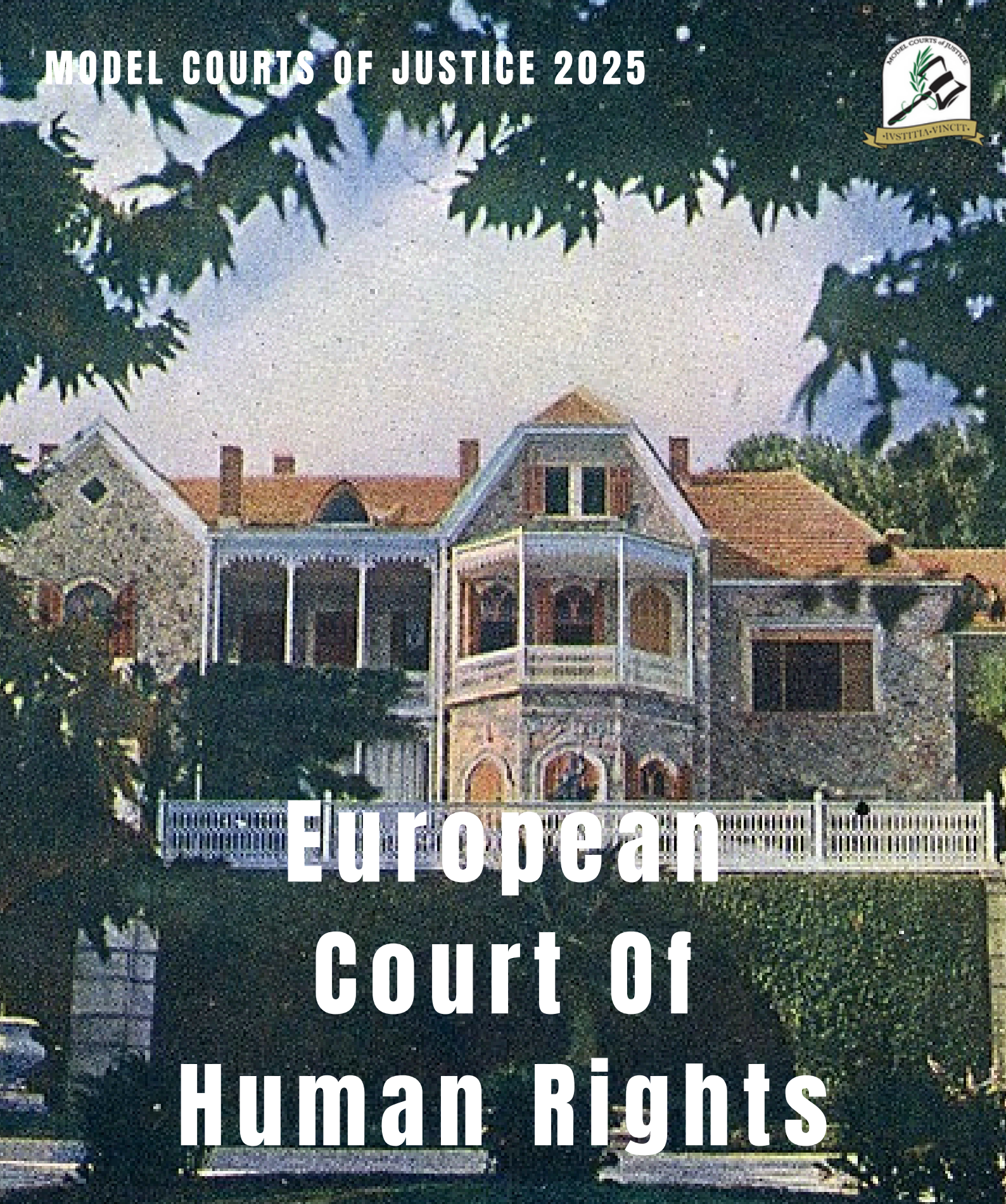
MODEL COURTS OF JUSTICE 2025



European Court Of Human Rights

Written by Burak Eren Ceyhan
Supervised by Aydan Seyidaliyeva

10 REDUCED INEQUALITIES

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LETTER FROM THE SECRETARY-GENERAL

Highly Esteemed Participants,

It is my pleasure to welcome you all to the 13th Edition of the Model Courts of Justice as the Secretary-General. My name is Aydan Seyidaliyeva and I am a junior law student at Ankara University, currently on her Exchange Program at Utrecht University Law School.

The participants of the Model Courts of Justice 2025 will be focusing on the fields of property law in terms of ownership and possession along with human rights protected under the European Convention on Human Rights. The case that will be simulated this year is *'Case of The Former King of Greece and Others v. Greece'*. In this regard, the participants, will have the opportunity to practice their subjects and improve their written and oral skills in the above-mentioned fields.

I would first like to express my gratitude to Mr Burak Eren Ceyhan for his efforts in the preparation of this academic material. Second, I appreciate the Academic Assistants of the Secretary-General Alperen Arifoğlu and Yusuf Kuzey Vurmaz for their immense efforts to finalize this document. Last, I would like to thank the Director-General of the Model Courts of Justice 2025 and the most valuable source of our motivation throughout the entire preparation process, Miss Elfin Selen Ermiş for enduring organizational excellence and professionalism with her wonderful organization team despite uncountable obstacles and the given conditions.

Before attending the sessions, I highly recommend that all the participants read the Study Guide and Rules of Procedure and prepare the printed versions of these documents with them to refer to during the Conference.

If you have any questions or hesitations about the Conference, please do not hesitate to contact me at secretarygeneral@modelcj.org

Sincerely,

Aydan Seyidaliyeva

Secretary-General of the Model Courts of Justice 2025

LETTER FROM THE UNDER-SECRETARY-GENERAL

Dear participants,

My name is Burak Eren Ceyhan, and I am currently a sophomore year student in Middle East Technical University majoring in International Relations. It is my utmost pleasure to be serving as the Under-Secretary General of the European Court of Human Rights (ECHR) in this edition of the highly prestigious Model Courts of Justice Conference.

As a former participant as a judge in this conference, I can say from experience that in terms of court simulations it is not possible to find a higher quality conference than the Model Courts of Justice. Therefore, I encourage you all to give it your best effort both before and during the conference to make the most of your experience.

In regards to the case on the docket, I am sure that all participants either as advocate or judge will have an engaging time which will permanently enhance their understanding and appreciation for the law. The case of "Former King of Greece and others v. Greece" encompasses not only numerous letters of the law both within the European Convention on Human Rights and out, but it also showcases events that are the reflections of a major state in the making. In this view, I can certainly say that such a unique case not only calls for major preparation beforehand, but also requires utmost attention to adjudicate properly.

Before or during the court proceedings, please do not hesitatee contact me at ceyhan.burak.ern@gmail.com with any questions you may have. Before concluding my letter, I would like to pay my utmost respect and gratitude to our Secretary General Aydan Seyidaliyeva for giving me this opportunity and our Academic Assistant Alperen Arifoğlu both for his support during our preparations and our long standing friendship.

I wish all participants the best of luck,

Burak Eren Ceyhan

Under-Secretary-General of the European Court of Human Rights

LETTER FROM THE ACADEMIC ASSISTANT

I am deeply honoured to receive you at the 13th iteration of the Model Courts of Justice, where I serve as the academic assistant to both the secretary-general and the European Courts of Human Rights. I am Alp Arifoğlu, a first-year student in the Political Science and Public Administration department at Ankara University, and I am the vice-president of the FLAUMUN community.

To discuss the court, the preparation phase was demanding, as it involved battling deadlines and other obstacles. However, I am of the opinion that we were able to establish a Court that will be successful in the end. We are embarking on a voyage to engage with Greek history and Greek property law by particularly focusing on the dispute in terms of human rights protected under the European Convention on Human Rights.

In an effort to minimise the length of this message, I would like to express my gratitude to a number of individuals, beginning with our Secretary-General Miss Aydan Seydialiyeva, who is similar to a sister to me. Aydan was succeeded by Elfin Selen Ermiş, the director-general, whom I encountered this year but whom I am aware to be a remarkable individual. Finally, I would like to extend my gratitude to Burak Eren Ceyhan, the Under-Secretary-General of the ECtHR, for his unwavering support and friendship in the community.

With warm regards,

Alperen Arifoğlu

Academic Assistant to the Secretary-General

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I. INTRODUCTION TO HUMAN RIGHTS

1. History of Development

The origins of Human Rights are ideally traced to the year 539 BC. When Cyrus the Great's forces subdued Babylon. Cyrus emancipated the slaves, proclaimed that all individuals possessed the right to select their own religion, and instituted racial equality. The principles were inscribed on a baked-clay cylinder called the Cyrus Cylinder, which inspired the first four articles of the Universal Declaration of Human Rights.[1]

The subsequent phase of human rights was articulated in the Magna Carta of 1215, which introduced the concept of the "Rule of Law." The Rule of Law encompasses the principle of established rights and liberties for all individuals, providing safeguards against arbitrary prosecution and imprisonment. Prior to the Magna Carta, the rule of law, now regarded as a fundamental principle of effective governance in contemporary democratic societies, was viewed as a divine justice exclusively administered by the monarch, specifically King John of England in this instance.

Until 1689, the Magna Carta was regarded as the foundation of human rights principles. In 1689, the English Bill of Rights was enacted, representing the subsequent advancement. It was a statute enacted in 1689 by William III and Mary II, who ascended as co-sovereigns in England following the deposition of King James II. The legislation delineated particular constitutional and civil rights, ultimately conferring authority upon Parliament over the monarchy. Numerous experts consider the English Bill of Rights as the fundamental legislation that established the framework for a constitutional monarchy in England. It is also recognised as an influence on the U.S. Bill of Rights.[2]

These were followed by the Declaration of the Rights of Man and Citizens in France in 1789 after the French Revolution. The fundamental principle established by the Declaration is that all individuals are born and remain free and equal in rights, which include the rights to liberty,

[1] 'Human Rights Evolution, a Brief History. | CoESPU - Center of Excellence for Stability Police Units' (Coespu.org2023) <https://www.coespu.org/articles/human-rights-evolution-brief-history> accessed 1 January 2025

[2] Ibid

private property, personal inviolability, and resistance to oppression. All citizens were equal under the law and entitled to participate in legislation, either directly or indirectly; no individual was to be apprehended without a judicial warrant. The freedoms of religion and speech were protected within the confines of public "order" and "law". Private property was designated as an inviolable right, subject to state acquisition solely with compensation and the provision of access to offices and positions for all citizens.

In 1945, the fifty founding members of the United Nations declared in the preamble of the UN Charter their commitment to safeguarding future generations from the devastation of war, which has inflicted immense suffering on humanity twice within their lifetime. They sought to reaffirm belief in fundamental human rights, the dignity and worth of the individual, the equal rights of men and women, and the equality of nations, regardless of size. Furthermore, they aimed to establish conditions that would uphold justice and respect for obligations arising from treaties and other sources of international law, thereby promoting social progress and improved standards of living in greater freedom. A robust political commitment was established, and to progress towards these objectives, a Commission on Human Rights was promptly formed and tasked with draughting a document elucidating the significance of the fundamental rights and freedoms enshrined in the Charter. Three years later, under Eleanor Roosevelt's assertive leadership, The Commission garnered global attention by draughting the 30 articles that constitute the Universal Declaration of Human Rights. The Declaration was introduced globally as a recognised and internationally accepted charter, with its initial article asserting that “All human beings are born free and equal in dignity and rights.” They possess reason and conscience and ought to interact with one another in a spirit of fraternity.[3]

Human Rights have progressively developed, and since its inception, the United Nations has ratified over 20 principal treaties, including conventions aimed at preventing and prohibiting specific violations such as torture and genocide, as well as safeguarding particularly vulnerable groups, including refugees (Convention Relating to the Status of Refugees, 1951), women (Convention on the Elimination of All Forms of Discrimination against Women, 1979), and children (Convention on the Rights of the Child, 1989).[4]

[3] lbid

[4] lbid

2. Europe and Human Rights

Europe has played a pivotal role in the evolution of human rights. The Magna Carta was signed in England, and the Bill of Rights of England represented the initial significant advancement in these developments. Moreover, in 1772, the court ruling by William Murray, the first Earl of Manchester, marked a significant advancement in the restriction of slavery.[5]

The subsequent developments in Europe were influenced by France following the French Revolution in 1789. The Declaration of the Rights of Man and of the Citizen was promulgated in France amid the French Revolution. In 1950, the European Court of Human Rights was established by the Council of Europe to provide a contemporary framework for addressing human rights violations. In 1992, the Vienna Declaration reaffirmed that all human rights are universal, indivisible, and interdependent.[6]

In 2007, the Lisbon Treaty of the European Union was enacted, enhancing the rights of European citizens. In 2012, Amnesty International was established, highlighting persistent human rights violations in various European nations, including the treatment of asylum seekers and instances of police brutality.

Furthermore, human rights hold a significant position in the foundational principles of Europe. Human rights constitute the foundation of democratic societies, guaranteeing governmental accountability to citizens. They advocate for the rule of law, equality, and justice, which are fundamental components for the stability and legitimacy of democratic nations. Currently, human rights principles advocate for social inclusion and oppose discrimination. They guarantee the protection of marginalised groups, including ethnic minorities, refugees, and the LGBTQ+ community, enabling their contributions to society. This promotes a more unified and inclusive Europe.[7]

Furthermore, the respect for human rights is intricately connected to economic development. Societies that prioritise human rights are generally more stable and prosperous, thereby

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[5] Council of Europe, 'The Evolution of Human Rights' (*Council of Europe*2012) <https://www.coe.int/en/web/compass/the-evolution-of-human-rights>

[6] lbid

[7] lbid

attracting investment and promoting innovation. This consequently results in sustainable economic growth.[8]

3. Fundamental Principles of Human Rights

The Universal Declaration on Human Rights (the UDHR), despite its groundbreaking effects on the international community, was a politico-moral document. It is without a doubt a *"common standard of achievement"* as stated by Mrs Roosevelt herself. There was, however, no mechanism to regulate compliance with the standards. It is a declaration whose authority was primarily moral. Later, with progressive development, the fundamental principles laid down by the UDHR were incorporated into the international legal framework by agreements and institutions including those that serve as effective controlling bodies.

Even though in its origins the UDHR was a General Assembly Resolution, many argue that the Declaration embodies customary international law *in toto*[9], especially considering the enormous impact it caused on the global take on human rights.[10] This statement is backed up by many practices, theories, and treaties considering that the core of it is the notion that the customary international law is binding on every state rather than parties to specific agreements. In this regard, a clear understanding and outline of the fundamental principles of human rights is indispensable.

a) Universality and Inalienability

Human rights are universal and inalienable. Every single individual is entitled to enjoy their human rights and cannot be deprived of them. They may only be limited by law in cases where it is clearly stipulated by the provisions in accordance with this principle, international laws, and customs. Article 1 of the Universal Declaration of Human Rights, paving the way for many

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[8] 'European Convention on Human Rights - the European Convention on Human Rights - Www.coe.int' (*The European Convention on Human Rights*2025) <https://www.coe.int/en/web/human-rights-convention/home> accessed 6 January 2025

[9] As a whole, overall.

[10] Li-ann Thio, 'The Universal Declaration of Human Rights at 60: Universality, Indivisibility and the Three Generations of Human Rights' (2009) 21 SAcLJ 293.

regulations with the same intention, provides that: *"All human beings are born free and equal in dignity and rights."*

b) Indivisibility

Human rights are indivisible. The rights subject to such consideration can be of a civil, cultural, economic, political, or social nature. They are all inherent to the dignity of every human person and cannot be thought of as separate norms. They are a whole in which every element has equal status and cannot be positioned in a hierarchical order. This principle derives from a realistic perspective on human rights, where the denial of one right invariably impedes the enjoyment of others. Thus, the right to an adequate standard of living cannot be compromised at the expense of any other rights, such as the right to health or the right to education.[11] In other words, the states may not exercise their powers in a way that will lead to a violation of a human right, even if the reported aim is to provide better conditions for the remaining rights. It is the positive responsibility of the state to ensure the total implementation of human rights and their principles. As a logical consequence of the principle of indivisibility, human rights are interdependent and interrelated. Every single right contributes to human dignity through the satisfaction of a person's developmental, physical, psychological, and spiritual needs. The fulfilment of one right is most often connected either directly or indirectly to the fulfilment of others.[12]

c) Equality and Non-discrimination

All individuals are equal as human beings in a substantive sense. In other words, the virtue of the inherent dignity of each human person is a possession and purpose of every single individual regardless of their special needs or differences. If there are conditions that hinder the realization of one's dignity, they must be ironed out to provide substantive equality. No person shall face discrimination on the basis of race, colour, ethnicity, gender, age, language,

[11] United Nations Populations Fund, 'Human Rights Principles' (2005) https://www.unfpa.org/resources/human-rights-principles Accessed on 28 January 2024.

[12] Ibid.

sexual orientation, religion, political or other opinions, national, social or geographical origin, disability, property, birth, or other status as established by human rights standards.[13]

d) Participation and Inclusion

Human beings must have a say and information on the processes of political and/or social facts affecting their access to dignity and well-being. It is clear that the rights-based approaches require a high degree of participation by communities, civil society, minorities, women, young people, indigenous peoples, and other identified groups.[14] Thus, civil and political rights are crucial for the existence of any other generations or groups of rights since in their absence, the latter may simply become subject to violations based on the state arbitrariness particular ideologies of the government.[15]

e) Accountability and Rule of Law

States are responsible for ensuring the order necessary for the enjoyment of human rights and the prevention of any obstacle against them. In this regard, the states are subject to legal norms and standards of international human rights. The principle of Rule of Law or State of Law[16], is crucial in this light since it provides for the basis of any legal responsibility of the state authorities. When the government fails to provide the required conditions, there must be legal remedies and mechanisms that can be applied in order to resolve the conflict and compensate for the damages suffered by the persons. This principle is closely related to the modern democratic understanding of state theory.[17]

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[13] Ibid.

[14] Ibid.

[15] Steiner, H. J. (1988). Political participation as a human right. Harv. Hum. Rts. YB, 1, 77.

[16] The law is binding on every subject it is addressed to, including the government itself as a whole with its functional administrative structure.

[17] To examine the relation between democratic governance and the principle of the Rule of Law see O'donnell, G. (2004). Why the rule of law matters. J. Democracy, 15, 32.

4. Sources of Human Rights

Treaty law and many international and national institutions' supervision provide a solid basis for human rights law. The UN alone comprises many bodies that contribute to the field significantly. It has Charter Bodies which are: the Human Rights Council, the Commission on Human Rights, the Special Procedures established by the Commission on Human Rights, and the Sub-Commission for the Promotion and Protection of Human Rights. The Treaty Bodies of the UN regarding human rights law are also crucial and can be listed as; the Human Rights Committee (CCPR), the Committee on Economic, Social and Cultural Rights (CESCR), the Committee on the Elimination of Racial Discrimination (CERD), the Committee on the Elimination of Discrimination Against Women (CEDAW), the Committee Against Torture (CAT), the Committee on the Rights of the Child (CRCD), the Committee on Migrant Workers (CMW), and the Committee on the Rights of Persons with Disabilities (CRPD).[18]

On the other hand, many other rules of human rights are prescribed by *jus cogens* and general principles of law. In this regard, they are not under strict requirements regarding the forms of entering into force since the binding nature of such norms is unquestionable. Each source of human rights law is dealt with in detail below.

a) International and Regional Treaties

The international and regional treaties constitute the base of human rights law by extensive provisions that are most often open to different interpretations. However, since other sources of human rights law include a wide doctrine of reports of international organizations, judicial decisions of international courts, and studies of most prominent scholars; consensus on the nature of many human rights can be reached without any complications. A treaty is defined under international law as *"an international agreement concluded between the states and governed by international law, either registered in a unique instrument, or in two or more annexed instruments and disregarding its particular name."*[19]

[18] United Nations Sustainable Development Group, 'UN Human Rights Treaty Bodies' (2019) https://unsdg.un.org/2030-agenda/strengthening-international-human-rights/un-treaty-bodies Accessed on 28 January 2024.

[19] Vienna Convention on the Law of Treaties (United Nations [UN]) 1155 UNTS 331, Article 2/1 (a).

Depending on the particular categories of rights that are protected, international conventions are classified into four main categories, namely general conventions, special or specific conventions, conventions regarding the protection of certain categories of persons, and the conventions of interdiction of discrimination.[20]

The general conventions can be defined as the documents consisting of the assembly of human rights or a large group of human rights adopted either regionally or universally. The relevant conventions establish human rights holistically by containing a wide group of rights. The ECHR and the Universal Declaration of Human Rights can be considered as the foremost examples of the many general conventions.

Special conventions on the other hand establish only specific categories of human rights, such as those that promote the protection of the human right to life (for instance the Convention against the Taking of Hostages) or those that aim to secure civil and political rights (most famously the International Covenant on Civil and Political Rights). The scope is wide in this regard and these conventions refer to the guarantee of many human rights regarding, *inter alia*, genocide, war crimes and crimes against humanity, slavery, human commerce, forced labour, asylum, freedom of information, private life, social security and many other issues. They are more detailed in this regard and usually possess more instruments for enforcement and monitoring.[21] The UN has defined a broad range of rights including civil, cultural, economic, political, and social rights. The Organization has taken many steps towards their acceptance by the international community. In this regard, it can be stated that the special conventions are indispensable in securing the specific groups of rights under international human rights law.

The third category comprises the conventions regarding the protection of certain groups of persons. They correspond to the necessity of special protection for some categories of persons thus providing means for the substantive equality of persons. Some examples of such categories

[20] Cristina Otovescu, Loredana Belu & Camelia Bobasu, 'The Concept and the Sources of the International Law of Human Rights' (2008) 2008 Rev Universitara Sociologie 209.

[21] See for a better understanding on the matter United Nations Human Rights Office of the High Commissioner, The Core International Human Rights Instruments and their monitoring bodies https://www.ohchr.org/en/core-international-human-rights-instruments-and-their-monitoring-bodies Accessed on 7 February 2024.

of persons can be listed as refugees, stateless persons, women, children, emigrants, combatants, prisoners, and civilians during an army conflict.[22]

Lastly, again as an emerging need to provide substantive equality, there are the conventions of interdiction of discrimination that aim to eliminate discrimination based on sex, race, ethnic origin, ethnic origin, choice of profession and labour and many other aspects of social life.

b) Customary Law and Jus Cogens

Customary international law consists of two elements, namely the existence of a general and mostly extensive, uniform, consistent, and settled practice on the one hand and a sense of legal obligation, the *opinio juris*, on the other. These elements are most commonly referred to respectively as the objective and subjective elements of *jus cogens*. Although they have an equal role in establishing the *jus cogens*, this is not the case in practice and the traditional understanding of the concept.[23] According to most international courts, consistent practice proves to be more crucial as evidence of the *opinio juris per se*. The Case of the S.S. "Lotus" (France v. Turkey) before the Permanent Court of International Justice can be considered as one of the main judgments establishing the prevalence of objective element over the subjective one.[24] International customary law does not need to be established or secured by any agreements. In other words, while international treaties and negotiations are clearly among the indications of state practice, they are not a necessity when considered in the scope of the binding nature of *jus cogens*.

Although there are many different opinions on the customary nature of human rights, there is a more or less complete consensus that the prominent rights protected *inter alia* under the Universal Declaration of Human Rights are *jus cogens*. Thus, any deviations from the *ratio legis*[25] of human rights constitute violations of customary law and not a state practice. Many

[22] Otovescu, 210.

[23] Bruno Simma & Philip Alston, 'The Sources of Human Rights Law: Custom, Jus Cogens, and General Principles' (1988-1989) 12 Aust YBIL 82, 88.

[24] Ibid.

[25] The reasoning, rationale, or purpose behind establishing a certain legal norm or principle.

scholars conclude that the specific and regional conventions on human rights also comprise the customs and have a binding nature since they are within the scope of the rationale of the protection of human rights.[26]

c) General Principles

The general principles of law are inherently binding and in this sense guiding legal norms that are to be abided by in any dispute. The United Nations Human Rights Office of the High Commissioner has established the guiding principles of international human rights law primarily focusing on state responsibility deriving from the general principles of law established by the UN.

"These Guiding Principles are grounded in recognition of:

(a) States' existing obligations to respect, protect and fulfil human rights and fundamental freedoms;

(b) The role of business enterprises as specialized organs of society performing specialized functions, required to comply with all applicable laws and to respect human rights;

(c) The need for rights and obligations to be matched to appropriate and effective remedies when breached."[27]

The guiding principles of human rights should be regarded as a whole not creating new international law obligations, and not limiting or undermining any legal obligations a State may have undertaken. They are rather the general structure of the above-mentioned notions and must be taken into consideration in any legal issue. Thus, any act of the state, any agreement, national, regional, or international, and any court decision must be regarded either openly or *ex officio*.

[26] Simma, 95.

[27] Implementing the United Nations "Protect, Respect and Remedy" Framework, United Nations Human Rights Office of the High Commissioner, New York and Geneva, 2011.

The general principles include the principle of non-discrimination and the principle of substantive equality.[28]

II. INTRODUCTION TO THE EUROPEAN COURTS OF HUMAN RIGHTS

1. History

The European Court of Human Rights (ECtHR) is a Civil Court established in 1959.[29] European Court of Human Rights rules on individual or state applications in claims of violation of the civil and political rights set out in the Convention for the protection of Human Rights and Fundamental Freedoms, shortly known as the European Convention on Human Rights of 1950.[30] The European Convention on Human Rights was drawn up by the Council of Europe with the provision that it become binding on all signatories.[31] The European Convention on Human Rights obligates signatories to guarantee various civil and political freedoms, most important of which include the right to a fair trial.[32] In 1998, in order to handle the growing number of cases, the European Court of Human Rights and the European Commission of Human Rights, both of which were bodies of the Council of Europe, were merged.[33] This merger made the European Court of Human Rights a full-time court to which individuals can petition directly.[34] Despite this change, the still growing number of cases petitioned to the ECtHR prompted the adoption of streamlining measures in 2010. These measures included prohibiting the ECtHR from having to hear individual cases in which the applicant has not suffered a "significant disadvantage".[35] Individuals who believe that their human rights have

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[28] Ibid.

[29] 'The European Court of Human Rights - Council of Europe Office in Georgia - Www.coe.int' (*Council of Europe Office in Georgia*2020) <https://www.coe.int/en/web/tbilisi/europeancourtofhumanrights> accessed 6 January 2025

[30] Merrills, J. G. (1993). *The Development of International Law by the European Court of Human Rights*. Manchester University Press.

[31] lbid

[32] lbid

[33] Christoffersen, J., & Madsen, M. R. (Eds.). (2011). *The European court of human rights between law and politics*. Oxford University Press.

[34] lbid

[35] lbid

been violated and believe they are unable to seek satisfaction from their national legal systems may petition the ECtHR to hear the case and render a verdict.[36] The ECtHR, hearing the case brought either by an individual or a state, may award financial compensation and its decisions often require amendments to national law.[37] The ECtHR is based in Strasbourg, France with almost 700 million europeans across the 46 members of the Council of Europe members depending on it.[38] In almost fifty years since its foundation, the ECtHR has delivered more than 10.000 judgements with the total amount growing even faster day by day.[39] The ECtHR's case law enables the European Convention on Human Rights to be more efficiently applicable and precisely monitored in its role of being a powerful instrument for consolidating rule of law and democracy.[40]

2. Structure

The ECtHR was established as a mecahnism thorugh which the application of the European Convention on Human Rights could be monitored and enforced. Therefore, its structure is also laid out in the convention.[41] Within the ECtHR, there are currently 46 judges since the withdrawal of Russia from the Council of Europe; selected by the Parliamentary Assembly of the Council of Europe from a list of applicants proposed by its member states.[42] Judges of the ECtHR serve on their individual capacities and not as representatives of any state. Each judge is elected for a non-renewable term of nine-years as per Article 23 of the European Convention on Human Rights.[43]

In order to hear many cases simultaneously, the ECtHR is composed of five sections each hearing cases regarding a specific number of topics with each having its judicial chamber,

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[36] Ibid

[37] Ibid

[38] Ibid

[39] Ibid

[40] Ibid

[41] Ibid

[42] 'European Court of Human Rights' (*International Justice Resource Center*10 July 2014) <https://ijrcenter.org/european-court-of-human-rights/> accessed 6 January 2025

[43] European Court of Human Rights, 'European Convention on Human Rights' (1950) <https://www.echr.coe.int/documents/d/echr/Convention_ENG>

judges, president and vice-president.[44] According to Rule 25 of the rules of the court, each judge must be a member of a section and each section must be balanced both in terms of respective geography and gender of judges.[45] Within the court and each section, judges work in four different kinds of judicial formations to which the applications are allocated[46];

-Single Judge: A single judge may only rule on the admissibility of applications that are clearly inadmissable based on the material submitted.[47]

-Committee: Each Committee is composed of 3 judges and they may rule on admissibility of cases as well as the merits, if unanimous, when the case concerns an issue that is well-covered by case law.[48]

-Chamber: Each Chamber is composed of 7 judges and they rule primarily on admissability and merits for cases not ruled upon commonly.Decisions of Chambers may be adopted by a majority. Each chamber includes a national judge, meaning the ECtHR judge with the nationality of the state against which the application is submitted, and the section's president.[49]

-Grand Chamber: The Grand Chamber is composed of 17 judges and it hears a small, select number of cases that have either been referred to it on appeal from a chamber decision or presented by a chamber itself. Applications never go directly to the Grand Chamber.. The Grand Chamber formation always includes the presidents of all five sections, the president and vice-president of the court as well as the national judge.[50]

The structure of the ECtHR also include a Bureau of the Court and a Court Registry. The Bureau of the Court assists the President of the ECtHR in carrying out their work and facilitates coordination between the five sections. The Court Registry is led by the Court Registrar who

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[44] 'ECtHR: COMPOSITION & ELECTION PROCESS COMPOSITION of the EUROPEAN COURT of HUMAN RIGHTS' <https://ijrcenter.org/wp-content/uploads/2020/07/ECtHR-EC-mini-guidefinal-1.pdf>

[45] lbid

[46] lbid

[47] Keller, H., & Sweet, A. S. (Eds.). (2008). *A Europe of rights: the impact of the ECHR on national legal systems*. OUP Oxford.

[48] lbid

[49] lbid

[50] lbid

is appointed for a five-year term. The Court Registrar's duty is to assist the judges in carrying out their work, maintaining ECtHR archives and maintaining communications related to cases before the Court.[51]

3.Proceedings before the Court

a) Overview

Proceedings of the ECtHR are generally conducted in writing, public hearings are rare. There is no cost associated with submitting an application to ECtHR and applicants are allowed to apply for legal aid during the proceeding for any cost that may arise such as payment to the lawyers.[52]A lawyer is not necessary to bring a complaint before the ECtHR but each party must be represented by a lawyer during court proceedings if the case is deemed admissable.All applications to the ECtHR go through the analysis of admissibility and merits.[53] Admissibility criteria is concerned whether or not the specific complaint is considerable before the ECtHR, whereas the merits consideration is regarding the facts of the case relevant to the case at hand in order to deliver an appropriate judgement. The nature of the case dictates the speed and course of the proceedings.

b) Admissibility

When the court recieves an application, it must analyze the admissibility criteria. A single judge, a committee, or a chamber may decide on the admissibility of a given case. An application must meet the following criteria to be declared admissable[54]; The use of all national legal procedures must be exhausted, Applications must be submitted within four months from the final domestic judicial decision, The complaint must be brought against a signatory of the European Convention of Human Rights, The applicant was at a significant disadvantage during

[51] 'ECtHR: COMPOSITION & ELECTION PROCESS COMPOSITION of the EUROPEAN COURT of HUMAN RIGHTS' <https://ijrcenter.org/wp-content/uploads/2020/07/ECtHR-EC-mini-guidefinal-1.pdf>

[52] lbid

[53] lbid

[54] Eng, 'AN COURT of HUM the ECHR in 50 QUESTIONS European Court of Human Rights' (2021) <https://www.echr.coe.int/documents/d/echr/50questions_eng>

the initial case hearing and If any one of these criteria is not met, the case will be deemed inadmissable. Inadmissibility decisions are not subject to appeal.[55]

c) Merits

The court may decide to rule on admissibility and merits together at the same time; however, it must notify the parties if it decides to do so. If an application is deemed admissable during a prior admissibility ruling or not removed from the docket due to another reason, the case will be assigned to its related section of the ECtHR.[56] After the assignment, the state against whom the complaint is lodged is notified about the new pending case. After the notification, the state concerned may file a preliminary objection in which they argue why the case should not be heard on its merits.[57] During this time, both the applicant and respondent will have the opportunity to submit observations to the court. These observations may contain specific information requested by the court or other information deemed relevant to the case by the parties.

If the court rules in favor of the applicant, it may also award a just statisfaction in the form of monetary compensation for the damages suffered and require the respondent state to cover legal costs of the applicant. If the court rules that there is no violation, the applicant is not required to cover the legal costs of the state. After any judgement on the merits of a case, there is a three-month period in which either party or both parties may request a referral of the case to the Grand Chamber.[58] Nevertheless, only a few select cases get referred to the Grand Chamber.

Judgments are binding on the states involved, and the states are required to execute them accordingly. The Committee of Ministers of the Council of Europe is responsible for enforcing judgements. Judgements often call for amending of legislations to ensure that the violation

[55] lbid

[56] lbid

[57] Keller, H., & Sweet, A. S. (Eds.). (2008). *A Europe of rights: the impact of the ECHR on national legal systems*. OUP Oxford.

[58] lbid

never occurs again; however, an ECtHR judgement cannot overrule a national decision or annul national laws.[59]

d) Friendly Statement

A friendly settlement is an agreement between the parties to put an end to the proceedings before the court delivers a judgement on its merits. Such friendly setlements are based on compromise in which a satisfactory remediation fee is agreed upon by the parties. The court will try to facilitate friendly settlements as far as the nature of the case does not require continuation for respect to human rights; in which case the friendly setlement will be overthrown.[60] If an agreement between the parties is not reached, the court will carry on with its proceedings.

e) Interim Measures

Interim measures are urgent measures taken when there is an imminent risk of irreparable harm to the rights outlined in the European Convention on Human Rights. The court may apply such interim measures as outlined in Rule 39 of the Rules of the Court in order to ensure that such interests of the parties are protected in order to conduct the proceedings properly. Such interim measures are decided in connection with th eproceedings before the court without prejudice to and subsequent decision or judgement that may follow. Rulings of the court regarding the adoption of an interim measure are communicated to the parties in the form of a decision. Interim measurea adoption decisions are not subject to appeal.The most typical cases are those where, if the expulsion or extradition of the applicant in question takes place, the applicants would fear for their lives or would face ill-treatment; both prohibited under the convention.

[59] lbid

[60] lbid

4. Decision and Judgement

Decisions and Judgements of the ECtHR are not the same. A decision concerns the adoption of an interim measure or the admissibility of a case, but not its merits.[61] Decisions may be given by a committee, chamber or a single judge. Judgements are the end ruling of the ECtHR regarding any case on its merits, outlining if the court has found a violation to the convention.[62] However, if a chamber decides to rule on the admissibility and merits of a case at the same time, both are part of a judgement.

Judges may express their opposing views on a judgement, shall they exist, with including their counter arguments and reasons for disagreement. Judges can also write a 'consenus view' if they agree with the majority but want to express their reasons. Both 'opposition views' and 'consesus views' can be found at the end of judgements.

5. Effects of the Judgements and Enforcement

Judgements finding violations are binding on the states concerned and all states are required to execute them properly.[63] Such requirement is enforced by the Committee of Ministers of the Council of Europe. The Committee of Ministers does this by advising the state concerned and its respective departments in determining hw the judgement should be carried out and how to prevent any such future violations to the European Convention on Human Rights. If such violation occurs again, the ECtHR may deliver further judgements against the state concerned .

6. Jurisdication

The ECtHR has jurisdiction to hear cases submitted by individuals and states concerning violations of the European Convention on Human Rights, which primarily concerns civil and political rights such as the right of protection against discrimination, freedom of speech and

[61] Keller, H., & Sweet, A. S. (Eds.). (2008). *A Europe of rights: the impact of the ECHR on national legal systems*. OUP Oxford.

[62] lbid

[63] lbid

right to fair trial.[64] The cases ECtHR hear are contingent on an application or a petition and cannot hear cases on its own initiative.[65] Applicants can be real persons, states or non-governmental organisations; insofar as the application is lodged agains a member of Council of Europe.

Article 32 of the current convention defines the jurisdiction of the court. According to Article 32 of the convention[66]:

'The jurisdiction of the Court shall extend to all matters concerning the interpretation and application of the Convention and the Protocols thereto which are referred to it as prvided in Articles 33 (inter-state applications),34 (individual applications), 46 (referrals by the Committee of Ministers of the Council of Europe of problems of interpretation and execution) and 47 (requests by the Committee of Ministers for advisory opinions'.[67]

On August 1, 2018, the ECtHR was granted advisory jurisdiction pursuant to Protocol 16 to the European Convention on Human Rights, broadening the jurisdiction of the court. In this advisory jurisdiction, the ECtHR is now allowed the court to issue advisory opinions on questions of principle relating to the interpretation or application the rights and freedoms defined in the European Convention on Human Rights.[68]

III. KEY CONCEPTS

1. Property and Ownership

a) Introduction

[64] lbid

[65] lbid

[66] Letsas, G. (2013). The ECHR as a living instrument: Its meaning and legitimacy. *Constituting Europe: The European Court of Human Rights in a National, European and Global Context*, *2*, 106.

[67] lbid

[68] lbid

Property and ownership are considered fundamental concepts of human societies, including both economic and legal relations. Over the history of civilisation, these concepts evolved and affected society in how resources are used or divided.

b) Definition of Property

Property denotes any entity that can be possessed or governed, regardless of being tangible or intangible. Tangible property encompasses physical assets, including land, structures, and personal possessions. Intangible property includes non-physical assets such as intellectual property, trademarks, and shares. The notion of property denotes an asset that can be utilised, governed, and conveyed by individuals or entities.

c) Definition of Ownership

The term ownership condemns the right to use, possess and dispose of a property. To further detail, it includes the right to use the property, the right to exclude others from the property, the right to transfer or sell the property, and the right to change or modify the property. Ownership may be either individual or collective, exemplified by shared ownership in a business or communal property in specific societies.

d) Theories on the Issue

Legal Theory emphasises the formal regulations and statutes that delineate and safeguard property rights. Legal systems differ worldwide, featuring distinct interpretations and frameworks for property rights. Common law systems and civil law systems exhibit divergent methodologies regarding property law. There are several legal theories to be considered.[69]

The classical theory underscores individual rights concerning property ownership. Grounded in philosophical principles, it posits that property is a natural extension of individual freedom and personal autonomy. Prominent philosophers such as John Locke contended that property rights emerge from the labour invested in resources, thereby associating ownership with effort.

[69] Editorial, 'Theories of Property Law: An In-Depth Examination of Concepts - Laws Learned' (*The Insurance Universe*21 June 2024) <https://lawslearned.com/theories-of-property-law/> accessed 6 January 2025

This theory asserts that by combining one's labour with natural resources, an individual creates a claim to that property.[70]

The Utilitarian Theory emphasises maximising the overall benefit for the majority. It posits that property rights ought to be organised to optimise collective societal welfare.This theory advocates for the allocation of property rights to enhance economic efficiency and social utility.[71]

Natural Rights theory, advocated by philosophers such as John Locke, posits that individuals possess intrinsic rights to property based on their labour. This perspective posits that property rights are inherent and exist prior to government and legal frameworks. The theory underscores the moral and ethical rationale for property ownership.[72]

The Historical Theory of Property posits that property rights originate from historical practices and customs. It underscores the significance of tradition and the progression of property rights throughout history. This theory frequently examines the establishment and recognition of property rights across various societies throughout history.[73]

The Economic Theory analyses the significance of property rights in resource allocation and economic efficiency. Property rights are regarded as essential for market operation, offering incentives for investment and innovation. Economists contend that well-defined property rights mitigate conflicts and foster economic development.

e) Types of Properties

Private property refers to assets owned by individuals or entities, with exclusive rights that permit the owner to utilise and transfer the property at their discretion. Private property is

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[71] Keller, H., & Sweet, A. S. (Eds.). (2008). *A Europe of rights: the impact of the ECHR on national legal systems*. OUP Oxford.

[72] lbid

[73] lbid

fundamental to capitalist economies.[74] *Public property*, owned by the government or community, is designated for public use and benefit. Examples encompass parks, public edifices, and infrastructure.[75] Resources that are collaboratively shared and administered by a community. *Common property* encompasses resources such as fisheries, forests, and grazing land. This encompasses intellectual creations, including inventions, literary and artistic works, designs, symbols, and names. *Intellectual property* rights safeguard the interests of creators and promote innovation and creativity.[76]

2. Constitutionality of Law

a) Overview

The European Court of Human Rights (ECHR) is a significant institution that serves as a symbol of justice and the protection of human rights across the entirety of Europe. The "constitutionalization" of law, which refers to the incorporation of the principles and decisions of the European Court of Human Rights (ECHR) into the constitutional framework of member states, is an essential component of its function.[77] The implementation of this procedure ensures that human rights are protected in accordance with the highest legal standards and has a significant impact on the legal frameworks of individual nations.

b) Core Rights

The European Convention on Human Rights (ECHR) is primarily concerned with the protection of fundamental human rights and freedoms. By incorporating the European Convention on Human Rights into their respective national constitutions, member states ensure that these rights are constitutionally protected and enshrined in their respective constitutions.

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[74] Team LawFoyer, 'Possession and Ownership: A Jurisprudential Analysis | LawFoyer' (*LawFoyer | A daily doze for inquisitors*31 August 2024) <https://lawfoyer.in/possession-and-ownership-a-jurisprudential-analysis/#google_vignette> accessed 6 January 2025

[75] Ibid

[76] Ibid

[77] Sweet A, 'On the Constitutionalisation of the Convention: The European Court of Human Rights as a Constitutional Court' <https://openyls.law.yale.edu/bitstream/handle/20.500.13051/5105/On_the_Constitutionalisation_of_the_Convention_The_European_Court_of_Human_Rights_as_a_Constitutional_Court.pdf?sequence=2&isAllowed=y>

Through this integration, the commitment of member states to uphold and advance human rights across all levels of governance is reaffirmed.[78]

c) Judicial Presence and Influence

The decisions of the European Court of Human Rights (ECHR) serve as significant judicial precedents that national courts frequently consult when developing their own interpretations of legislation. The implementation of this practice contributes to the development of a unified and consistent approach to the protection of human rights across Europe. By adhering to the decisions of the European Court of Human Rights (ECHR), national courts ensure that their interpretations are in line with international human rights standards.

d) Standards of Europe

In numerous member states, the European Convention on Human Rights possesses primacy over national legislation. This indicates that in the event of a conflict between national law and the ECHR, the latter takes precedence. This supremacy strengthens the constitutional authority of the ECHR's principles, guaranteeing that human rights prevail over contradictory national laws.[79]

The ECHR's interpretations are also essential for standardising human rights across Europe. The ECHR mitigates discrepancies among various legal systems by offering clear and consistent interpretations of human rights principles. This harmonisation results in a more cohesive strategy for the protection of human rights, benefiting individuals throughout the continent.[80]

e) Identity

Identity within the framework of the ECHR includes multiple dimensions, such as personal identity, cultural identity, and the identity of groups, including ethnic and religious minorities. The ECHR has established a comprehensive body of case law concerning these facets of

[78] lbid

[79] All Answers Ltd, 'Constitutionality of European Convention on Human Rights' (*Lawteacher.net*6 November 2023) <https://www.lawteacher.net/free-law-essays/constitutional-law/constitutionality-of-european-convention-on-human-rights-constitutional-law-essay.php> accessed 6 January 2025

[80] lbid

identity, guaranteeing that individuals and groups can articulate and preserve their identities without encountering discrimination or persecution.[81]

Personal identity encompasses elements such as name, gender, and legal status. The ECHR has adjudicated numerous cases related to personal identity, underscoring the entitlement of individuals to have their identity acknowledged and safeguarded. In Christine Goodwin v. the United Kingdom, the Court determined that the lack of legal recognition for a transgender individual's gender identity infringed upon Article 8 (right to respect for private and family life) of the Convention.[82]

Cultural identity denotes the collective attributes, traditions, and customs of a community. The ECHR acknowledges the significance of cultural identity and has adjudicated cases concerning the rights of minority groups to maintain and advance their cultural heritage. In Sámi Council v. Norway, the Court affirmed the rights of the Sámi people to preserve their traditional lifestyle, encompassing their language and customs.[83]

The Convention safeguards the identity of ethnic, religious, and linguistic minorities. Article 14 forbids discrimination based on multiple criteria, including race, religion, and language. In D.H. and Others v. the Czech Republic, the Court determined that the segregation of Roma children into specialised schools infringed upon their right to education and constituted discrimination.[84]

f) Judicial Protection

Judicial protection within the ECHR is fundamentally established in Article 6 of the European Convention on Human Rights, which ensures the right to a fair trial by an independent and impartial tribunal. This article guarantees individuals access to justice and safeguards their rights via an equitable and transparent judicial process. The ECHR has established comprehensive case law regarding judicial protection, focusing on matters such as judicial

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[81] 'Identity' (*ECHRCaseLaw*17 September 2018) <https://www.echrcaselaw.com/en/identity/> accessed 6 January 2025

[82] lbid

[83] lbid

[84] lbid

independence, the appointment and removal of judges, and safeguarding judges from external pressures. Article 6 expresses Right to Access to Court, Right to a Public Hearing, Right to Be Heard, Right to Legal Representation and Right to a Reasoned Judgement

3. Judicial Independence

Judicial independence is essential for the robust safeguarding of human rights. The ECHR has adjudicated multiple cases concerning judicial independence, focussing on matters including the appointment, tenure, and removal of judges. In Baka v. Hungary, the Court determined that the unjustified cessation of a judge's mandate, prompted by his critique of judicial reforms, contravened Article 6 and Article 10 (freedom of expression) of the Convention.

4. Recent Developments

Recent jurisprudence from the ECHR has elucidated and reinforced the tenets of judicial protection. The Court has examined matters including the impact of executive and legislative authority on the judiciary, the selection and duration of judges' service, and the safeguarding of judges' reputations. These advancements demonstrate the Court's dedication to maintaining the rule of law and guaranteeing that judicial protection is strong and effective.

5. Principle of Proportionality

The principle of proportionality is a fundamental principle of the European Convention on Human Rights (ECHR). It aims to ensure that any restriction on rights and freedoms established in the Convention is fair, necessary, and proportional to the legitimate objective pursued.

The principle of proportionality guarantees that any infringement of an individual's rights under the ECHR is warranted and not excessive. The interference must be proportionate to the objective it intends to accomplish. For a restriction to be considered proportionate, it must serve a legitimate purpose, such as national security, public safety, the prevention of disorder or crime, the safeguarding of health or morals, or the protection of the rights and freedoms of others. Judicial bodies frequently engage in a balancing assessment to evaluate individual rights

in relation to community needs. This guarantees that personal liberties are not excessively compromised for the greater societal good.[85]

The European Court of Human Rights (ECtHR) implements this principle when assessing cases to ascertain whether a state's actions or legislation conform to the standards established by the ECHR. The principle of proportionality safeguards individuals from arbitrary or unjust treatment by ensuring that any restriction of rights is warranted.

IV. CASE BEFORE THE COURT: CASE OF THE FORMER KING OF GREECE & OTHERS V. GREECE

1. Overview

a. Independence of Greece

i. Independence of Greece (1821-1833)

Greece was formerly a territory of the Ottoman Empire up until the Greek revolution in 1821 but their insurgencies date as back as the 1770s .[86] The Greek War of Independence was organised by a group of unlikely allies; namely a small number of businessmen primarily in Peloponnese and Istanbul, as well as a society called *Filiki Eteria*.[87] After the Napoleonic Wars and the ideas of the French Recolution shook the European continent, a new "power-balance" based status-quo was established by lead of the powerful Austrian Prince, Klemens von Metternich, in the Congress of Vienna (1814-1815) . The Greek attempt at independence and revolution was seen both by Klemens von Metternich and the Russian Tsar as threats to the

[85] Trykhlib K, 'THE PRINCIPLE of PROPORTIONALITY in the JURISPRUDENCE of the EUROPEAN COURT of HUMAN RIGHTS' (*EU AND COMPARATIVE LAW ISSUES AND CHALLENGES SERIES (ECLIC 4) - ISSUE 4* 2020) <https://www.academia.edu/44115516/THE_PRINCIPLE_OF_PROPORTIONALITY_IN_THE_JURISPRUDENCE_OF_THE_EUROPEAN_COURT_OF_HUMAN_RIGHTS> accessed 6 January 2025

[86] 'A Political History of Modern Greece, 1821-2018' (*ResearchGate*2018) <https://www.researchgate.net/publication/327405175_A_Political_History_of_Modern_Greece_1821-2018> accessed 6 January 2025

[87] Ibid

status-quo which would ignite further unrest in Europe.[88] Nevertheless, the British and French opted to help Greece in their insurgency and after the decisive defeat of the Ottoman Navy in Navarino and the inability of the Ottoman Army to focus on the Greek insurgency due to the simultaneous revolt of *Kavalalı Mehmet Ali Paşa* in Egypt, Greek Independence was officially recognised by all in 1830 after a struggle of 9 years until recognition.

During the external battles of Greece, there was also ambitions and struggles inside about writing a onstitution based on the separation of secular from ecclesiastical power, the delimitation of political power through its distribution among the various state bodies, and its limitation through guarantees of the exercise of certain rights . In 1822, the first constitution of Greece was signed and adopted. The role of this constitution was two fold: assertive in a sense that it needed to pave the way for the bith of a fully independent recognised state, but also guarantor in the liberal European sense about individual rights and liberties. The Constitution of 1822 did not provide full protection of individual liberties; but guaranteed the right to property, honor, security and freedom of religion while its most important provision was the complete prohibition of torture. Due to its absences, a new constitution was enacted in 1827 with a broader sphere in regards to guarantee of individual freedoms and liberal values such as placing sovereingty in the hands of people. Even though the "sovereignt lies with the nation" principle in this constitution and its other values were commonly cited by the majority of following Greek constitutions, it remained in force only for a year when Prime Minister Kapodistrias abolished it to rule with a strong hand in order to fully achieve independence.[89]

ii. Early Estabilishment

Prime Minister Kapodistrias was executed in 1831 due to his authoritarianism, which paved the way for further interference of the great powers and the consequent independence recognition of Greece. After the independence recognition in 1830 the Kingdom of Greece was established by the London Protocol of 1832 .[90] The sovereignty of the newly established and small Greek state was not absolute. Since the indepedence depended on the help of the great

[88] lbid

[89] lbid

[90] lbid

powers of the Congress of Vienna, the London Protocol opened up ill-defined rights of intervention within Greek internal affairs by the great powers themselves.[91] This is clearly visible in a provision annexed to the London Protocol, defining 3 "Protecting Powers" to Greece; namely France, Britain and Russia. The great powers chose the Bavarian Otto of Wittelsbach, later named King Louis I of Bavaria, as the new king who was only 17 years old when he ascended the throne.[92] During the period from the assasination of Prime Minister Kapodistrias to the election of Otto of Wittelsbach by the 3 protecting powers, a final revolutionary constitution was enacted which would last until 1844 and the three constitutions of this time came to be known as "the revolutionary constitutions" . Regardless of their fate, the revolutionary constitutions that established the First Hellenic Republic were not only pioneering for their time but also helped to serve the foundation of a nationalist, liberal and constitutional Greek society and state culture. Since Otto was still a minor, the great powers ran Greece by a Bavarian regency council for almost 3 years .[93] It was during the revolutionary period and reign of Otto that Greece imported models of law and government of European models.[94] As Otto became of age, he ruled with strong Bavarian influence still existing.

Despite his early popularity, his absolutism and the fact that he was a Roman Catholic, married to the Protestant and childless Amalia, were among the causes of resentment together with austerity measures he had to adopt, including suspension of benefits to war veterans, due to Greece's insolvency[95] which grew discontent among his subjects.[96] In 1844, Otto was forced to accept a constitution widening the freedoms of the public primarily by the establishment of a parliament, elected by universal male suffrage in which 9 out of 10 Greek males were eligible to vote in elections . The Constitution of 1844 also eradicated Bavarian involvement.[97] However, Otto's destabilizing transgressions to not only the third revolutionary constitution

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[91] Danforth L and Haldon JF, 'Greece | Islands, Cities, Language, & History' (*Encyclopedia Britannica*20 July 1998) <https://www.britannica.com/place/Greece/Building-the-nation-1832-1913> accessed 6 January 2025

[92] lbid

[93] lbid

[94] lbid

[95] Kitsantonis, N. (2023). Constantine II, the Last King of Greece, Dies at 82. *International New York Times*, NA-NA.

[96] lbid

[97] Velkova, S. (1996). The Megali Idea and national identity in the period between the two world wars (Conditions and development of the problem). *Études balkaniques*, (3-4), 19-34.

but also the constitution of 1844, resulted in him being deposed and deported in 1862 with a blodless coup by the public.

The Bavarian legacy in Greece showcases an era of turmoil as well as a process of Europeanisation and the establishment of key ideas and developments.[98] During the three decade reign of Otto of Wittelsbach, Greece established hierarchy and bureaucracy in public administration and army, the judiciary was organized and all of the aforementioned developments were modeled after European institutions of the time . Otto also adopted a nationalisation policy in which he saw failures such as the Crimean War intervention attempt but also successes such as the nationalisation of the Greek Orthodox Church and the integration of the *Megali Idea* to his policy.[99] The *Megali Idea* is an irredentist policy that seeks to unite all majorly Greek speaking areas then under the rule of the Ottoman Empire including key island such as Crete and Cyprus as well as Istanbul, which the Greeks still called Constantinople. From 1844 to 1922, even surpassing Otto's reign, *Megali Idea* was a central part of Greek administrative policy and foreign policy.

iii. Constitutional Monarchy Era During the Reign of King George I (1863-1913)

Due to the discontent with Otto's policies and the still fragile power balance politics in Europe, Otto's successor had to be uncontroversial as to not threaten the status quo crucial to the great powers.[100] After the initially elected Prince Albert of Britain was rejected by Russia and France due to the fact that he would give an unfair share of control to the British, the rather unsided choice was King Christian the IX of Denmark, later known as King George I of Greece. King George I ruled over Greece until his assasination in 1913, and is the top ascendant of the royal family in question for the case. King George I was a solid anglophile and willing to accept a democratic constitution unlike Otto . In 1864, a new constitution was adopted which amplified the individual liberties given in the 1844 constitution.[101] With the 1864 constitution, Greece became one of the few parliamentary democracies in the world. Despite these developments

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[99] lbid

[100] lbid

[101] lbid

with the 1864 cosntitution, the realities of politics showed little change; even at the moment of adoption of the 1864 constitution, the monarch exercising his power as the sovereign of the state, retained substantial power in foreign policy which were vaguely defined and open to interpretation to enhance even further.[102] Furhtermore, with numerous elections and even more frequent changes to administrative posts, politicians raced to obtain votes by empty promises and ill-adivsed short-term coalitions to remain in a disproportionately large parliament for decades to come. From 1865 to 1875, seven general elections were held but there were eighteen different administrations holding office at different times. King George could and did create and dismiss governments if the parliament failed to come up with legislation. Last but not least, the social balance of Greek citizenry was still split and the gap between the growing urban middle class and the conservative elites was growing; powerful personalities retained their influence through patronage networks which ofet influenced parliament candidacy and popular voting trends.[103] All of these combined did not only undermine the power of the citizens in governance but make a mockery of the entire democratic system. With such imbalances and constantly shifting allegiances in both political and social power, topped off with the power of the sovereign to dismiss governments and overlook remarkable political power holders by fueling minority participation based on obedience, there was a political gridlock in early constitutional monarchy era of Greece.

To solve the problems with the political landscpae of the time, the parliamentary democracy typology rule of Greece, albeit still under a monarchy, was reinforced in an amendment to the constitution in 1875 which necessitated that the government should enjoy confidence of the parliament in order to be legitimate.[104] This amendment stabilized the political landscape of Greece for the following quarter century and changed the kaleidoscopic allegiences to a two-party system in which a westernist Kharilaos Trikoupis, the lead reformer of the 1875 amendment to the constitution, and Theodoros Deliyannis, a traditionalist and irredentist, strived for political power.[105] Trikoupis emerged as the dominant force not only against his

[102] Kitsantonis, N. (2023). Constantine II, the Last King of Greece, Dies at 82. *International New York Times*, NA-NA.

[103] lbid

[104] lbid

[105] Hatzis, A. N. (2019). A political history of modern Greece, 1821–2018. *Encyclopedia of Law and Economics. Springer, New York, NY.*

rival but with respect to all other opposition since he was elected prime minister seven times in the span of 1875 to 1895.

The Greek territory was expanded peacefully from 1864 to 1881.[106] Influence of the *Megali Idea* gained momentum in this era and showed the ceding of Ionian Islands to Greece from Britain as a gift for not siding with Russia in the Russo-Turkish War of 1877. Crete gained independnce with a Greek character but under a different administration than that of the Greek crowned democracy, with increased territorial claims and guerilla support by the Greek crowned democracy. The era also showed conflicts with the Slavs and Ottomans for expansion and indigenous Greek's independence in Macedonia. [107] Although these developments improved the status of the Greek crowned democracy, the problems of political corruption, rigged elections and a dsyfunctional bureaucracy remaind chronic and, for the most part, unsolved.[108]

While the monarch King George I enjoyed his powers as the sovereign of the state, Trikoupis was the leading political figure who further westernized Greek governmental affairs, society and financial system.[109] Trikoupis, even though a major political figure in Greek history, had his own undoings in fiscal policy planning since the extensive external loans and the fragile policies he took to modernize infrastructure caused the Greek government to go bankrupt in 1897 when it could not withstand the burden of the defeat in the Greco-Turkish War with up to almost 40 per cent of national budget went to servicing national debt at the time.[110] After British Navy interference with the Greco-Turkish War and the issue of Crete, the defeat was somewhat remediated when the British helped Crete become independent under Prince George of Greece in 1898 and imposed international control over Greek fiscal policy which would lead to an impressive fiscal consolidation. Nevertheless, the defeat and bankruptcy caused national humiliation and a major disillusionment with the Greek Palace.

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[106] Ibid

[107] Ibid

[108] Ibid

[109] Ibid

[110] Hatzis, A. N. (2019). A political history of modern Greece, 1821–2018. *Encyclopedia of Law and Economics. Springer, New York, NY.*

The 1890s also saw efforts in reunification of Crete with homeland Greece and a Cretan lawyer called Eleutherios Venizelos in charge of it.[111] Venizelos's influence would spread to homeland Greece as well from 1909 onwards. Breaking point of 1909 is the Goudi Coup organised by a bunch of dissatisfied military officers.[112] The Goudi Coup ushered in a persistent pattern of military involvement in politics during the 20th century, which would have a strong impact in Greek political history. The conspirator soldiers demanded extensive reforms of both a nonmilitary and a military nature, the latter including the removal of the royal princes, who often promoted their own protégés, from the armed forces.[113] Venizelos, not a conspirator, would use this paved way to walk up to be the Prime Minister thanks to his non-involvement in the corrupt politics of motherland Greece. Venizelos established the Liberal Party which drew support from nationalist professional soldiers, workers and merchants, which enabled him to come to power easily and conclusively while passing legislation at frantic pace.[114] Venizélos introduced a wide-ranging program of constitutional reform, political modernization, and economic development, which he combined with an energetic enthusiasm for the *Megali Idea.* Around 50 amendments to the 1864 constitutions were enacted with provisions for lend reform, legislation benefitting the working population and reform to the educational system.[115] During Venizelos's rule as Prime Minister; new state bureaucracies were establshied and the powers of governmental branches were substantially reworked by constitutional amendment. Venizelos also made sure to keep his support from the army by expanding and re-equipping it. Venizlos' first years stabilised the social unrest and formerly broken finances.[116] Venizélos's continuing political ascendancy was confirmed with a sweeping victory in elections held in 1912, which would unfortunately be followed by the Balkan Wars.

The Constitutional Monarchy era showcases the Greek political history as well as the social circumstances that has shaped the adoption of constitutions and other administrative

[111] Ibid

[112] Ibid

[113] Ibid

[114] Ibid

[115] Kulik RM, 'Young Turk Revolution (1908) | Summary, Causes, Ottoman Empire, & Movement' (*Encyclopedia Britannica*12 January 2024) <https://www.britannica.com/topic/Young-Turk-Revolution> accessed 6 January 2025.

[116] Ibid

mechanisms that have shaped the facts of the case. Considering the fact that King George I is the great-grandfather of the first applicant, and it is King George I who started the accumulation of land to establish the estates that are matters of dispute before the court, it would be appropriate to briefly examine the history behind the disputed estates.

First and foremost, pertaining to this time period, is the Tatoi Estate, which has served since 1904 as the primary residence of the Hellenic King. The Tatoi Estate, at final size expanding as big as 41,990,000 sq. m., was formed during the reign of King George I through several purchases. For example, in 1877 by a Law, the Greek state transferred in full and absolute ownership to King George I the forest known as Bafi, of approximately 15,567,000 sq. m., while the Greek government had expressed the intention of donating the Bafi forest to King George I, the latter did not wish to acquire this land through a donation, but insisted on purchasing it at a price fixed by the government. In the transaction process, a compromise was reached, whereby the Bafi forest was expressed to be "conceded" rather than donated Another example shows King George I purchasing an adjacent forest by decree.

Secondly, is the Mon Repos estate on the island of Corfu. The Mon Repos estate intially belonged to the British correspondent in the region, but after the ceding of the Ionian Islands in recognition of the Greek state's alliance with Britain, the Mon Repos estate was ooffered to King George I in recognition of his help. Even though reports do not indicate the initial size of the estate, the enlargements by King George I from 1870 through 1912 has made it 238,000 sq. m. at the end.

Finally, the Polydendri Estate began developing during this era. The Polydendri Estate is an area of 33,600,000 sq. m. to which the applicants will claim partial ownership of Crown Prince, and later king Constantinos I purchases and obtains the Polydendri Estate in 1906.

iv. Era of Victory and Agony: Balkan Wars, World War I and Crises (1912-1922)

The defeat of Greece in the Greco-Turkish War of 1897 had induced pessimism amongst the public, which would, after the British help resotring the Greek state to stand alone, fade and optimism would emerge.[117] The Ottoman Empire during the early 1900s was declining in

[117] Ibid

power, influence and stability. The antagonism of Bulgarians and Macedonians had opened way for Greek enlargement aspriations fueled by the *Megali Idea.*[118] The Ottomans were also in an undesirable security situation due to the Italian occupation of Libya.[119] Furthermore, the Young Turks Revolution of 1908, imposing a constitutional rule to the empire conspired by the students of the Imperial Medical Academy and some dissatisfied military officers had created a new political shift within the internal affairs of the Ottoman Empire, diverting focus from farther territorries.[120] The internal turmoil of the Ottoman Empire, primarily between the dynasty and the young turks would go with disappointment still spreading amongst the Ottoman subjects due to lack of action by the Sultan, until the officers of the Committee of Union and Progress led by Enver Pasha take reins of the government to resolve the issue in 1913.[121]

The Balkans shortly after these developments were in a major regional war, the Balkan Wars of 1912-1913. [122] Greece emerged victorious from the Balkan Wars with its territory substantially increased . At the core of the Balkan Wars were three issues: the disposition of Macedoia, the problem of Crete and the liberation goals of farther Ottoman territories such as Albania and Macedonia. An alliance of Bulgaria, Serbia, Montenegro and Greece attacked the Ottoman Empire in October 1912, officially starting the Balkan Wars.[123] Greece was not expected to make progress in this battle, not even by their allies Bulgaria. Nevertheless, the Greek army became surprisingly remarkable, capturing the mutually desired city of Thessaloniki before their allies. This led to Bulgarian dissappointment, and an attack on Greece with the aspiration to capture Thessaloniki for Bulgaria, starting the Second Balkan War amongst the former allies. Despite this interestin security dilemma, the Greek army in an alliance with the Serbs successfully defended the Bulgarian attacks and managed to obtain the

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[118] lbid

[119] 'The Balkan Wars through the Prism of the Wider Theoretical Framework of the Concept of the "Security Dilemma"' (*ResearchGate*2015) <https://www.researchgate.net/publication/322317194_The_Balkan_Wars_through_the_Prism_of_the_Wider_Theoretical_Framework_of_the_Concept_of_the_Security_Dilemma> accessed 6 January 2025

[120] Kulik RM, 'Young Turk Revolution (1908) | Summary, Causes, Ottoman Empire, & Movement' (*Encyclopedia Britannica*12 January 2024) <https://www.britannica.com/topic/Young-Turk-Revolution> accessed 6 January 2025.

[121] lbid

[122] lbid

[123] lbid

territory of Macedonia in the process.[124] After the Balkan Wars, Greek territory had expanded by %68, the populations of which were, for many of them, ethnically Greek. Nevertheless, controlling the minorities in the region was not an eay task for the small Greek Kingdom, and would pose a problem in the future . The victory in the Balkan Wars was also a result of Venizelos' political and diplomatic intelligence, which benefited his relationship with the heir of King George I and commander-in-chief, Prince Constantine. Nevertheless, Venizelos and Prince Constantine would come to disagreement regarding their priorities in Greek expansion; which would be remediated by King George I.[125]

In 1913, King George I was the victim of an assasination; leaving his heir Prince Constantine to become King Constantine I of Greece.[126] With the unsolved political problems of Greece, this change in the state sovereign just months after the Balkan Wars victory was welcomed by the public and national morale was at an all time high.

Despite this bright period however, the dynamism, sense of deveolpment and national unity of the early Venizelos years would only last for a short while until World War I and its turmoil.[127] After the assasination of King George I who was the arbitrator of the differences between the then Prince Constantine and Prime Minister Venizelos, the differences of the two became irreconcilable; especially after Constantine took the crown . Even though there were earlier reasons to split, the immediate grounds for tension at the beginning of World War I was regarding the alignment of Greece in the war. World War I was fought between the Triple Entente of Britain, France, Russia and the Central Powers of Germany, Austria-Hungarian Empire, Ottoman Empire; both alliances of which posed a number of reasons to ally with. Influence of German military on Greek officers, many of whom had been educated in German military academies, as well as the kinship of Queen Sofia of Greece and Kaiser Wilhelm of Germany were reasons to join the Central Powers, which was the idea of King Constantine.[128] Meanwhile, the unredeemed Greeks of the east, the Bulgarian and Ottoman rivalry with Greece

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[124] 'The Balkan Wars through the Prism of the Wider Theoretical Framework of the Concept of the "Security Dilemma"' (*ResearchGate*2015) <https://www.researchgate.net/publication/322317194_The_Balkan_Wars_through_the_Prism_of_the_Wider_Theoretical_Framework_of_the_Concept_of_the_Security_Dilemma> accessed 6 January 2025.

[125] Ibid

[126] Ibid

[127] Ibid

[128] Ibid

as well as the territorial promises of Britain and France were reasons to join the Triple Entente, which was the idea of Prime Minister Venizelos. Due to the sovereign still holding remarkable sway over foreign policy and due to Venizelos' stubborn character, Venizelos resigned as Prime Minister of Greece; creating "National Schism" between the palace and parliament.[129]

Despite Venizelos' resignation, the December 1915 election yielded the majority of the seats in parliament to Venizelos and the Liberal Party; which King Constantine refused to recognise.[130] Simultaneously, Greece was under threat of attack as the government of Sofia claimed Macedonia and Thessaloniki.[131] Despite the sovereign's reluctance to accept the current political landscape, he agreed to accept the actions of parliament only if Greece is attacked. Nevertheless, Venizelos held political power and orchestrated a parliamentary declaration of war on Bulgaria, which had joined the Central Powers, and allowed stationing of British and French troops in Macedonia for their attack on Galippoli without informing the king. In retalliation, abusing his power of unilateral dismissal of government by misinterpreting the constitution, King Constantine I dissolved the parliament and called for a new election . This conflict between Kind Constantine I and Venizelos was not only a matter of foreign policy but a constitutional crisis since King Constantine I's misinterpretation of "in national interests" understanding while dismissing the government.[132]

When German-escorted Bulgarian troops managed to seize a part of Greek Macedonia, Venizelos established a provisional government in Thessaloniki with the support of the French and British . In October 1916, Venizelos as far as returning to Crete and establishing a new army which would side with the Triple Entente, bringing Greece to the brink of civil war.[133] By the end of 1916, Britain and France had recognised the provisional government of Venizelos and applied a blockade,imposing near-famine conditions, alongside threats of bombarding Athens in order to force King Constantine I into submission. In 1917, King Constantine I took his first-born George and left the country, passing the crown to his second eldest son Alexander

[129] Hatzis, A. N. (2019). A political history of modern Greece, 1821–2018. *Encyclopedia of Law and Economics. Springer, New York, NY.*

[130] lbid

[131] lbid

[132] lbid

[133] lbid

without formally abdicating himself.[134] Alexander was a malleable individual easily handled by Venizelos . After the ousting of King Constantinos I, Venizelos returned to Athens to assume control of a formally united but utterly divided Greece and joined the war on the side of the Triple Entente. In an effort to remediate the damage of the National Schism, Venizelos turned to the *Megali Idea*. During the period of 1917-1920, Venizelos altered the royalist foreign policy and expanded his influence in politics . After the victory of the Triple Entente in World War I, Venizelos attended the Paris Peace Confidence and declared a triumphant victory for Greece when it became a beneficiary of the Treaty of Sevres promising İzmir, formerly *Smyrna*, to Greece.[135] In 1920, Venizelos was surprisingly somewhat defeated in elections and the exiled King Constantine I was restored to his throne after a plebiscite in a further example of National Schism.[136] Despite this division, Venizelos and King Constantine I worked together in government. That is, until Mustafa Kemal, later Atatürk, used his excellency in military planning and diplomacy to obliterate *Megali Idea* aspirations in smoke on the shores of the coveted city of Izmir.[137] More than 2.500 years later, Greek presence in the region of Asia Minor ended in the greatest catastrophe in modern Greek history.

v. Interwar Period Struggles and Second Hellenic Republic (1922-1935)

The disastrous military defeat and the unprecednted national humiliation on the shore of Izmir ensured that the National Schism between the royalists and the parliamentary liberals would continue with ever increasing severity for the next two decades.[138] Immediately after the defeat on the battlefield, pro-Venizelos colonels staged a military junta and abdicated King Constantine.[139] Six Greek officials, all politicians or commanders in charge of the campaign in the anatolian were executed on charges of treason, even though there was no conclusive evidence of treachery. After the abdication of King Constantine, his first-born son George was

[134] Gerolymatos, A. (2016). *An international civil war: Greece, 1943-1949*. Yale University Press.

[135] lbid

[136] lbid

[137] Kitsantonis, N. (2023). Constantine II, the Last King of Greece, Dies at 82. *International New York Times*, NA-NA.

[138] lbid

[139] lbid

crowned the new interim king while the colonels conspiring in the junta rid the bureaucracy and army of royalists. In the Treaty of Lausanne, Greece withdrew any territorial claims on the mainland of the newly established Republic of Turkey and the two states agreed to a change of population based on religion.

During most of the 1920s, Greece was struggling with political turmoil.[140] From 1922 to 1924, Venizelos was elected Prime Minister once again but went into exile of his own accord due to the serious splits in his own ranks, during which the newly crowned King George II assumed control as interim king.[141] Serious splits existed in the military as well, coup attempts were a rather regular event between 1923 and 1936 except a peaceful four years in 1928-1932. In 1924, the Second Hellenic Republic was proclaimed and a new constitution was adopted in 1927, transferring much of the political and administrative power formerly held by the king to to the parliament and prime minister.[142] Despite this change in regime and constitution, the royalists refused to recognize the new typology of rule and the National Schism deepened. A total of 11 military coups occurred during this time period .

In an overwhelming victory with 71 per cent of votes in 1928, Venizelos once again became the Prime Minister of Greece; yielding a short era of fruitful governance and political stability for four years.[143] Even though the majority of his came from the new refugee class migrating en masse into Greece due to the population exchange, Venizelos followed daring policies such as visiting Ankara and signing a friendship agreement with President Atatürk in a remarkable rapprochement . Venizelos managed to undertake substantial reforms, primarily in agriculture, thanks to foreign loan from the British.[144] However, affairs would become harder each day from 1931 onwards when Greece felt the effects of the Great Depression significantly due to decimated exports of key products such as olive oil and tobacco.

After the devestation of the Greek economy, the era of stability would come to an end in 1932 when the anti-Venizelist fraction saw a major increase in votes almost splitting the parliament

[140] Hatzis, A. N. (2019). A political history of modern Greece, 1821–2018. *Encyclopedia of Law and Economics. Springer, New York, NY.*

[141] lbid

[142] lbid

[143] lbid

[144] lbid

into two equal sections of Liberals and Populists. When the populists failed to come up with an effective coalition to obtain government, the staunchly Venizelist former 1922 Coup d'Etat conspirator Colonel Nikolas Plastiras staged a coup attempt to restore Venizelos to power; ending in failure.[145] Venizelist officers, fearing a royal comeback, attempted once more at a coup but failed again; this time revealing Venizelos as a conspirator and utterly discrediting his political image in the progress. Venizelos, immediately reitirng to Paris in 1935, died in 1936 . In this power vacuum, King George II returned to the throne after a rigged plesbicite.

vi. Restoration of the Kingdom of Greece (1935-1967)

Following the death of Venizelos and the demise of the second Hellenic Republic, the elections of 1936, still majorly affected by the National Schism, promised to be a key date in Greek political history.[146] Populists hoped this election would legitimize their position at last; but the result would come up once again in a deadlock with the twist of 15 votes in favor of the Communist Party (KKE).[147] This unexpected rise of communism, combined by widespread labor strikes, forced King George II to accept a military dictatorship under General Ioannis Metexas. Known to be a royalist protector, Ioannis Metaxas was a competent and experienced, but also ruthless retired military officer.[148] Metaxas, right after assuming control in August 1936, persuaded the king to suspend key articles of the constitution and suspended the parliament; initally temporarily for five months, but lasting for a decade.[149]

Supported by the army and tolerated by King George II, the Metaxas dictatorship lasted more than four years.[150] Metaxas shared a dislike for parliamentary democracy, liberalism, and communism with the characteristics of German Nazism and Italian Fascism, but his regime simply lacked their dynamism. The government led by Metaxas did not seek alliances with the

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[145] Kitsantonis, N. (2023). Constantine II, the Last King of Greece, Dies at 82. *International New York Times*, NA-NA.

[146] lbid

[147] lbid

[148] lbid

[149] Gerolymatos, A. (2016). *An international civil war: Greece, 1943-1949*. Yale University Press.

[150] Kitsantonis, N. (2023). Constantine II, the Last King of Greece, Dies at 82. *International New York Times*, NA-NA.

European dictatorships. On the contrary, as a traditional Greek royalist, Metexas strove to maintain the Greek state's traditional alignment with Britain. Moreover, Metaxas aimed to recast the traditional Greek character in a more disciplined mode, invoking the values of ancient Greece and, in particular, of the Spartans. He also sought to fuse them with the values of the medieval Christian empire of Byzantiu.[151] Nevertheless, despite such strong ideological bacground and support, Metaxas lacked the popular support of German Nazism and Italian Fascism to consolidate what he called the "Third Hellenic Civilization" as a continuation of Byzantium.

vii. World War II (1939-1945) Era and Greek Civil War (1944-1949)

The Greek people, fed up with almost three decades of war and internal political turmoil, did not resist the new Metexas regime even though it was somewhat modeled after the authoritarian conservative government of Fascist Italy. When WWII erupted, both Metaxas and King George II had learned their lessons from WWI and decided to keep Greece neutral as long as possible; joining Britain if there seemd to be no other choice.[152]

When Mussolini's forces invaded Greece in 1940, both Metaxas and King George II agreed to fight back; finding widespread support among the public and willful mass conscription regardless of political orientation.[153] Despite the initial success of Greece in forcing the Italians back, they were no match for Nazi Germany reinforcements in 1941 . By June 1941, Greece was divided amongst Bulgaria, Nazi Germany and Fascist Italy. After the unexpected death of Metaxas in the same year, King George II fled to Egypt and appointed the former Venizelist politician Ioannis Tsouderos as Prime Minister.[154] Germans effectively ruled over Greece by a brutal hand and a number of provisional governments. By the end of 1941, the widespread resistence since the first days of occupation had reached a high point. The Communist Party

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[152] lbid

[153] Gerolymatos, A. (2016). *An international civil war: Greece, 1943-1949*. Yale University Press.

[154] lbid

founded the "National Liberation Front", out-sizing other resistance groups primarily funded and supported by the British.[155]

Just as during the Independence War period and post-World War I period, conflicts between resistance groups scrambled for post-war power; causing Greece to find itself in a civil war slowly birthing in December 1944 right after the withdrawal of Nazis.[156] Even though many members of the Communist Party-oriented resistance were not communists themselves, they liked the idea of a definite proposal, ideology and method enough to follow communist leadership. Despite the communist fraction enjoying remarkable control over the Greek state and support by Joseph Stalin initially, British President Winston Churchill brokered a deal with USSR to secure Greece for the West. In a provisional coalition of the communist and British-backed resistance groups, the communists were reluctant to cooperate; leading to a bloody confrontation in Athens early in December 1944.[157] After foreign support increasing for the non-communists, the communist resistance group capitulated and agreed to disarm for a new election to be held in 1946.[158]

The 1946 elections, the most influential one since the elections of 1936, yielded a sweeping far-right Royalist victory especially ddue to the abstention of far-left communist groups. In the same year, a plesbicite issued the result of King George II coming back to the throne; only to die six months later.[159] After his death, his brother Paul, the father of the first applicant Constantinos II, succeeded the throne and the chaotic background of these elections re-emerged as arms were picked up once again to obtain political power. Late in October 1946, a communist-controlled "Democratic Army" followed by a "Democratic Provisional Government" were established; finding remarkable result and fighting ferociously as guerilla warriors based on the knowledge of territory from resistance years.[160] However, communist success in Greece would come to an end after the adoption of the Truman Doctrine in 1947;

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[155] Kitsantonis, N. (2023). Constantine II, the Last King of Greece, Dies at 82. *International New York Times*, NA-NA.

[156] Ibid

[157] Ibid

[158] Ibid

[159] Ibid.

[160] Ibid.

replacing the United States of America with Britain as Greece's chief external patron and supporter. In the summer of 1949, communist guerillas would be defeated.[161]

viii. Post-Civil War Greece (1949-1967)

After the era of wars lasting for a decade, Greece was in political and economic shambles. With massive United States aid under the Marshall Plan of 1949, post-war recovery began with remarkable pace.[162] In 1950, Martial Law was lifted and civilian politics resumed. Under conservative political coalitions led by Prime Minister Konstantinos Karamanlis taking control of government in 1955 through 1963, the pace and stability of post-war economic and social recovery was ensured.[163] Greece followed a rapid period of Westernisation in this period, shown by their NATO membership 1952. The cost of this westernisation was an illiberal democracy, treating the far-left groups harshly; furthening the political divide instead of providing social and political reconciliation.

In the 1960s however, the electorate had become increasingly disillusioned by the era of repression stemming from the Civil War, combined with the compromising foreign policy in the Cyprus issue creating further distrust of the government, and sought change.[164] Aspirations for political change yielded a new government in the 1964 elections, but reforms had to be put on hold due to the still rising diplomatic crisis of Cyprus against Turkey . Furthermore, the throne had went to King Constantine II, the first applicant of the case, from his father King Paul after his demise. From then, King Constantine II and other royal family members became owners of the estates. The United States exerted an enormous influence on Greek politics in an attempt to fruther westernize the Greek state, due to the fact of the Westernisation process being slowed by the antagonistic behavior of King Constantine II toward elected governments.[165] Once again, Greece had failed to resolve differences regarding political power struggle

[161] Hatzis, A. N. (2019). A political history of modern Greece, 1821–2018. *Encyclopedia of Law and Economics. Springer, New York, NY.*

[162] Ibid.

[163] Ibid.

[164] Ibid.

[165] lbid

amongst the crown and parliament; this time excerbated by the left-right divide. Once again, an era of political turmoil would lead to a Coup d'Etat in 1967.[166]

ix. Greek Coup d'Etat & Military Dictatorship (1967-1973)

Leading figures behind the Greek Coup d'Etat of 1967 were two colonels and one brigadier general, whose dictatorship regime simply came to be called as "the junta" or "the colonels". Supporters of the coup were mostly composed of military officers of lower-class backgrounds who feared that their ranks and career advancements would be hurt by their involvement in right-wing conspiracies and political orientation; which the conspirators and officers used to legitimize the coup as an anti-communist forestalling act.[167] King Constantine II tried to stage a counter coup immediately after the colonels took reigns of government, ending in a failure and forcing him to flee the country 8 months later.[168] During the junta reign, all political activity was seized for 7 years. Worse yet, due to lack of support from politicians, the junta reign arrested all opposition.[169] The Communist party was closed in this era, but it was not only the leftist politicians resisting the new rule that got arrested, but also reluctant centralists as well. The main conspirators of the colonels regime resumed government for the entirety of the era with the proclaimed goal of ridding Greece of the moral sickness accumulated since the civil war. The junta followed an interesting mixture of populist reforms and paternalistic authoritarianism backed by extensive propaganda.[170] From their acquirement of government to the end of their reign, the junta regime kept the Greek state formally a crowned democracy and ruled thorugh the institutions of the royal regime.[171]

Due to the effectivess of the reign of terror operating by a secret police force, propaganda and widespread arrests on the Greek public, resistance to the junta regime would come from abroad. Even though some anti-junta groups kept international attention on the acts of the regime by

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[166] Kitsantonis, N. (2023). Constantine II, the Last King of Greece, Dies at 82. *International New York Times*, NA-NA.

[167] Ibid

[168] Ibid

[169] Ibid

[170] Ibid

[171] Ibid

publications; it was the Cyprus crisis that brought the end of the junta. In 1073, widespread student protests broke out amongst Greek Cypriots, further antagonizing the already deteriorating relations between and bloody conflict between Greek and Turkish Cypriots. Inspired by the protests in Cyprus, similar protests took place in mainland Greece; which the junta oppressed brutally.[172] These protests showed the junta lacked social control so much so that they resorted to using tanks to subdue the angry population . In an attempt at appeasing the public, the leader of junta declared Greece a republic in the same year . In 1974, when Prime Minister Ecevit of Turkey initiated the Cyprus Peace Operation, the junta believed that a nationalist cause would further social cohesion and called for support from bot the military and the public; the latter showing no support with the former reluctant.[173] With the reluctance of the army to help, it became evermore clear that the military junta had been losing major support from its main standing as well. After the success of the Turkish Armed Forces in Cyprus, the junta regime became more delegitimized and weaker than ever, paving way for former Prime Minister Konstantinos Karamanlis to return to Greece in 1974 to resume control of government after an 11 year self-imposed exile.[174]

In 1968, the junta regime promulgated a new constitution with the former being enacted in 1952. Article 21 of the 1968 constitution guaranteed the right of property and that nobody was to be deprived of property except in cases of public interest following the payment of full compensation which was to be determined by civil courts.[175] Nevertheless, the junta regime confiscated all movable and immovable property of the former King Constantinos II and the royal family with immediate effect from the issue date of the legislative decree. A sum for the confiscated propert was awarded with respect to ownership ratios of the royal family members bu tno part o fit was ever claimed. The 1968 constitution and the legislative decrees would be a topic of contention in regards to its legality and the legality of the regime change itself during the Third Hellenic Republic.

[172] Hatzis, A. N. (2019). A political history of modern Greece, 1821–2018. *Encyclopedia of Law and Economics. Springer, New York, NY*.

[173] lbid

[174] lbid

[175] lbid

x. Third Hellenic Republic

Prime minister Karamanlis resumed government in a coalition and used a paradigmatic way to re-establish democracy with the first step of legalizing the Communist Party.[176] Karamanlis also followed a series of structural reform to make Greece more adapted to civilian rule once again. Greece officially became a republic after the abolishment of monarchy based on the 1974 referendum and the 1975 constitution, the latter still being in force today.[177] Karamanlis undertook a pro-European foreign policy, securing an early membership to the European Economic Community in 1980 before Karamanlis' tenure as Prime Minister ended, with official membership secured 1 year after. From then on, despite several government changes with different political orientations, Greece remained a republic with aspirations to become European despite differentiating views on questions such as the recognition of Macedonia.[178]

The Third Hellenic Republic, shortly referred to as the Republic of Greece or Greece, is the respondent in this case. Therefore, its constitution, legislative decrees and agreements are a part of the merits of the case. Act 1, Article 15 of the 1975 constitution provided that the 1968 constitution and all other constitonal acts or acts of a constitutional character passed under the junta regime would be repealed. Due to this, the confiscation of the movable and immovable property priorly belonging to the former royal family became a point of contention amongst the parties. To solve this issue, pursuant to Articles 1 and 10 of the First Constitutional Act of 1974, the government issued a legislative decree which provided that the property of the former King and former royal family be administered under a seven-member committeee until the form of regime had been finally determined, which would come a year later with the 1975 constitution.[179]

In 1979, the moveable property was transferred to the former King and former royal family.[180]

In 1992, an agreement was reached amongst the two parties outlining compensations and transfers of ownership of some areas of the estates in question, which was later invalidated in

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[176] Gerolymatos, A. (2016). *An international civil war: Greece, 1943-1949*. Yale University Press.

[177] Ibid

[178] Ibid

[179] Kitsantonis, N. (2023). Constantine II, the Last King of Greece, Dies at 82. *International New York Times*, NA-NA.

[180] Ibid

1994 by legislation, after which the estates became property of the Greek state. After disputes regarding the non-registry of the former King and former royal family in the Registrate of Births, Marriages and Deaths; the applicants could not bring action to legal courts by their surname and the usage of any royalty prefix was outlawed by the constitution of 1975, even if solely to affirm identity. The Greek state issued that the former King and royal family were to unreservedly waive their claims related to holding office of their ascendt and any such other act or agreement would be automatically repealed.[181] In 1998, the case at hand was on the docket of ECtHR.

2. Facts of the Case

1. Under Law No. 599 of 17 February 1877, the Greek State transferred in full and absolute ownership to King George I of the forest known as Bafi, of approximately 15,567,000 sq. m. The applicants have produced documents that demonstrate that, while the Greek government had expressed the intention of donating the Bafi forest to King George I, the latter did not wish to acquire this land through a donation but insisted on purchasing it at a price fixed by the government. In the event, a compromise was reached, whereby the Bafi forest was expressed to be "conceded" (rather than "donated") to King George I. In return, the latter deposited GRD 60,000 with interest at the National Bank.

2. By his holograph will dated 24 July 1904, King George I made the Tatoi estate a family trust (*familia-fideicommis*) in order to serve as a permanent residence of the reigning King of the Hellenes. However, according to the then-prevailing Byzantine-Roman law, a family trust lasted only for four successions, which meant that the trust was released in the fourth successor.

3. Following the death of King George I on 5 March 1913, Tatoi devolved to his successor, King Constantinos I, and following the latter's deposition from the throne in 1917, to his second-born son, King Alexander. After the latter's death in 1920, Tatoi came back to King Constantinos I, who had in the meantime returned to the throne. After the latter's abdication in September 1922, Tatoi passed to his firstborn son, Crown Prince George II.

[181] Ibid

4. By an Act of 1 August 1974 ("the First Constitutional Act of 1974"), the government revived the 1952 Constitution, except for the provisions relating to the form of government (Article 1)

5. Article 10 of this Act provided that, until the National Assembly was reconvened, the legislative power vested in the Council of Ministers was to be exercised through legislative decrees. Article 10 § 2 provided that such legislative decrees would be capable of having retrospective effect as regards any issues arising from any Constitutional Acts after 21 April 1967. Article 15 provided that the 1968 Constitution (as amended) and all other Constitutional Acts or Acts of a constitutional character passed under the military dictatorship after 21 April 1967 were repealed.

6. Pursuant to Articles 1 and 10 of the First Constitutional Act of 1974, the government issued a legislative decree (no. 72/1974) which provided for the property of the former King and the royal family to be administered and managed by a seven-member committee until the form of regime had been finally determined.

7. The above decree was implemented by three ministerial decisions. By decision no. 18443/1509 of 1 October 1974, a seven-member committee was formed "for the purposes of managing and administering the estate of the royal family.". By decision no. 21987 of 24 October 1974, it was provided that "the handing over [of the property] of the royal family from the state to the committee" was to be made by 31 December 1974. By decision no. 25616 of 23 December 1974, it was provided that the handing over of the property of the royal family to the committee would continue until completion, before the handing over to its owners or to a person nominated by them.

8. Between 1974 and 1979, all the movable and immovable property of the former king and the royal family in Greece was administered and managed in the name of the committee established pursuant to Legislative Decree No. 72/1974 on behalf of the former king and the royal family. In 1979, the movable property was handed over to them.

9. On 17 November 1974, there were elections to the National Assembly, and the Assembly was thereafter reconvened. A referendum was held on 8 December 1974, the outcome of which was in favour of a parliamentary republic. By Resolution D18 of 18 January 1975, the National Assembly resolved and declared, *inter alia*, that democracy in Greece was never lawfully abolished.

10. The Greek government has taken over the properties of the former royal family under the 17th amendment of the 1975 constitution, with the statement that the properties should be considered as public property. Article 17 of the 1975 Greek Constitution addresses the right to property and its regulation. It establishes fundamental principles about ownership and the conditions under which property may be expropriated.

11. Article 1 of Protocol No. 1 to the ECHR protects the right to property. It states that no one shall be deprived of their possessions except in the public interest and under the conditions provided by law. However, the provision allows for restrictions on property rights if they serve the public interest and follow lawful procedures.

12. The case was brought before the European Court of Human Rights against the Hellenic Republic by the following applicants: the former King of Greece (“the first applicant”), his sister, Princess Irene (“the second applicant”), and his aunt, Princess Ekaterini (“the third applicant”).

13. After the entrance of Protocol I into force, the case was referred to the Court, in accordance with the provisions applicable prior to its entry to the Convention for the Protection of Human Rights and FundamentalFreedoms ("the Convention") 1, by the European Commission of Human Rights ("the Commission") on 30 October 1999 (Article 5 § 4 of Protocol No. 1 and formerArticles 47 and 48 of the Convention).

3. Claims of the Parties

a) Claims of the Applicant

1. The fact that individual members of the royal family had owned private property had been consistently recognised by Greek public authorities throughout the period of the so-called “crowned democracy” which had been established when the first applicant's ancestor, George I, was elected King in 1863. It had also been consistently recognised after the creation of the Republic. Such private property had always been recognised as being distinct from any property that was made available to the royal family by virtue of the constitutional status of the King, for example, the Royal Palace in Athens, which was not and had never been the private property of the royal family. As regards certain privileges which were historically afforded in

respect of their property, the applicants considered that those privileges had no bearing on the status of the royal family's private property. In any event, maintenance payments by the State some fifty years earlier had been made in recognition of the damage which had been caused to the properties during the period when they were in the possession of the State and had been neglected. As for the tax exemption, the applicants invited the Court to bear in mind that the King had paid all of the very considerable expenses incurred by him in the exercise of his official duties in his capacity as Head of State. Until 1949, the King also had to pay all the maintenance and running costs of the palaces made available to him by the State in his capacity as Head of State out of the Civil List.

2. The applicants further submitted that the fact that the royal family owned private property had been clearly recognised even during the period of the unconstitutional military dictatorship between 21 April 1967 and 24 July 1974. The 1968 Constitution included a provision (Article 134 § 3), which provided for a unique legislative measure to be enacted to expropriate or confiscate the movable and immovable property of the former King and his family. A legislative decree (no. 225/1973) had subsequently been issued by the dictatorship to confiscate the property of the royal family. These measures would have served no purpose if the royal property had always belonged to the State. After the fall of the dictatorship, a legislative decree of 1974 had recognised that the property confiscated by the dictatorship belonged to the royal family, on whose behalf it was administered by a special committee. In 1979 the movable property was handed over to the royal family. Protocols governing the handing over of immovable and movable property had been duly signed by the appropriate governmental authorities and by the special committee. The status of the property had in no way been affected by the outcome of the referendum of 8 December 1974 which had resulted in the establishment of a presidential parliamentary republic. The status of the property of the royal family had simply not been an issue in that referendum. Nor had the status of the property been affected by the enactment of the 1975 Constitution. If this had been the case, the State would not have returned the movable property to the royal family in 1979, thus recognising their rightful ownership.

3. Furthermore, the applicants stressed that from 1974 to 1996, namely even after the enactment of the 1994 Law, they had filed tax returns and paid tax in respect of the property in question. They argued that tax on the land could properly be payable by only the owner, and

the government could not have properly and in good faith have demanded and accepted the payment of such tax except on that basis.

Moreover, in 1992 the former King and the Greek State concluded an agreement, which was ratified by Law no. 2086/1992, by which large parts of the Tatoi property were transferred by the former King to the Greek State and donated to two foundations for the benefit of the public. This agreement was concluded on the basis that he was the owner of the property in question. Otherwise it would have served no purpose. That the relevant property belonged to the royal family had even been acknowledged by Law no. 2215/1994 itself, which in its preamble referred to "Settlement of matters pertaining to the expropriated *property of the deposed royal family of Greece*" (emphasis added by the applicants). Furthermore, the applicants stressed that the 1994 Law expressly mentioned the Legislative Decree
no. 225/1973 enacted by the military dictatorship, under which the property of the royal family had been confiscated. Reference to that decree was wholly inconsistent with the Government's argument that the royal family never owned any private property; if the property already belonged to the State, the latter would not have needed to rely on a prior confiscation.

4. The applicants concluded that there was no basis in Greek law for making any connection between the constitutional role of the former King and the status of his property. Greek civil law did not recognise a so-called *sui generis* concept of ownership. Article 973 of the Greek Civil Code provided an exhaustive definition of ownership rights that were recognised as a matter of Greek law. These were ownership, easements, pledge and mortgage. There was no category of quasi-public ownership.

b) Claims of the Respondent

1. The Hellenic Government's argument was that the contested estates were inextricably linked to the institution of the Head of State and therefore did not fall under the notion of "possessions" protected by Article 1 of Protocol No. 1. As a general remark they noted that a common feature all over Europe was the existence of a clear-cut distinction between public and private possessions of monarchs. Public possessions were owned by the States and at the disposal of the monarchs to use in the performance of their duties as Heads of State. The Government submitted that such properties, held under special privileges and immunities, did

not come within the concept of property or possessions protected under Article 1 of Protocol No. 1.

2. On the present case the Government submitted that the most significant special feature of the legal status of the alleged "royal property" of the Greek Crown was that it had always had a *sui generis* and quasi-public character. This was demonstrated by various facts. First, the three contested estates had not been acquired by the former royal family in accordance with the general provisions of Greek civil law, but because of the functions of the beneficiaries. A substantial part of these properties were donated to the former Greek kings by the Greek State as a sign of respect towards the royal institution. Second, whenever a succession to the throne occurred, the general rules of inheritance law did not apply. On the contrary, a special law was always enacted to avoid the ordinary order of succession and settle the relevant disputes. Third, the alleged properties enjoyed full tax exemption, including exemption from inheritance tax. Had inheritance tax been applied in each of the four successions to the Greek throne from 1913 to 1964, the relevant tax burden would have exceeded the current market value of the contested estates. Fourth, the property in question had not only been assimilated to State property for procedural purposes, for example special time hed to the monarchs' public status. No ordinary Greek citizen would ever have succeeded in legally acquiring and transferring this land.

4. Established Agenda of the Court

1. Has there at any relevant time frame been a distinctly recognized private property of the Former King and under Law no. 2215/1994, the Legislative Decree no. 225/1973 enacted by the military dictatorship and the constitutional status of the royalty?

2. Does this distinction invalidate the expropriation of the private or public property of the Royal Family under domestic law?

3. Does the property held by the Royal Family in its public or private capacity constitute 'possessions' protected by Article 1 of Protocol No 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms?

4. In this regard was the expropriation of property without payment of compensation under the Legislative Decree no. 225/1973 enacted by the military dictatorship a disproportionate interference with the applicants' right to peaceful enjoyment of property?

V. APPLICABLE LAW

1. European Convention on Human Rights

Article 1 of Protocol No. 1:

"*Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.*"

Article 14:

"*The enjoyment of the rights and freedoms set forth in the Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.*"

2. The Greek Constitution of 1975:

Article 4(1):

"*All Greeks are equal before the law*"

Article 17(1):

"*Property is protected by the State; rights deriving therefrom, however, may not be exercised contrary to public interest*."

Article 17(2):

"*No one shall be deprived of his property except in the public interest, which must be duly shown, when and as specified by law and always following full compensation corresponding to the value of the expropriated property at the time of the court hearing on the provisional*

determination of compensation. In cases in which a request for the final determination of compensation is made, the value at the time of the court hearing of the request shall be considered"

Article 17(4):

"*Compensation shall in all cases be determined by civil courts. Such compensation may also be determined provisionally by the court after hearing or summoning the beneficiary, who may be obliged, at the discretion of the court, to furnish a commensurate guarantee for collecting the compensation as provided by law*."

3. The 1992 Agreement between the Former King and the Greek State

The former King transferred an area of 200,030 sq. m. of his forest at Tatoi to the Greek State for the sum of GRD 460,000,000. The former King donated an area of 401,541.75 sq. m. of his forest at Tatoi to a foundation for the benefit of the public, namely the Universal Hippocration Medical Foundation and Research Centre. A foundation for the benefit of the public, namely the National Forest of Tatoi Foundation, was created and the former King donated an area of 37,426,000 sq. m. of his forest at Tatoi to the foundation. The former King, the royal family and the Greek State waived all legal rights in connection with and discontinued all pending legal proceedings concerning the royal family's tax liabilities. The former King and the royal family agreed to pay to the Greek State the sum of GRD 817,677,937 in respect of inheritance tax, income tax and capital taxes, together with interest and surcharges. The payment to be made by the former King would be set off against any sums due to the former King pursuant to the agreement.

4. Law no. 2215/1994 of Greece

"*Settlement of matters pertaining to the expropriated property of the deposed royal family of Greece*"

VI. CONCLUSION

The case brought before the European Court of Human Rights by the Royal Family presents a great step in terms of the human rights aspect of property law with a particular focus on the contrast between the monarchy and newly established governments. The dispute focuses on many issues regarding possession and property as well as the distinction between private and public property under relevant domestic law. In October 1973 the military dictatorship issued a legislative decree No. 225/1973, pursuant to Article 134 para. 3 of the 1968 Constitution (as amended in 1973) and this event led to the dispute that is currently before the Court. In this regard, all moveable and immovable property of the former King and Royal family was confiscated with effect from the date of publication of the decree in the Government Gazette (4 October 1973), and whereby title to the confiscated property passed to the Greek State. The judges of the European Court of Human Rights will focus on the legality, constitutionality and lawfulness of the confiscation while deciding on whether or not the act constitutes a violation of human rights protected under the Protocol 1.1 to the European Convention on Human Rights.

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