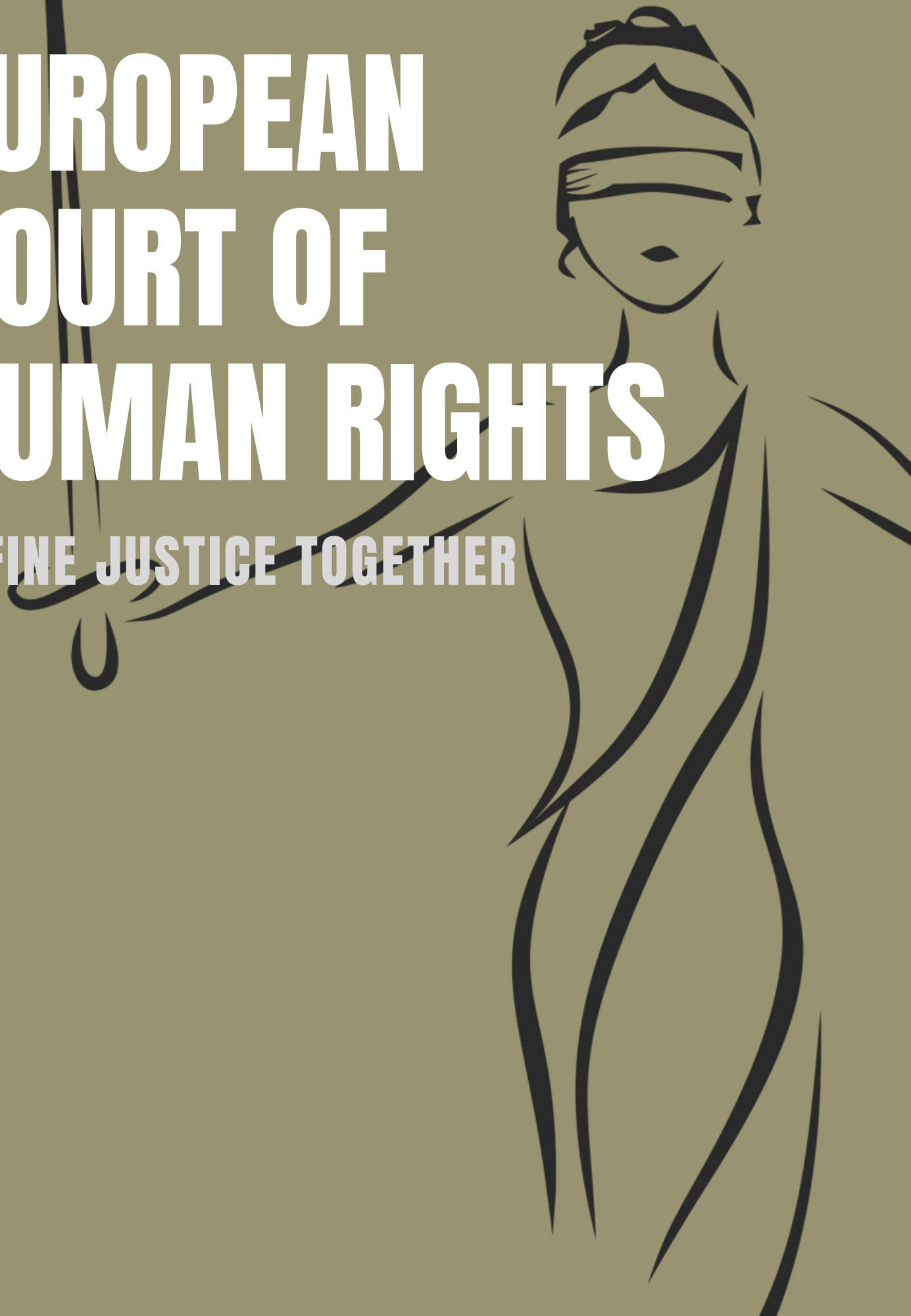


TCS'24

EUROPEAN COURT OF HUMAN RIGHTS

DEFINE JUSTICE TOGETHER



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LETTER from SECRETARY GENERAL

Dear participants, it is my privilege to introduce you to Themis Court Simulations 2024 as the Secretary General of the Conference.

This year, we are once again hosting Turkey's leading moot court conference with academic saturation as well as organizational excellence. As Themis Court Simulations, our goal is to continue this tradition and provide you with a unique and exciting experience.

This year, we are continuing a tradition with additions. Our perspective was to have courts in the most exciting, competitive, and instructive areas of law and in this context, we have prepared six interesting courts.

On behalf of the academic team who prepared these exciting courts and my Deputy Secretary General Ece Koç, I would like to welcome you all to Themis Court Simulation. Likewise, our organizing team will welcome you with their kind hospitality to make your experience as easy as possible.

I would also like to thank all my academic team in advance. I can see that I have the opportunity to work with a great group of people, so I am happy to have such a team. With their potential, this journey will be incredibly enjoyable. I would also like to thank my fellow Director General Mr. Can Deryahan and Deputy Director Generals Ms. Berfin Rabia İstek and Ms. Nur Damla Karadurmuş for their tireless organizational team.

In closing, on behalf of Themis Court Simulations, I would like to once again welcome you all to this year's event and look forward to defining justice together!

Best regards,

Kaan Ünder

Secretary General of Themis Court Simulations 24

LETTER from UNDER SECRETARY GENERAL

Distinguished participants,

I'm Meral Yıldırım, a senior law student at Ankara University. This is my third year at Themis CS, and I am pleased to welcome you all to this legendary conference where you may demonstrate your legal understanding and debate talents. The academic team of ECTHR chose a case that is currently actively contested. Ratat v Switzerland is based on the legal principles of political crimes, women's rights, the prohibition of torture, and non-refoulement. Ratat v. Switzerland is an individual application determined by the European Court of Human Rights in 2015. The issue challenged the rights of political asylum applicants. Ratat claimed he was tortured in Turkey for his actions in the Turkish Communal Party, that Switzerland breached the non-refoulement promise. Switzerland denied the entire claim, citing Rasat's threat to public order and national security. Articles 2, 3, 6, and 8 of the European Convention on Human Rights are on the table and open for your discussion!

The academic team of the European Court of Human Rights prepared this guide to help you understand the most crucial human rights violation on refugees and political groups. This guidance is expected to be read and understood by all attendees prior to the conference. Having good debate and pursuing justice requires commitment. I want to express my special thanks to our Secretary-General, Kaan ÜNDER, and Deputy Secretary-General, Ece KOÇ, for allowing me to join this excellent organisation for the third time. Thank you to the entire organising team.

When the issue comes to my academic assistants; I am proud of my academic assistants, Atanur Duman and Arda Sarıkaya, for their creative approaches to legal disputes and tireless attempts to advance the court. Finally, thank you, THEMIS, for always being there for me as a family. Wishing that these three days will be in the back of your mind forever.

Yours Sincerely,

Meral Yıldırım

LIST OF ABBREVIATIONS

CoE	Council of Europe
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
TCP	Türkiye Communal Party
SEM	The State Secretariat for Migration

I. Introduction to The European Court of Human Rights

The European Court of Human Rights, also referred to as ‘the Court’ or ‘ECtHR’ in further, was established initially in 1959, based in Strasbourg - France, is one of the most fundamental bodies of international human rights in existence. The Court is the only judicial institution of the Council of Europe which implements the European Convention on Human Rights.¹ There stands 46 judges in total for each member state of the Council, and the decisions of the Court are, *erga omnes*, potentially binding upon the member states of the Council of Europe.²

The jurisdiction of the court may be separated in three main parts: Inter-State applications, applications by individuals, and advisory opinions. Most of the applications, which have been brought before the ECtHR are Individual applications, where a private person has a concern over their human rights. Even though it is extremely rare in practice, it is still possible for a contracting state to the European Convention of Human Rights to sue another one for alleged violations of the Convention. Furthermore, the highest courts and tribunals of a State Party may request the Court to give an advisory opinion in relevance with the rights defined in the Convention or the protocols, under the Protocol No. 16.³

A. History of ECtHR

After two catastrophic World Wars and the start of the Cold War, Europe needed to form a council to put an end to the bloodshed that had resulted in thousands of deaths. Belgium, France, Luxembourg, the Netherlands, the United Kingdom, Ireland, Italy, Denmark, Norway, and Sweden formed the Council of Europe in order to meet this need.

¹ William Schabas, *The European Convention on Human Rights: A Commentary* (Oxford University Press, 2015) 1.

² "The Russian Federation is excluded from the Council of Europe" (Press release). Strasbourg: Council of Europe. 16 March 2022.

³ Rhona K. M. Smith, Christian van den Anker, *The Essentials of Human Rights* (Hodder Arnold, 2005) 115.

The Council of Europe drew up the legal text of the European Convention on Human Rights in 1950 and created the institutions responsible for monitoring human rights in Europe. The Convention serves as the legal backing for European human rights protection. States promise to act in accordance with human rights and freedoms by signing and ratifying the Convention for the Protection of Human Rights and Fundamental Freedoms, European Convention on Human Rights.⁴

On January 21, 1959, the European Court of Human Rights (ECtHR) was established as one of three mechanisms designed to ensure that states that signed up to the European Convention on Human Rights uphold their assumed obligations as a result

of articles between 19 and 51 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

The convention has been revised several times over the years as a result of experiences and shifting perspectives on human rights. These revisions are known as additional protocols, and the convention currently has 13 additional protocols.⁵

B. Sources of ECtHR

1. The European Convention on Human Rights

The European Convention on Human Rights (ECHR) is an international human rights treaty signed by the 46 member states of the Council of Europe (CoE).

Governments that have signed up to the ECHR have made a legal commitment to uphold certain standards of behaviour and to protect people's basic rights and freedoms. It is a treaty designed to protect the rule of law and promote democracy in European countries, but the convention has since spread throughout the world. It represents the minimum human rights standards to which the European States could agree to more than 50 years ago and is primarily concerned with the protection of civil and political rights, rather than economic, social, or cultural rights.

The Convention secures:

- the right to life (Article 2)
- freedom from torture (Article 3)
- freedom from slavery (Article 4)

⁴ Andreas Føllesdal, Birgit Peters, Geir Ulfstein, *Constituting Europe: The European Court of Human Rights in a National, European and Global Context* (Cambridge University Press, 2013) 1.

⁵ Weller, K., Wagner, A., Hacker, R., Harvey, P., & McCormick, P., *A Brief History Of The European Court Of Human Rights* (2018, May 09).

- the right to liberty (Article 5)
- the right to a fair trial (Article 6)
- the right not to be punished for something that wasn't against the law at the time (Article 7)
- the right to respect for family and private life (Article 8)
- freedom of thought, conscience and religion (Article 9)
- freedom of expression (Article 10)
- freedom of assembly (Article 11)
- the right to marry and start a family (Article 12)
- the right not to be discriminated against in respect of these rights (Article 14)
- the right to protection of property (Protocol 1, Article 1)
- the right to education (Protocol 1, Article 2)
- the right to participate in free elections (Protocol 1, Article 3)
- the abolition of the death penalty (Protocol 13)

2. The Protocols

Following the entry into force of the European Convention on Human Rights in 1953, some Council of Europe member states signed and ratified protocols in which they sought to protect a number of rights and freedoms, making them legally binding for themselves.

Protocol Nos. 2, 3, 5, 8, 9, 10, 11, and 14 are Protocols that amended Convention proceedings and did not include any additional rights or freedoms. These Protocols have been signed by all Contracting Parties. The remaining Protocols, and the rights and freedoms they guarantee, are as follows:

- Protocol No. 1, which entered into force on 18 May 1954: protection of property, the right to education, and the right to free elections.
- Protocol No. 4, which entered into force on 2 May 1968: prohibition of imprisonment for debt, freedom of movement, the prohibition of the expulsion of nationals, and the prohibition of collective expulsion of aliens.
- Protocol No. 6, which entered into force on 1 March 1985, provides for the abolition of the death penalty but includes a provision to allow the Contracting Parties to prescribe the death penalty in their legislation in a time of war or of imminent threat of war.
- Protocol No. 7, which entered into force on 1 November 1988: procedural safeguards relating to expulsion of aliens, the right of appeal in criminal matters, the right to compensation for wrongful conviction, the right not to be tried or punished twice for the same offence, and equality between spouses.

- Protocol No. 12, which entered into force on 1 April 2005: created a free-standing prohibition of discrimination. Unlike Article 14 of the Convention, which prohibits discrimination in the enjoyment of “the rights and freedoms outlined in the Convention”, Protocol No. 12 prohibits discrimination in the enjoyment of “any right set forth by law” and not just those rights guaranteed under the Convention.
- Protocol No. 13, which entered into force on 1 July 2003: abolished the death penalty in all circumstances. Applicants should note that the Protocols mentioned above have not been ratified by all the Contracting Parties. It follows that a complaint made under an Article of one of the Protocols against a State that has not ratified that Protocol will be declared inadmissible. The table of Dates of Entry into Force of the Convention and its Protocols reproduced in “Textbox i” above should be consulted.⁶

C. Structure

The structure of the Court is mentioned between Article 19 and 51 of the European Convention on Human Rights. According to Article 20⁷ and Article 21⁸, one judge is elected from each High Contracting Party, resulting in a total of 46 judges. The judges are selected among those who are of high moral character, less than 65 years old, and are qualified to take part in a high judicial office. Their duty ends either when they serve one term for nine years or when they reach seventy years old. The totality of the members form the Plenary Court which mostly has administrative missions and authority.

According to Article 26 of the Convention⁹, there are mainly four different formations which a case may go through once it is brought before the Court:

1. Single Judge Formation
2. Committees
3. Chambers
4. The Grand Chamber

1. Single Judge Formation

A single judge has the authority to strike an application out or declare it inadmissible when there is no further examination needed. If the single judge does not declare it

⁶ Pieter van Dijk, Godefridus J. H. Hoof, G. J. H. Van Hoof, Theory and Practise of the European Convention on Human Rights (Martinus Nijhoff Publishers, 1998) 4-5

⁷ European Convention on Human Rights, Article 20 ‘The Court shall consist of a number of judges equal to that of the High Contracting Parties.’

⁸ European Convention on Human Rights, Article 21 ‘1. The judges shall be of high moral character and must either possess the qualifications required for appointment to high judicial office or be jurisconsults of recognised competence. 2. Candidates shall be less than 65 years of age at the date by which the list of three candidates has been requested by the Parliamentary Assembly, further to Article 22. 3. The judges shall sit on the Court in their individual capacity. 4. During their term of office the judges shall not engage in any activity which is incompatible with their independence, impartiality or with the demands of a full-time office; all questions arising from the application of this paragraph shall be decided by the Court.’

⁹ European Convention on Human Rights, Article 26 ‘Single-judge formation, Committees, Chambers and Grand Chamber’

inadmissible or strike it out, the application gets forwarded to a Committee or to a Chamber for further examination. Decisions of a single judge are final.

2. Committees

A committee consists of three judges and has the authority to unanimously declare an application inadmissible or strike it out of the Court's list of cases, or declare it admissible and if the subject of the case is thorough and well- submitted, reach a conclusion on the merits of the case.

3. Chambers

A chamber is conducted by seven judges. If no conclusion has been reached by a single judge or a committee, upon the admissibility of the application, there are two possibilities depending on the type of application.

In the case of an individual application, the Chamber decides on admissibility and the merits of the application. For Inter-State applications, the Chamber decides separately unless another decision has been made by the Court, on the admissibility and merits of the application.

4. The Grand Chamber

a. General

The structure of the Grand Chamber is explained in Article 26 of the Convention. Herein states that the Grand Chamber is formed by the President of the Court, the Vice-Presidents, the Presidents of the Chambers and Elected Judges and National Judges which are selected under the rules of the Court, making it host a total number of seventeen judges. Among them, National Judges shall sit in cases concerning their country in the Grand Chamber as *ex officio* members. In addition, the Grand Chamber has at least three substitute judges.

The Grand Chamber never accepts direct applications, therefore hears only a small number of cases. These cases include the ones which are referred to it by a Chamber under Article 43¹⁰, abandoned by a Chamber when the matter involves a significant or unusual issue which must be examined further by the Grand Chamber under Article 30¹¹, or referred to it by the Committee of Ministers under Article 46¹².

¹⁰ European Convention on Human Rights, Article 43 'Referral to the Grand Chamber'

¹¹ European Convention on Human Rights, Article 30 'Relinquishment of jurisdiction to the Grand Chamber'

¹² European Convention on Human Rights, Article 46 'Binding force and execution of judgements'

Sections: Sections are administrative units appointed for three years which are aimed to mirror various legal systems and geographical backgrounds, as well as gender balance, and are established via a proposal of the President, by the plenary Court. This procedure substantiates under the Rules of Court. Presidents of the Sections shall be elected by the plenary court in accordance with Rule 8¹³. Rule 25 requires the creation of at least four sections, and Rule 25.5 allows the plenary Court to add a new section, which it has been added¹⁴. As a result, the first four sections each have nine judges, while the fifth has eleven.

b. Submitting an Individual Application to the Court

According to the rule 47 of Rules Of Court individual application shall be made as described below:

1. An application under Article 34 of the Convention shall be made on the application form provided by the Registry, unless the Court decides otherwise. It shall contain all of the information requested in the relevant parts of the application form and set out

- (a) the name, date of birth, nationality and address of the applicant and, where the applicant is a legal person, the full name, date of incorporation or registration, the official registration number (if any) and the official address;
- (b) the name, address, telephone and fax numbers and e-mail address of the representative, if any;
- (c) where the applicant is represented, the dated and original signature of the applicant on the authority section of the application form; the original signature of the representative showing that he or she has agreed to act for the applicant must also be on the authority section of the application form;
- (d) the name of the Contracting Party or Parties against which the application is made;
- (e) a concise and legible statement of the facts;
- (f) a concise and legible statement of the alleged violation(s) of the Convention and the relevant arguments; and
- (g) a concise and legible statement confirming the applicant's compliance with the admissibility criteria laid down in Article 35 § 1 of the Convention.

2. (a) All of the information referred to in paragraph 1 (e) to (g) above that is set out in the relevant part of the application form should be sufficient to enable the Court to determine the nature and scope of the application without recourse to any other document.

(b) The applicant may however supplement the information by appending to the application form further details on the facts, alleged violations of the Convention and the relevant arguments. Such information shall not exceed 20 pages.

¹³ Rules of Court, Rule 8 'Election of the President and Vice-Presidents of the Court and the Presidents and Vice-Presidents of the Sections'

¹⁴ Rules of Court, Rule 25 'Setting-up of Sections'

3.1. The application form shall be signed by the applicant or the applicant's representative and shall be accompanied by

- (a) copies of documents relating to the decisions or measures complained of, judicial or otherwise;
- (b) copies of documents and decisions showing that the applicant has complied with the exhaustion of domestic remedies requirement and the time-limit contained in Article 35 § 1 of the Convention;
- (c) where appropriate, copies of documents relating to any other procedure of international investigation or settlement;
- (d) where the applicant is a legal person as referred to in Rule 47 § 1 (a), a document or documents showing that the individual who lodged the application has the standing or authority to represent the applicant.

3.2. Documents submitted in support of the application shall be listed in order by date, numbered consecutively and be identified clearly.

4. Applicants who do not wish their identity to be disclosed to the public shall so indicate and shall submit a statement of the reasons justifying such a departure from the normal rule of public access to information in proceedings before the Court. The Court may authorise anonymity or grant it of its own motion.

5.1. Failure to comply with the requirements set out in paragraphs 1 to 3 of this Rule will result in the application not being examined by the Court, unless

- (a) the applicant has provided an adequate explanation for the failure to comply;
- (b) the application concerns a request for an interim measure;
- (c) the Court otherwise directs of its own motion or at the request of an applicant.

5.2. The Court may in any case request an applicant to provide information or documents in any form or manner which may be appropriate within a fixed time-limit.

6. (a) The date of introduction of the application for the purposes of Article 35 § 1 of the Convention shall be the date on which an application form satisfying the requirements of this Rule is sent to the Court. The date of dispatch shall be the date of the postmark.

(b) Where it finds it justified, the Court may nevertheless decide that a different date shall be considered to be the date of introduction.

7. Applicants shall keep the Court informed of any change of address and of all circumstances relevant to the application.

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¹⁵ Rules of Court, Rule 47 'Contents of an individual application'

b.1. General Principles

- Rule 34.1 declares English and French as the official languages of the Court and decisions of the Court are published in English and French¹⁶.
- Parties may be represented by a lawyer if they want. While lawyers are not required to file a complaint, they must represent the applicant at any hearing before the Court once the application is found to be admissible.
- Typically, transactions are conducted through written proceedings; public hearings are rare.
- There is no fee for submitting an application. Furthermore, the applicant may request legal aid for expenses that must be met in the following stages.
- In any stage of the procedure, the Court may strike an application out of the list if it is believed that the applicant does not hold the intention to pursue his claims, if the issue has been already solved, or if it is unjustified to further examine the application.

There are two basic steps in analysing cases submitted to the court. The first of these stages is admissibility, which determines whether the matter can be heard in court. The second stage is the major step in which the concerns are examined. The nature of the case will determine the speed and duration of the proceedings.

b.2. Proceedings on Admissibility

Following the filing of an application to the Court under Rule 46, the President of the Court assigns one of its Sections and notifies the respondent state. This is the main difference between an Inter-State and an individual application. In terms of Inter-State applications, the application is directly reviewed by a Chamber while an individual application is initially reviewed by a single judge.

The President of the assigned Section shall set up a Chamber pursuant to Rule 26 where national judges of both of the applicant and respondent party shall sit as ex officio members of the Chamber.

The contracting party will be asked to submit written observations on the issue of admissibility of the application. The information will also be communicated to the applicant state, who also may respond with a written observation. Before the decision on the admissibility of the application, the Chamber or the President of the Section may request parties to submit further written observations. If the respondent state has claims indicating inadmissibility of the application, they must include that claim in their written or oral observations.

¹⁶ Rules of Court, Rule 34 'Use of languages'

The decision of the Chamber on the admissibility of the case shall be communicated by the Registrar to the applicant, concerned Contracting Parties, or Council of Europe Commissioner for Human Rights.¹⁷

b.3 Proceedings After the Admission of an Application

Once an application made under Article 33 of the Convention is deemed admissible by the Chamber, the time limits for the preparation and filing of written observations on the merits and for presenting further evidences are set by the President of the Chamber although this procedure may be dispensed with a joined decision of both sides, and the decision of the President.

b.4 Hearings

Hearings are organised by the President of the Chamber and are typically held in public, unless there is a situation where the public order, national security, democracy of the society, interests of juveniles and morals or privacy is being threatened.

b.5 Grand Chamber Procedure

Any rule of procedure before the Chamber also applies to proceedings before the Grand Chamber. Regardless of the type of application, the Grand Chamber has appellate jurisdiction on the applications according to Article 31 of the Convention¹⁸.

There are two types for the jurisdiction of the Grand Chamber, first one is the "Chamber relinquishing its power in favour of the Grand Chamber" regulated under Rule 72¹⁹. This rule indicates that a Chamber might relinquish its power if there is an important question in the interpretation of the Convention or the protocols or if the outcome of the case is likely to be against established precedent.

The second type of jurisdiction of the Grand Chamber is called "referral". Article 43 ensures any party to be able to request the referral of the case to the Grand Chamber if there are exceptional circumstances present within a period of three months from the judgement date. A Panel of five judges examines the request and accepts it if there is an issue regarding the interpretation or application of the Convention or the Protocols or a serious issue of general importance. After the acceptance from the panel, the Grand Chamber works on a judgement regarding the referral.

¹⁷ Practical Guide on Admissibility Criteria - Council of Europe/European Court of Human Rights, 2022

¹⁸ European Convention on Human Rights, Article 31 '*Powers of the Grand Chamber - The Grand Chamber shall (a) determine applications submitted either under Article 33 or Article 34 when a Chamber has relinquished jurisdiction under Article 30 or when the case has been referred to it under Article 43; (b) decide on issues referred to the Court by the Committee of Ministers in accordance with Article 46, paragraph 4; and (c) consider requests for advisory opinions submitted under Article 47.*'

¹⁹ Rules of Court, Rule 72 '*Relinquishment of jurisdiction in favour of the Grand Chamber*'

5. Individual Applications

One of the key features of the ECtHR is its accessibility to individuals, allowing them to submit applications directly to the Court. This process is known as an individual application, and it empowers ordinary citizens to seek justice on an international level when they believe their rights have been violated by a state party to the Convention.

Individual applications can be filed by any person, group of individuals, or non-governmental organization claiming to be a victim of a human rights violation committed by one of the 47 Council of Europe member states. The types of violations that can be brought before the Court are diverse and can include issues such as freedom of expression, the right to a fair trial, protection from torture or inhuman or degrading treatment, and the right to respect for private and family life, among others.

II. Case of Ratat v Switzerland

A. Introduction To The Case

The case commenced with an appeal against the Swiss Confederation submitted to the European Court of Human Rights by a Turkish citizen, Mr. Ratat ("the applicant"), under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on October 8, 2012.



Applicant Ratat was born in Nurhak, Türkiye. In their previous lives, the applicant and his two sons were living in Nurhak, Kahramanmaraş, Türkiye. Then they applied and granted refugee status in Switzerland in 1994 due to their involvement in political activities within the Türkiye Communal Party (TCP). The applicant's wife and other children subsequently joined them in Switzerland.

In 2001, when the applicant was convicted of murdering his wife, leading to an eight-year prison sentence. During the course of the legal proceedings, the applicant was diagnosed with schizophrenia.

In 2009, the Federal Office for Migration revoked the applicant's asylum status on the grounds of his criminal conviction, leading to a decision that mandated his confinement to a psychiatric clinic for three years due to his mental condition. Expert assessments during this period indicated that the applicant would be unable to sustain himself independently.

In June 2010, the Immigration Office cancelled the applicant's residence permit and ordered him to leave Switzerland. The applicant alleged that his proposed expulsion to Turkey placed him at risk of inhuman and degrading treatment, and threatened his physical and moral integrity. He also claimed that the decision of the Federal Tribunal violated his right to a fair trial. He relied on Articles 2, 3, 6 and 8 of the Convention.

The applicant pursued unsuccessful appeals at all levels challenging the expulsion decision. In his appeal to the Federal Supreme Court, he contended that he had not received a fair hearing during the court proceedings. He argued that due consideration had not been given to the non-refoulement principle, asserting that his mental health would seriously deteriorate if he were deported to Turkey, putting his life at risk. Furthermore, he expressed concerns about potential harm from his life in Turkey due to feud and the possibility of facing torture or inhumane treatment by Turkish authorities. While Article 8 of the Convention was mentioned in the heading of his appeal to the Federal Supreme Court, he did not explicitly or substantively claim a violation of his right to respect for his private and family life.



On August 2, 2012, the Federal Supreme Court rejected the applicant's appeal, determining that he could be returned to Turkey even though he had been granted refugee status under the 1951 Refugee Convention. The court assessed that the applicant, having been convicted of a severe offense, did not demonstrate that his mental health would deteriorate to a life-threatening degree in the event of expulsion. The court also

noted the presence of psychiatric facilities in Turkey where the applicant could receive necessary treatment.

On 21 August 2012 the Migration Office of the Canton of Zurich informed the applicant that he had to leave Switzerland by 30 November 2012. On 10 December 2012 this time-limit was extended until 31 January 2013.

By decision of 2 July 2013 the District Court of Zurich prolonged the applicant's probation regarding his criminal conviction until 1 July 2016 and ordered that, owing to the applicant's need for medical treatment, he continue to receive treatment in an institution providing psychiatric care until that date.

B. Historical And Political Background

Historical and Political background also should be accepted as facts of the case.

1. Events Till Ratat Being Accepted as an Asylum by Switzerland

The year 1980 marked a tumultuous period in Turkey's history, characterized by political instability, economic turmoil, and social unrest. It was a time when the nation found itself standing at a critical crossroads, torn between opposing ideologies and factions vying for control. The culmination of these tensions led to a pivotal moment in Turkish history - the 1980 military coup, a decisive intervention by the country's armed forces to restore order and reestablish the rule of law.

The events leading up to the 1980 coup were deeply rooted in a complex web of historical, social, and political factors. Turkey had experienced numerous coup attempts and political crises in the years leading up to 1980, creating a sense of perpetual instability. Discontent simmered among various segments of the population, including left-wing and right-wing political groups, religious conservatives, and secularists, each with their vision for the future of the nation. Although the Turkish Army accomplished the coup to set national peace, the consequences created a deep scrape throughout the nation.

In the mentioned years Mr.Ratat was an active member of The Türkiye Communal Party. Türkiye Communal Party which is regarded as the primary organ of the leftist side in Turkey had great public support and organised hundreds of social actions. Through the years Ratat attended to these countless

social actions supported by the TCP. His passion and great public speaking skills have been a handful to Ratat. Following years Ratat was promoted to the role of Public Speaker at TCP. Ratat's vital role through social actions was to read out loud the manifesto of the leftist side.

The passion of the Ratat spread through his family. His sons also attributed to social actions and have been active parts of the Türkiye Communal Party. Ratat's sons were seen as the future of the political party by the higher executives.

The rising tension between the political parties beat a path to rumours of a coup. On 11 September 1980, the Turkish Military accomplished a coup to set a national peace. Ratat and his sons were arrested due to their active involvement in political actions. The assignments and the role of the Ratat family were not seen as vital as other executives. Since the prosecutor's office decided that the necessary elements to initiate the prosecution were not found, the Ratat family was released after being detained for 24 hours.

The late 80s was a normalization time for the Turkish and Ratat family. After they were detained for a short time, the political activeness of the Ratat family was reduced. Following the normalization process, the Ratat family continued their political activeness. Between the date 1990-1993, Ratat and his sons were arrested and released several times due to their political actions. The consecutive arrests and public pressure through the family and TCP led to asylum ideas in Ratat's mind.

2. Events While Ratat Completing Asylum Application by Switzerland

Ratat applied for asylum application to Switzerland at 1993 due to his and his family's political involment. Ratat also claimed that the police tortured him and his sons through their interrogation. The asylum applications of the Ratats in 1993 represented not only a personal quest for safety but also a reflection of the broader human rights concerns in Turkey during that period. These applications shed light on the challenges faced by ethnic and political minorities, as well as the importance of international protection for individuals whose political activities make them vulnerable to persecution in their home countries. Ratat was greeted as a political asylum in Switzerland in 1994. After a while, Ratat has also been able to take his family to Switzerland.

As Switzerland considered the asylum application of the Ratat family, it played a vital role in upholding the principles of asylum and refugee protection, demonstrating its commitment to providing sanctuary to families who had been forced to leave their homeland due to political involvement and persecution. The Ratat family's asylum application in 1993 underscores the enduring

importance of nations like Switzerland in upholding the principles of asylum and providing a safe life for families in need, particularly during times of political turmoil and uncertainty.

3. Ratat's Life in Switzerland Until He Killed His Wife

Following Ratat's family asylum application acceptance, Ratat and his sons continued their political accessions, especially at Canton of Zürich. Ratat's sons, who was also part of the left movement in Turkey, was appointed as the head of TCP at Canton of Zürich. The Head of a particular area or country institution is frequently used by political parties to manage their international operations and relations. The significance of the head institutions takes the vital role of the international power of political parties. The asylum period was not an ending for the son's of Ratat. Ratat's sons continued their political accessions by increasing. Ratat's sons, by being appointed as the head of Canton of Zürich been part of the decision-making.

Ratat's sons organized several meetings to arrange a leftist action march at the capital of Canton of Zürich. Action march actualized in peace. The number and the volume of the meetings increased over time. The meetings and the actions attracted the attention of the right political movements. Although few rightists provoked the actions, there was no major threat to their lives and Rita's sons reached their goals to make their voices heard through the view of public opinion. Through time provocation's volume intensified. As tensions heightened with the increasing volume of provocations, the clash of ideologies became more pronounced, leading to a polarized political atmosphere within the Canton of Zürich. Ratat's sons faced the challenge of maintaining the integrity of their leftist movement while navigating the escalating confrontations from the right-wing factions.

4. Ratat's Institutionalization and The Mental Facility Period

During the legal proceedings, a diagnosis of recurrent depressive disorder with psychotic symptoms was made, classifying it as a schizophrenic disease syndrome. Consequently, his imprisonment was deferred to facilitate treatment in a closed psychiatric facility. The District Court of Zurich decided to extend the applicant's probation related to his criminal conviction. Moreover, it mandated that, due to his medical needs, he should continue receiving treatment in a psychiatric care institution until further notice. Ultimately, Ratat was granted parole, contingent upon him remaining in a psychiatric care facility for the next three years. He

transitioned from a closed ward to an open residence facility, where he continued to receive comprehensive psychiatric care and supervision. Despite ongoing treatment, he suffered multiple relapses, requiring intermittent stays in a closed psychiatric hospital. Expert reports uniformly acknowledged his persistent inability to live independently. It was affirmed that regular consumption of psychotropic drugs and continuous therapy were essential for him. Non-compliance with this treatment plan would likely lead to relapses, characterized by hallucinations and psychotic delusions, and pose a potential threat to himself and others.

5. Switzerland's Decision To Expel the Ratat to Turkey

In June 2010, the Migration Office of the Canton of Zurich revoked the applicant's residence permit on the basis of the Federal Office's decision and ordered the applicant to leave Switzerland. The applicant appealed to all instances against the decision to expel him. In an appeal to the Federal Supreme Court he claimed that he is under the protection of non-refoulement principle. The applicant also stated that if he were deported, his mental health would be damaged on a life threatening level and he may confront torture and ill treatment by the Turkish authorities and his wife's family.

On 2 August 2012 the Federal Supreme Court refused the applicant's appeal. It ruled that the applicant could be sent back to Türkiye despite his recognition as a refugee under the 1951 Refugee Convention. It considered that he had been sentenced for a serious crime and concluded that it could not be established that, in the event of an expulsion, the applicant's mental health would deteriorate to such an extent as to become life-threatening. There were psychiatric facilities in Türkiye where the applicant could receive treatment. Switzerland, while recognizing the "non-refoulement" principle, has Domestic Law which may be applied primarily in some specific situations. According to some specific articles of the "Asylum Act of 26 June 1998" regulates the situations which "non re-foulement principle" may be ignored. On 21 August 2012 the Migration Office of the Canton of Zurich informed the applicant that he had to leave Switzerland by 30 November 2012. On 10 December 2012 this time-limit was extended until 31 January 2013. By decision of 2 July 2013 the District Court of Zurich prolonged the applicant's probation regarding his criminal conviction until 1

July 2016 and ordered that, owing to the applicant's need for medical treatment, he continue to receive treatment in an institution providing psychiatric care until that date.

6. What Happened Afterwards

Ratat claimed that Switzerland's decision to expel him was the decision to let him die due to the condition of the healthcare system in Türkiye. Furthermore, Ratat claims that his health condition is not stable and that Türkiye's political situation is stable enough to move back. Hereafter the detailed report of the Swiss government stated that there are capable psychology clinics to heal Ratat. Ratat claimed the opposite. The legal conflict between the Swiss government and Ratat moved to a public case which was followed by the European Court of Human Rights.

C. Keypoints Of The Case

a. Meaning of putting a X on doors with different aspects

Putting a 'X' on somebody's door can mean many different things. In Türkiye, there are several examples in which this concept appears, but what they have in common is their aim of targeting someone with anger and hate. You can see a few examples of events taking place below.



In 2017, Alevis were subjected to oppression in the regions where they lived. The house markings, which occurred one after the other in a few months, caused concern among Alevis.



In 2020, It was stated that a person drew a sign on his door to intimidate his uncle which killed his

sister in the province called Nurhak, Kahramanmaras.



b. Bullet

During Ratat's residence in Switzerland, Ratat and his family faced several occurrences. Ratat claimed that the occurrence is highly related to his son's political accretion. Following days of the left movement's political action which was organised by the Ratat's sons, Ratat found a bullet in front of his residence. Ratat and his sons accused the right movement for the thread.

D. As To The Law

1. Relevant Domestic Law

"Asylum Act of 26 June 1998"

Art. 5 Ban on refoulement

1. No person may be forced in any way to return to a country where their life, physical integrity or freedom are threatened on any of the grounds stated in Article 3 paragraph 1 or where they would be at risk of being forced to return to such a country.

2. The ban on refoulement may not be invoked if there are substantial grounds for the assumption that, because the person invoking it has a legally binding conviction for a particularly serious felony or misdemeanour, they represent a threat to Switzerland's security or are to be considered dangerous to the public.

Art. 5b Security duties of the migration authorities

SEM shall within the scope of its duties and responsibilities assess whether foreign nationals pose a threat to Switzerland's internal or external security or international relations. When

issuing police alerts, it shall notify fedpol. If necessary, the cantonal authorities concerned may also be notified.

Art. 65 Removal or expulsion

Refugees may be expelled only if they endanger Switzerland's internal or external security or have seriously violated public order, subject to Article 5. The removal or expulsion of refugees is governed by Article 64 FNIA in conjunction with Article 63 paragraph 1 letter b and Article 68 FNIA. Article 5 is reserved.

Art. 6a Competent authority

1. SEM decides on granting or refusing to grant asylum as well as on removal from Switzerland.
2. The Federal Council shall identify states in addition to the EU/EFTA states in which on the basis of its findings:
 - a. there is protection against persecution, as a safe native country or country of origin;
 - b. there is efficient protection against refoulement as defined in Article 5 paragraph 1, as a safe third country.
3. It shall periodically review decisions made in terms of paragraph 2.
4. It shall provide the competent committees of the Federal Assembly with the list of states in accordance with paragraph 2 letter a for consultation prior to any amendment and at least once each year.

2. Applicable Law

European Convention On Human Rights

- **Article 2 of European Convention on Human Rights: Right to Life**

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:

(a) in defence of any person from unlawful violence;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) in action lawfully taken for the purpose of quelling a riot or insurrection.

- **Article 3 of European Convention on Human Rights: Prohibition of torture**

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

- **Article 6 of European Convention on Human Rights: Right to Fair Trial**

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

- **Article 8 of European Convention on Human Rights: Right to respect for private and family life**

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

- **Article 34 of European Convention on Human Rights: Individual Application**

"The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."

- **1951 Convention Relating to the Status of Refugees**

- **Article 5 Rights granted apart from this Convention**

Nothing in this Convention shall be deemed to impair any rights and benefits granted by a Contracting State to refugees apart from this Convention.

- **Article 33 Prohibition of expulsion or return ("refoulement")**

1. No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country.

- **United Nations (1975) Declaration on the protection of all persons from being subjected to torture and other cruel, inhuman or degrading treatment or punishment**

Article 1

1. For the purpose of this Declaration, torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed or is suspected of having committed, or intimidating him or other persons. It does not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions to the extent consistent with the Standard Minimum Rules for the Treatment of Prisoners.
2. Torture constitutes an aggravated and deliberate form of cruel, inhuman or degrading treatment or punishment.

- **International Covenant on Civil and Political Rights (1966)**

Article 13

“An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.”

- **1951 Geneva Convention Relating to the Status of Refugees**

Switzerland has ratified the 1951 Refugee Convention, which defines the situations in which a State must grant refugee status to persons who apply for it, and the rights and responsibilities of those persons. Articles 1, 32 and 33 of the 1951 Refugee Convention provide:

Article 1

“... For the purposes of the present Convention, the term ‘refugee’ shall apply to any person who ... owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”

Article 32

“1. The Contracting States shall not expel a refugee lawfully in their territory save on grounds of national security or public order.

2. The expulsion of such a refugee shall be only in pursuance of a decision reached in accordance with due process of law. Except where compelling reasons of national security otherwise require, the refugee shall be allowed to submit evidence to clear himself, and to appeal to and be represented for the purpose before competent authority or a person or persons specially designated by the competent authority.

3. (...).”

Article 33

“1. No Contracting State shall expel or return (‘refouler’) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country.”

- **1967 Protocol Relating to the Status of Refugees**

*“The Convention does not however apply to all persons who might otherwise satisfy the definition of a refugee in Article 1. In particular, the Convention does not apply to those for whom there are serious reasons for considering that they have committed war crimes or crimes against humanity, **serious non-political crimes**, or are guilty of acts contrary to the purposes and principles of the United Nations.”*

E. Merits of The Case

- Would a right-wing authoritarian regime convey a real risk of ill-treatment for left-wing supporters?
- Should crimes against women be treated as serious in today's sociopolitical climate?
- Is there any time limit on vested rights?
- What are the limits of serious crimes in international law?
- Can the goal of maintaining public order and social structure be an exception to non-refoulement?
- Can United Nations principles on women's rights be used to justify not applying the Refugee Convention to mentally ill individuals?
- Are blood feuds recognized as a life-threatening situation in international law?

Further Readings

[LALIVE - The Doctrine of Acquired Rights](#)

[Non-refoulement principle in the 1951 refugee convention and human rights law](#)

[The principle of non-refoulement under international human rights law](#)

[UNHCR Note on the Principle of Non-Refoulement - Part F](#)

Exceptions to the principle of *non-refoulement*

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