal: across and within EU institutions and bodies
 - Vertical: between EU and MS (examples)
 - 2) Different reasons for incoherence

Challenge of effectiveness

- Problem of measurement
 - Indicators
 - Impact assessment
- Delivery and coherence challenges impact on credibility and, ultimately, effectiveness
 - Legitimacy and soft power of the EU

Court of Justice of the European Union (CJEU)



Court of Justice of the European Union (CJEU)



G. Fessy © CJUE

Court of Justice of the European Union (CJEU)



Court of Justice of the European Union (CJEU)

- **Role:**
 - ensuring EU law is interpreted and applied the same in every EU country
 - ensuring countries and EU institutions abide by EU law.
- **Members:**
 - Court of Justice: 1 judge from each EU country, plus 11 advocates general
 - General Court: 47 judges - In 2019 this will be increased to 56 (54?) (2 judges from each EU country).
- **Established in:** 1952
- **Location:** Luxembourg
- over 300 cases concerning fundamental rights

Composition of the CJEU

- The CJEU is divided into **2 courts**:
- **COURT OF JUSTICE** – deals with requests for preliminary rulings from national courts, certain actions for annulment and appeals.
- **GENERAL COURT** – rules on actions for annulment brought by individuals, companies and, in some cases, EU governments. In practice, this means that this court deals mainly with competition law, State aid, trade, agriculture, trade marks.
- Each **judge and advocate general** is appointed for a renewable 6-year term, jointly by national governments.
- In each Court, the judges select a **President** who serves a renewable term of 3 years.

CJEU – types of cases

- **interpreting the law** (preliminary rulings) – If a national court is in doubt about the interpretation or validity of an EU law, it can ask the Court for clarification. The same mechanism can be used to determine whether a national law or practice is compatible with EU law.
- **enforcing the law** (infringement proceedings) – cases taken against a national government for failing to comply with EU law (can be started by the European Commission or another EU MS)
- **annulling EU legal acts** (actions for annulment) – if an EU act is believed to violate EU treaties or **fundamental rights**, the Court can be asked to annul it
- **ensuring the EU takes action** (actions for failure to act) – the Parliament, Council and Commission must make certain decisions under certain circumstances. If they don't, EU governments, other EU institutions or (under certain conditions) individuals or companies can complain to the Court.
- **sanctioning EU institutions** (actions for damages) – any person or company who has had their interests harmed as a result of the action or inaction of the EU or its staff can take action against them through the CJEU.

European Court of Human Rights (ECtHR)



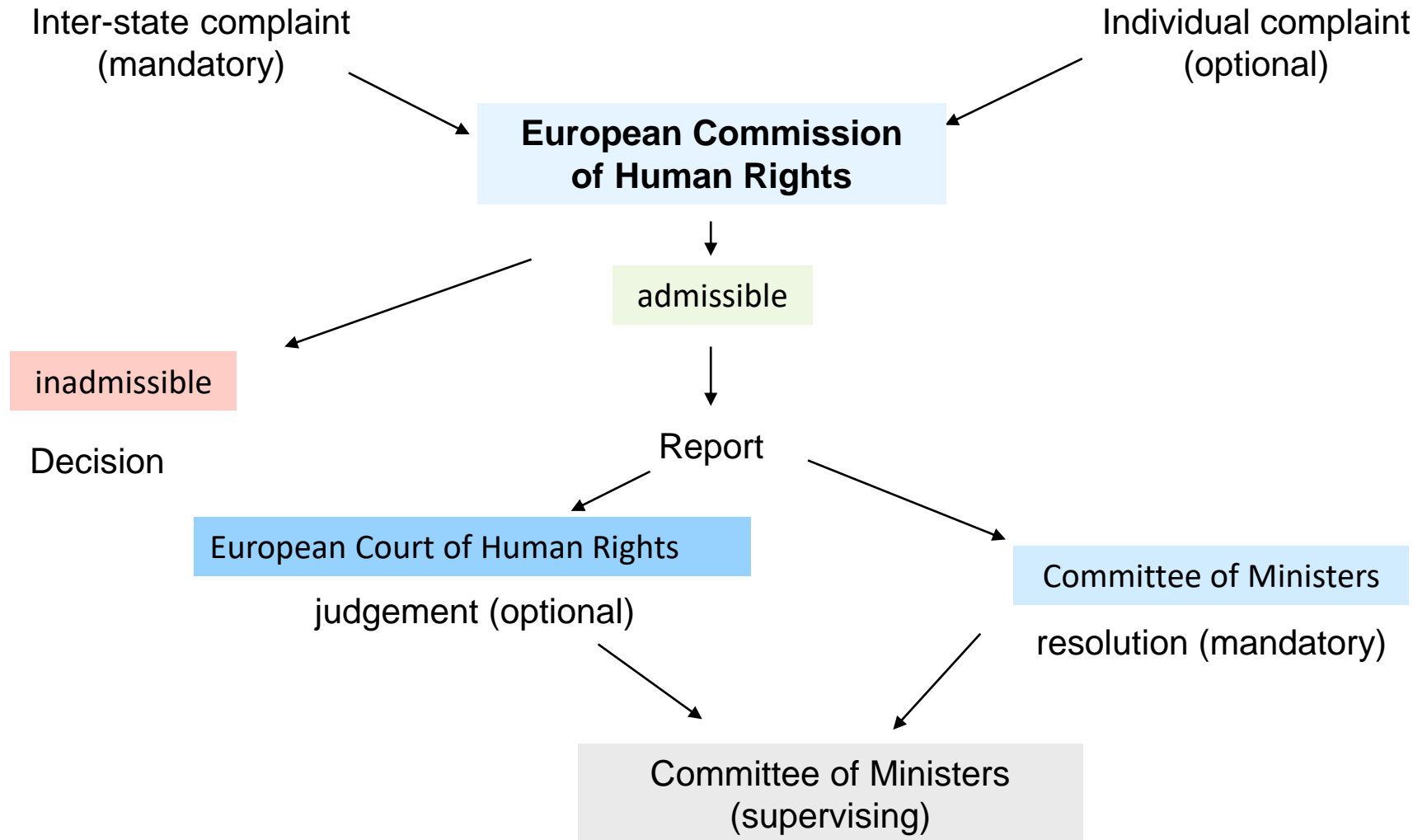
ECtHR: basic facts

- an **international court** set up in **1959**
- rules on **individual** or **State applications** alleging violations of the civil and political rights set out in the European Convention on Human Rights (ECHR)
- Since 1998 it has sat as a **full-time court** and individuals can apply to it directly.
- In almost 50 years the Court has delivered **more than 10,000 judgments**.
- Judgments are **binding** on the countries concerned and have led governments to alter their legislation and administrative practice in a wide range of areas.
- The ECtHR's case-law makes the ECHR a powerful living instrument for meeting new challenges and consolidating the **rule of law and democracy** in Europe.
- based in **Strasbourg**
- **monitors respect** for the HR of 800 million Europeans in the 47 Council of Europe member States that have ratified the ECHR.

Individual procedures before the ECtHR



Complaints Procedures until 1998





Complaints Procedures Reform 1998

- **1 November 1998 entry into force of the 11th Optional Protocol to the ECHR restructuring of the Strasbourg complaints procedure → new single full-time European Court of Human Rights**
- **Aim of the reform: simplifying the procedure** in view of the increase of the applications registered
 - Shortening the length of proceedings
 - Strengthening the judicial character of the system
 - Abolishing the Committee of Ministers' adjudicative role
 - Dissolving the European Commission of Human Rights
 - Removing optional clauses concerning individual complaints and the jurisdiction of the Court

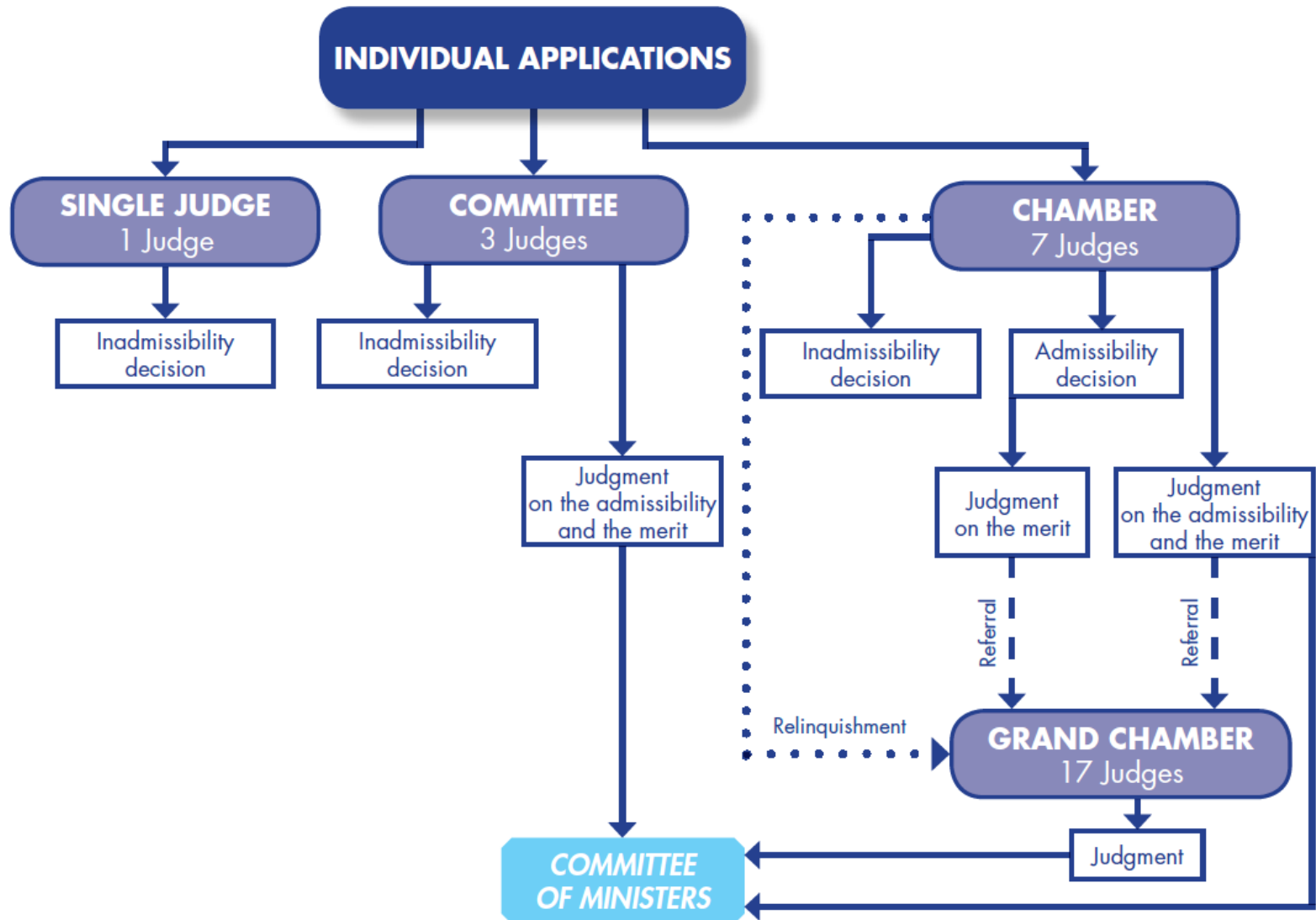


Complaints Procedures Reform 2010

- **1 June 2010: Entry into force of the 14th OP to the ECHR amending the control system of the Convention:**
 - Empowerment of **single judges** to declare inadmissible
 - Introduction of the **inadmissibility criterion**: “no significant disadvantage” suffered by the applicant →
 - **Criticism:** Court rarely cites reason (paragraph of Article 5 ECHR) why application is rejected – can be due to procedural or substantial grounds!
 - Empowerment of a **three-judge committee** to declare **admissible** and give **judgment** in certain cases
 - Provides that the **EU** may accede to the ECHR!

Additional Protocols 15 and 16 to the ECHR

- **Protocol No. 15** will introduce a reference to the principle of subsidiarity and the doctrine of the margin of appreciation. It also reduces from six to four months the time-limit within which an application may be made to the ECtHR following the date of a final domestic decision (**not yet in force**).
- **Protocol No. 16** allows the highest courts and tribunals of a State Party to request the ECtHR to give advisory opinions on questions of principle relating to the interpretation or application of the rights and freedoms defined in the Convention or the protocols thereto (**in force since 1 August 2018**).



Article 26 – Single-judge formation, Committees, Chambers and Grand Chamber

The Court sits in

- Single-Judge Formation (1 judge)
- Committees (3 judges)
- Chambers (7 judges)
- Grand Chamber (17 judges)



→ **Conditions of Admissibility** (Article 35 ECHR)

- Exhaustion of domestic remedies
- Application lodged within six months after final national decision
- No anonymous applications
- No application that is substantially the same as a matter that has already been examined by the ECtHR or that has been submitted to a comparable international procedure
- No application that is incompatible with the provisions of the ECHR, manifestly ill-founded or an abuse of the right of application
- The alleged violation must be to the applicant's personal detriment (victim requirement, no *actio popularis*)
- The event must have occurred after the ECHR's entry into force for the state concerned
- The applicant must have suffered a significant disadvantage

Special provisions of the individual procedure

- Single judges decisions on admissibility – **“filtering system”**
- **“Pilot-judgments”** (Rule 61 Rules of the Court – RoC)
- **“Repetitive cases”** (Rule 61 RoC)
- Legally and politically **binding force** and **scope of the effect of the Court’s judgments** (Rule 46 RoC)
- **Supervision of the national implementation of the Court’s judgments** by the CoE Committee of Ministers (Rule 46 RoC)
- Considerations and negotiations of a **further improvement of the procedures** in order
 - to manage the quantity of applications, and
 - to speed up the decision-making process
- **Interlaken Conference:** Starting in *Interlaken* in 2010, the Council of Europe member states held several *conferences* on the future of the ECtHR → Results of the **accession of the EU to the ECHR** to be taken into account.

Inter-State Complaints Procedure before the European Court of Human Rights



Persisiting complexities in (non)interactions between CJEU and ECtHR

- Phenomenon of proliferation of European judicial bodies on HR - both courts deciding on HR/fundamental rights issues - danger of fragmentation
- Challenge of accession of the EU to the ECHR
 - With the EU's accession to the ECHR, the EU would be subject to its HR law and external monitoring as the EU member states currently are. It is further proposed that the EU join as a member of the Council of Europe.
 - On 5 April 2013, negotiators from the EU and the CoE finalised a draft agreement for the accession of the EU to the ECHR.
 - On 18 December 2014, the CJEU issued a negative opinion on the EU's accession to the ECHR as it would give an external body the power to review the application of EU law, thus bringing the accession to a halt.
- Interpretation of EU Law – a sole prerogative of the CJEU – challenges in practice

Thank you for your kind attention!

Q & A

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