



Linguistics  
Linguistique



# HANDBOOK

English for Human Rights EU Law



With financial support from the  
Justice Programme of the European Union

### **Copyright Note**

This Handbook has been compiled solely for educational purposes.

All the texts and materials included in this Handbook, except where otherwise stated, are the exclusive Property of the European Judicial Training Network (EJTN) .

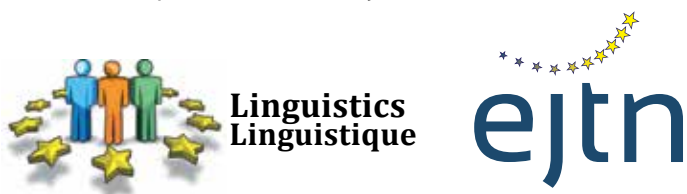
Absolutely no reproduction of the contents of this Handbook, in whole or in part, may be made without the express written permission of EJTN.

Extracts of the Handbook may be reviewed, reproduced or translated for private study only. This excludes sale or any other use in conjunction with a commercial purpose. Any public legal use or reference to the Handbook should be accompanied by an acknowledgment of EJTN as the source and by a mention of the author of the text referred to.

### **Disclaimer**

The contents and views expressed herein reflect only those of EJTN and the European Commission is not responsible for any use that may be made of these contents and views.

European Judicial Training Network  
Réseau européen de formation judiciaire



With financial support from the  
Justice Programme of the European Union

ISBN-NUMBER: 9789082810615

EAN: 9789082810615

## Foreword of the EJTN's Secretary General

Mastering a foreign language and its legal terminology should form an inevitable part of the training of judges and prosecutors. Knowledge of a foreign legal language is key to participation in cross-border activities and to smooth cross-border judicial proceedings and cooperation.\*

The European Judicial Training Network (EJTN) has devoted particular attention to designing and implementing linguistic training activities for members of the judiciary of EU Member States. EU judges and prosecutors benefit from the EJTN's high-quality training programmes, supported by the European Commission.

EJTN courses aim to develop participants' legal and linguistics skills by combining legal knowledge and language exercises in a practical and dynamic way. This includes highly acclaimed linguistic training on the vocabulary of judicial cooperation in criminal/civil matters, human rights, family law, competition law and cybercrime.

This Handbook is a 1st edition compiling the most relevant training materials used in EJTN linguistic courses in human rights. It is addressed not only to participants, but also to all judges and public prosecutors interested in developing their linguistic skills. Definitions, exercises and examinations of real cases make the Handbook an invaluable, hands-on resource for any judge, prosecutor or trainer involved within linguistics endeavours.

On behalf of the EJTN, I would like to express my sincere gratitude to the authors of the texts and exercises in the Handbook for their dedicated work. I wish also to express appreciation to the EJTN Project Coordinator, Ms. Carmen Domuta, for her dedication in executing the EJTN linguistic activities, as well as members of the EJTN Linguistic Sub-working Group, chaired by Ms. Renata Vystrčilová from the Czech Judicial Academy, which supervises all EJTN linguistic activities.

Enjoy using this Handbook.

**Wojciech Postulski**  
EJTN Secretary General

\* European Commission – Roadmap, European Judicial Training Strategy 2019-2025, Ref. Ares(2017)5432247 - 08/11/2017

## List of authors and coordinator

CAMPOS PARDILLOS, MIGUEL ÁNGEL

Lecturer and Researcher in Legal English and Translation, Department of English. University of Alicante

CONSTANTINESCU, ROXANA

University English assistant, National School of Political and Administrative Studies, Bucharest, Legal English Trainer, National Institute of Magistracy, Bucharest

ERBEZNIK, ANZE

Administrator in the European Parliament

FERRARA, CALOGERO

Deputy Prosecutor - Special Antimafia District Department - Office of the Prosecutor - Palermo (*Procura della Repubblica di Palermo*). Member of Specialized Department against Terrorism, and Trafficking and Smuggling of Human Beings

JANNELLI, LORENZO

Judge of Preliminary Hearing and Preliminary Investigations - Court of Palermo, Italy

MAZUR, DARIUSZ

Chief of the Third Criminal Division of Regional Court in Kraków, and Judge Coordinator for international cooperation in criminal matters for Kraków region. Expert lecturer for the Polish National School of Judiciary and Public Prosecutors.

PETRALIKOVA, DENISA

Linguist and methodology consultant with Judicial Academy of the Slovak Republic; legal English lecturer at Czech Constitutional Court

SAMANIEGO FERNÁNDEZ, EVA

Lecturer in Legal English and Translation, Departamento de Filologías Extranjeras, UNED, Spain. Sworn legal translator. Teacher of Legal English for the Spanish Council of the Judiciary, ERA and EJM/Eurojust.

WALBAUM ROBINSON, ISABEL ALICE

Lecturer in Legal Linguistics, Department of Law, University of Rome Three (Università degli Studi, Roma Tre). Teacher of Legal English for the Italian National School of the Judiciary.

EDITOR: CAMPOS PARDILLOS, MIGUEL ÁNGEL

COORDINATOR

DOMUTA, CARMEN, Senior Project Manager, Head of Programmes Unit, European Judicial Training Network

## Table of contents:

**Unit 1.** Introduction to Legal English and Human Rights English | 6

**Unit 2.** Human rights; concepts and definitions, European Union and Council of Europe instruments | 24

**Unit 3.** Right to a fair trial in the ECHR and in the EU Charter of Fundamental Rights. Basic concepts. | 43

**Unit 4.** Conflicting rights: freedom of expression, private life, freedom of religion. Internet. Hate speech. | 54

**Unit 5.** Current challenges of immigration and asylum. Scope of protection provided by EU law and ECHR. | 67

**Answer Key** | 85

**Glossary** | 94

**Bibliography** | 102

# UNIT 1

## INTRODUCTION TO LEGAL ENGLISH AND HUMAN RIGHTS ENGLISH

### A. Legal English

#### I. What is Legal English?

In this chapter, we shall give a brief description of the distinctive features of Legal English, which can be divided into two categories: those having to do with legal vocabulary, and those having to do with syntax.

#### 1. Legal vocabulary

Legal vocabulary may be classified into three types:

- a) technical terminology, i.e. words specifically belonging to legal contexts (“distrain”, “litigation”, “indemnity”, “condonation”, “alimony”, “collusion”);
- b) terms whose meaning in legal contexts differs from the one they possess in general language, also called “subtechnical” or “semitechnical terms” (e.g. “action” meaning “suit” or “proceedings”, “service” meaning “notification”, “hand” meaning “signature”, etc.
- c) general terms that are used in legal contexts, such as “theft”, “witness”, “judge”, etc.

Some of the technical words and/or expressions come from other languages, either in their original form or adapted into English pronunciation, spelling or structure. These can be Latinisms, either in their original form (*prima facie*, *bona fide*), adapted into English (“abscond”, “insolvent”) or direct translations from Latin expressions (e.g. “law merchant”, from *lex mercatoria*), “last will” (*ultima voluntas*), “burden of proof” (*onus probandi*). Also, there are words of French origin, some of which have been imported directly, such as “fait accompli”, “force majeure”, etc., whereas others have been translated directly, such as “under pain of” (*sous peine de*), or “plead guilty” (*plaider coupable*), and yet others have been adapted (such as “salvage”, “towage”, “anchorage” or “demurrage”).

In general, the vocabulary of Legal English is characterized by a great degree of formality. This is partly brought about by a high frequency of terms of Greek or Latin origin, but also by some specific features, namely:

- a) archaisms and formal expressions: “whilst”, “showeth”, “witnesseth”, etc.;
- b) complex prepositions: “by virtue of” (instead of “by”), “in the event of” (instead of “if”), “in pursuance of” (instead of “under” or “according to”), “having regard to” (instead of “considering”) etc.;

- c) binomial or multinomial expressions, i.e. combinations of two or more elements with a similar meaning, such as “act or omission”, “advice and consent”, “under or in accordance with”, “rest, residue and remainder” or “give, devise and bequeath”; compound prepositions and adverbs, such as “herein” (meaning “in this document” or “mentioned here”), “hereby” (“by this document”) or “thereafter” (“after that, in the future”);
- d) choice of words pertaining to a higher register, e.g. “append” (instead of “attach”), “deem” (“consider”), “expedite” (“hasten”) or “initiate/commence” (“begin, start”);
- e) nominalization, i.e. the use of nouns instead of verbs, sometimes through the conversion of verbs into nouns (“to study” – “a study”) or through derivation (by adding a suffix like “-ism”, “-tion”, “-ure”, amongst others);
- f) post-modification, which is a result of nominalization, whereby a number of elements follow the noun for greater accuracy or in order to avoid ambiguity, as in “on the payment to the Owner of the total amount of any instalments then remaining unpaid of the rent hereinbefore reserved and agreed to be paid and the further sum of ten shillings (...)”.

## 2. Legal syntax

There are also some specific features characterizing English syntax and sentence structure, which include the following:

- a) lexical repetition as a reference mechanism; instead of “it”, “this” or any other pronoun, legal English prefers to use specific words like “the aforesaid” or “the aforementioned”, or simply to repeat words, e.g. “The SEC has reinforced the insider trading restrictions with promulgation of Rule 14e-3 of the SEC, an independent provision prohibiting insider trading in connection with tender offers. Congress has further reinforced these trading restrictions by providing the SEC with the power to seek a treble penalty under the Insider Trading Sanctions Act of 1984 (ITSA). This legislation empowers the SEC to base enforcement actions on any recognized theory of insider trading restriction”;
- b) long and complex sentences, with multiple levels of subordination which are very seldom found in general English: “It will be your duty, when the case is submitted to you, to determine from the evidence admitted for your consideration, applying thereto the rules of law contained in the instructions given by the court, whether or not the defendant is guilty of the offense as charged”);
- c) frequent use of the passive, in order to emphasize the result of actions rather than the agents (e.g. “The case was clear authority for the proposition that regard must be had to the particular circumstances in which the rent payments were made”);
- d) use of connectors such as “whereas”, “provided that”, “where” (e.g. “Where the lack of supervision or control by a natural person referred to in paragraph 1 has made possible the commission of the criminal offences”);
- e) omission of the relative pronoun and the appropriate form of the verb “to be” (“all the rights and remedies [which are] available to a secured party”);
- f) a tendency to avoid the negative particle “not”, for instance, through the use of “never”, “unless”, “except”, “fail to” or negative prefixes, such as “un-”;
- g) use of prepositions which are separated from their complements, as in “tracing and identification of proceeds from, or other property related to, crime” or “illicit manufacturing of and trafficking in firearms”;

- h) use of the subjunctive, which is very seldom used in everyday language except for some fixed expressions. In legal English, the subjunctive is used after verbs like “ask”, “advise”, “command”, or “recommend” (e.g. “Even though someone may be eligible for an informal hearing, we will recommend that he attend a formal hearing”), after adjectives like “important”, “essential”, “advisable” or “crucial” (e.g. “But even though he is no model of courtroom decorum, it is crucial that he be granted the opportunity to present his positions to the court”), after some nouns (“There is also the recommendation that the Council meet every week” or “There is the necessity that funding be found urgently”);
- i) use of conditional sentences with inversion, as in “Each Party may provide that the only prerequisite is that the conduct would have constituted a predicate offence had it occurred domestically” or “The Court approached the EU law claim on the basis that EU Treaty principles would provide a basis for the claim as long as the contract was one which would have been subject to one or other Directive had it not been a concession”.

## B. EU Legal English

In this section, we shall give a brief description of the distinctive features of EU Legal English (also referred to as EU Law English), by examining the vocabulary and syntax of the *acquis communautaire*.<sup>1</sup>

### A. Legal vocabulary

EU Law vocabulary may also be classified into three distinct types:

- a) *single, binomial and multi-word phrases* used in EU primary and secondary legislation, many of which are specifically defined: “appellate”, “applicant”, “assessor”, “asylum seeker”, “court of origin”, “creditor”, “debtor”, “free movement of persons/judgments/data”, “holder of parental responsibility”, “maintenance obligations/recovery”, “Member State of enforcement/of origin”, “recovery”, “rights of access”, “rights of custody”, “third state”, “wrongful removal or retention”;
- b) *semi-technical terms* or words whose denotation in legal contexts is unique or different from the meanings conveyed in general purpose language, such as: “access” meaning “right to take a minor to a location other than his/her habitual residence for a limited time period”; “accession” meaning “entering/joining the EU as Member State”; “actor” meaning “party”; “contempt” meaning “manifest disrespect of authority in a court of law”; “decision” meaning “order, judgment”; “default of appearance” meaning a “procedural term to refer to lack of appearance in court”; “enhanced cooperation” meaning “procedure by which Member States (minimum 9) can work together in specific areas of EU law (e.g. asylum, family reunification, housing) for the purpose of efficiency and expeditious performance”; “high contracting parties” meaning “signatories to a treaty as state representatives”; “infringement of rights” meaning “violation of fundamental human rights against a person seeking asylum”; “service” meaning “document transmission or notification”;
- c) *shared legal terminology* by both Legal English and EU human rights law English, such as “abet”, “act”, “abduction” (usually in reference to children), “abrogation”, “abscond”, “adjudicate”, “admissibility”, “advocacy”, “alimony”, “beneficiary”, “burden of proof”, “claim”, “claimant”;

<sup>1</sup> This analysis of EU language, written by Isabel Alice Walbaum Robinson, was carried out with WordSmith Tools, Version 7.0.



“consent”, “defendant”, “defamation”, “delict”, “enforce”, “inadmissibility”, “inalienable”, “indemnity”, “insolvency”, “instalment”, “judge”, “jurisdiction”, “legal aid”, “liquidator”, “litigant”, “parental responsibility”, “tort”, “winding up”, “plaintiff”, “pleadings”, “revocation”, “signatories”, “uphold”, “verdict”.

EU legal English also includes technical words and/or expressions from other languages. These can be direct borrowings in their original form and denotation or adaptations into EU law English with changes in pronunciation, spelling or form. Examples include:

- a) *Latin-based terms in their original form* such as: “*actus reus*” meaning “guilty/criminal act carried out by an individual(s) which, if proven, constitutes a criminal liability”; “*ad litem*” meaning “temporary appointment for the duration of an action”; “*conditio sine qua non*” meaning “a covenant/stipulation without which the event may not take place”; “*forum conveniens*” meaning “the most appropriate court for the resolution of a dispute”; “*forum necessitatis*” meaning “rule which ensures that where no court of a Member State has jurisdiction, the courts of a Member State may exceptionally hear the case if proceedings cannot reasonably be brought in a third State with which the dispute is closely connected”; “*lex loci delicti commissi*” meaning “the locus or place where a tort, offence or injury has been committed”; “*lis pendens*” as in “pending suit or notice of pending suit, where any other court other than the court first seised shall stay the proceedings until jurisdiction of the first court is established”; “*mens rea*” as in “culpable mind”, “the act of killing with premeditation”; “*mutatis mutandi*” meaning “change where change is needed”; “*negotiorum gestio*” as in “carrying out business on behalf of another”; “*nemo tenetur se ipsum accusare*” meaning “nobody is expected to accuse him/herself”; “*prima facie refugee*” meaning a person recognised by a State or UNHCR as a refugee on the basis of objective criteria related to the circumstances in the person’s country of origin which justifies the presumption that he/she meet the criteria of refugee status applicability”; “*pro tanto*” meaning “only up to a given extent”; “*ratione materiae*” meaning “determination of competence based on the subject of controversy”; “*ratione personae*” meaning “immunity given to a person not for the act(s) committed but for the qualities of the delinquent person such as official rank or other”; “*res judicata*” or “matter that has been judged and hence is not subject to appeal”; “*status quo ante*” meaning “in the previous situation”;
- b) *Integrated Latin origin terms with different meaning in regards to general purpose language*, as in (i.) “allege” meaning “to affirm” or to assert” (Latin *ex + litigāre*, “to clear at law”); “assessor” meaning a person of competence to act as legal assistant to magistrate or judge” (Latin *assidere*, “to sit next to”; “institute” meaning “established law” (Latin *institutus*, “to set up”); “petition” meaning “right to formulate a request” (Latin *petitionem*, “a search in law”, “a claim”); “prescription” meaning “time limitation beyond which a debt or crime is no longer enforceable” (Latin *praescribere*, “to order”); (ii.) words beginning with the Latin prefix “re” meaning “back to the original place; again, anew, once more” as in: “requisition” meaning “formal inter-governmental request to return a criminal or fugitive” (Latin *requisitionem*, “requirement”); “remand” meaning “to send a case to a lower court with instructions for revision”, “to send back to custody” (Latin *remandāre*, “to send word back”);
- c) *integrated Latin origin terms and phrases with the same meaning but unusual or specific use*: “acquiesce” meaning to consent or comply passively, without protesting” (Latin *acquiescere*, “to rest/to remain quiet”); “cognisance” meaning (Old French *conoissance*, “to know”), from (Latin *cognōscere*, “to learn”); “counterveil” meaning “counteract”, “compensate” (Old French *countre*, “to oppose”+ *valoir* “value”, from Latin *valere*, “to be strong”); “enter into force” meaning “becoming effective as law” (Latin *vigēre*, “to exist”, “to have life”); “impecunious”;

meaning “without money or wealth” (Latin *pecūniōsus*, “possessing no money”); “impugn” meaning “to challenge as false or questionable (Latin *impugnāre*, “to oppose”); “insalubrious” meaning “not good for one’s health” (Latin *insalubris*, “unwholesome”); “inviolable” meaning “a value (e.g. human rights) that is not to be violated” (Latin *inviolābilis*, “that cannot suffer violation”); “ratify” meaning “confirm, approve” (Old French *ratifier*; from Latin *ratificāre*, “to fix”, “to reckon”); “ratiocination” meaning “the process of methodic reasoning” (Latin *ratiocinationem*, “act or process of reasoning, calculating”); “recur” meaning “occur, show up, carry out repeatedly” as in “recurring criminal action” (Latin *recurrere*, “to run”, “to repeat”); “re-trafficked” meaning “human trafficking of an individual carried out more than once” (Vulgar Latin *transfricare*, “to rub + across”);

- d) *integrated into English from other languages*. From Old, Middle or Anglo-French: “apprise” meaning “to inform, to notify” (French *apprendre*; Old French *aprendre*, “to learn”); “arrears” meaning “to be behind in the fulfilment of an obligation” (French *arriere*, “behind”, “backward”); “durable” meaning “permanent”, “lasting” (Old French *durable*); “injury” meaning “violation of a person’s rights” (Anglo-French *injurie*, “wrongful action”); “tort” meaning “damage carried out negligently” (Old French: *tort*, “fault”); “parole” meaning “release of prisoner before the term sentenced with condition of good behaviour” (French *promise*, “pledge”); “seconded” meaning “assisted” as in “staff seconded from national diplomatic services of the Member States” (Middle French *seconder*, “to aid”, “to assist”). From Greek: “xenophobia” meaning “rejection or fear of foreign persons” (Greek *xeno*, “foreign” + *phobos*, “fear”);
- e) *borrowed from other languages*. Directly or indirectly from French: “acquis communautaire” meaning “body of European Union law”; “*force majeure*” meaning “exceptional event/situation”, “non-refoulement” meaning “having entitlement to conditions of non-expulsion from a sovereign state”; “ordre public” meaning “public order”; “renvoi” meaning “to send back”. From German (through French): “warrant” meaning “to safeguard”, “to protect” (Old French *garantir*, from Germanic “*waren*”, “to protect”, “to warn”). From Old Norse: “ombudsman” meaning “person who investigates violations of citizens’ rights regarding the public sector”.

For the most part, the vocabulary of EU law English compared to Legal English is characterized by a slightly lower level of formality. This is partly due to the restricted use of borrowings from Latin and the mindful selection of words of those who, in a multi-cultural, multi-lingual context such as the EU, have the remit of drafting and translating legislative products (primary law: treaties; secondary law: recommendations, decisions, directives) from 3 working languages (English, French, German) into 24 EU ‘official’ languages, 6 ‘semi-official’ languages (Catalan, Galician, Basque, Scottish Gaelic, Welsh), and, where necessary, into 7 ‘main EU immigrant’ languages(s) (Arabic, Berber, Chinese, Hindustani, Russian, Turkish, Urdu).

As a discipline-based technical language, EU law English vocabulary shares linguistic conventions of Legal English, often with its own peculiar choice of vocabulary, such as:

- a) *formal, age-worn expressions* that have resisted the passage of time: “by way of derogation from”, “subject to the provisions of”, “where necessary and in so far as possible”, “nothing in this Title shall preclude”, “the competent administrative authorities within the meaning of”, “no reservations may be entered in respect of this Convention”; “seeing to it that”; “with a view to reconciling the positions”;
- b) *formulaic* conventions that signal the different ‘structural’ components of EU acts: (i.) “whereas”, “acting in accordance with”, “in view of”, “having regard to”, used to introduce the Preamble section of EU regulations; (ii.) citations used in the introductory section of EU legal documents to indicate the legal grounds for the act, such as: “Having regard to”, “Acting in

consideration of”; (iii.) expressions to signal precedent/previous acts: “incumbent upon” as in “responsibilities incumbent upon it in external relations”; (iv.) conventions to indicate the closing or enacting formula: “Has/Have adopted this Regulation /Directive/Decision”; (v.) expressions to refer to the final article stating the specific time of entry into force: “It shall apply from [...]”; and (vi.) to indicate its scope and legal grounds: “This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties”;

- c) *higher register word replacement*: “affordances” (“resources tapped once recognized as such”); “alien” (instead of “foreign”), “arrears” (“balance due”), “commence” (“start”), “convene” (“gather”), “foster” (“promote”), “jurisdiction” (“competence”), “justiciability” (“ability to provide justice”); “deprivation” (“removal” of liberty), “redress” (“reparation”); “seise” (“court where proceedings are brought”), “writ” (“legal document or instrument”); “incrimination” (“show/prove involvement in a crime”); “indemnification” (“protection from danger or damage”); “indissociable” (“not separable”); “inducement” (“an issue or matter presented to support legal allegations as plea or defence”); “ineffectualness” (“futility”); “inextricability” (“impossibility of disentanglement”); “inimical” (“hostile”, “behaving as an enemy”); “instrumentalities” (“devices, instruments, artefacts”); “invocation” (“legal enforcement”) ; “liability” (“debt of a pecuniary nature”); “liquidation” (“settlement of debt by discharge of indebtedness”);
- d) *nominalization*, i.e. the process of word formation by way of conversion from verb or adjective to noun: (i.) with no change of form: “to remedy” and “remedy”; “to stay” as in, “to stay the proceedings”, and “a stay” as in, “a stay necessary for the proper administration of justice”; (ii.) with change of form, i.e., by derivation, e.g., adding a suffix such as “ability” to a verb (“to enforce” and “enforceability”), “-ance”, (“to order” and “ordinance”; “to afford” and “affordances”), “-ion” (“accessible” and “accession”), “ment” (“to entrap” and “entrapment”; “to reinstate” and “reinstatement”), “-ure” (“to proceed” and “procedure”), “-y” (“to warrant” and “warranty”);
- e) *adjectives not commonly used in general English*: “irrevocable” (“that cannot be annulled”); “irredeemable” (“that cannot be restored”); “onerous” (“costly”); “ostensible” (“that can be shown or viewed”); “pernicious” (“capable of causing death”); “precautionary” (“measure taken to safeguard against harm”); “rogatory” (“request for information from one court to another, frequently a foreign court”, e.g., “a letter rogatory”);
- f) *multiword prepositional phrases*: “in accordance with” (“based on”), “in consideration of” (“considering”), “pursuant to” (“under”), “with the purpose of” (“with the objective of”); “without prejudice to” (“without changing”), “until such time as” (“up to the specific time”);
- g) *compounds*: “notwithstanding” (“in spite of”); ongoing (“presently taking place”); “outlaw” (“lawbreaker”), “overcrowding” (“full beyond tolerable levels”), overlap (“sharing an area or range”), “override” (“to declare null and void”, “to ride over”), “overrule” (“decision to rule against something”), “overstayer” (“person who stays beyond the agreed/permitted time”), “overturn” (“to invalidate, to reverse”), “withhold” (“refrain from providing/granting”); “withdraw” (retract, remove”);
- h) *here-/there- English adverbs*. For stylistic purposes, the full array of here-/there- adverbs is less frequently used in EU acts, with some exceptions: “hereby” as in “Framework Decision 2002/629/JHA on combating trafficking in human beings is hereby replaced in relation to Member States participating in the adoption of this Directive [...]” meaning “by virtue of”; “hereinafter” as in “*The agreement relating to the accession of the Union to the European*

*Convention on the Protection of Human Rights and Fundamental Freedoms*, hereinafter referred to as the 'European Convention', provided for in Article 6(2) of the Treaty on European Union [...] meaning "from this point in the text forward"; "thereafter" used in expressions such as "Thereafter, the adequacy or otherwise of the authorities' response [...] can be considered." meaning "from that point on"; "thereby" as in "The State had thereby discharged its obligations under Article 6 of the Convention to ensure effective access to a court by acceding to the applicant's request for legal aid." meaning "in connection with"; "therefore" as in "This Regulation should therefore provide" meaning "for this reason"; "therein" as in "including any right indicated therein" meaning "somewhere in the document cited"; "thereof" as in "An appeal against the declaration [...] is to be lodged within one month of service thereof" meaning "from the time of the cited item"; "thereon" as in "to request the Court to give a ruling thereon", meaning "on or upon that matter"; and, "thereto" as in "This Regulation shall not preclude the application of the Convention of 23 March 1962 between [...] on the recovery of maintenance by the Member States which are party thereto" meaning "actors or parties included".

## B. Legal syntax

Some specific features characterizing EU law English syntax and sentence structure, are:

- a) complex sentences containing subordination and embedding, often in EU law recitals such as the 99-word (numbers excluded) example below:
 

"This Directive adopts an integrated, holistic, and human rights approach to the fight against trafficking in human beings and when implementing it, Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities and Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals should be taken into consideration."
- b) *use of connectives to link sentences* including the three central ones, "and", "but", "or" as well as "according to", "as regards", "as against", "for the purposes of", "in consideration of", "pursuant to", "subject to", "where", "where by virtue of", "within the meaning of", "without prejudice to" as in: "This Directive is without prejudice to the principle of non-refoulement in accordance with the 1951 Convention relating to the Status of Refugees (Geneva Convention) [...]";
- c) *verb tenses such as the present simple, present perfect, present continuous and past simple*. The present simple is used for events occurring "now, regularly": "This Directive adopts a broader concept of [...] trafficking in human beings than under Framework Decision 2002/629/JHA"; the present perfect is used to express past events "with results in the present", as in "This Directive applies from the time the offender is made aware by the competent authorities of being a suspect [...] to the final determination that he has committed the act"; the past perfect is used to express an activity that was completed before another activity took place in past time as in "On the same day, they recorded an interview with V. in which he explained that S. had persuaded him to make false statements against the applicant"; the present continuous is used to express an event happening "now, in this moment" as in: "The asylum seeker is claiming the right to receive the necessary information from the competent authorities". If the action is finished, the past simple is used as in "The asylum seeker received

the information needed to request a further extension of his right to stay in the Member State of residence”;

- d) *use of the passive form of the verb* to highlight the result of an action rather than the agent(s). The present passive as in “Rules on material and formal validity should be defined so that the informed choice of the individuals concerned is facilitated”; the past passive as in “The application was allocated to the First Section of the Court; the past perfect passive is likewise used to express an action taking place in the past before another past action, with a focus on the ‘action’ rather than the ‘actor’ as in “The appeal court considered the applicant’s detention lawful and necessary until the applicant’s immunity had been confirmed”;
- e) *auxiliary/main verb separation*. Frequent in legal English documents, but used with reserve in EU and international legal instruments with a wide, multicultural, multilingual readership for its added syntactic complexity. Example: “The transferring Member State shall, in so far as it is available to the competent authority in accordance with national law, *transmit* to the Member State responsible information on any special needs of the person to be transferred”;
- f) *verbs of enacting*. These are of two types: (i.) verbs used in EU primary and secondary legislation to denote “obligation” or “command” as the modal verb *shall* for “positive command” and *shall not* for “negative command” as in (e.g. “Member States shall take the necessary measures to ensure that inciting, aiding and abetting or attempting to commit an offence [...] is punishable.”) and also (e.g. “The lack of consent, including a refusal to consent, shall not constitute an obstacle to the transfer.”); *must* to denote “compelling duty” (e.g. “In the application of this Directive, the child’s best interests must be a primary consideration, in accordance with the Charter of Fundamental Rights of the European Union and the 1989 United Nations Convention on the Rights of the Child”); *may* to denote “possibility” or “option” (e.g. “It is undisputed between the parties that the local authorities may grant emergency assistance to adult migrants in need of such assistance”); *should* to denote “suggestion” (e.g. “I do believe that the Court should undertake a careful examination of whether a trial based on such evidence complies with Article 6 § 1 [...]”; or “expectation” as in “The Court is obviously not, and should not become, a fourth-instance court”); (ii.) verbs used for ‘defining’ and ‘creating’ or ‘developing’ such as *mean* and *set up*: (e.g. “For the purposes of this Directive ‘undertaking’ means any organization, other than public authority, acting in the course of its independent economic or professional activity”; and in (“To guarantee access to good-quality information, the Commission regularly updates the Internet-based public information system set up by Council Decision 2001/470/EC”);
- g) *use of verbs with uncommon/special meaning in legal English*: *to abscond* meaning “the offence of hiding”; *to abridge*, “to curtail legal rights”; *to abrogate*, “to annul by authority”; *to lay down*, “to enforce a law, decree, rule”;
- h) *use of collective noun + singular or plural verb*: singular, if the purpose is to highlight the organization, as in: “The Council has approved the content of the revised texts”; plural, where the purpose is to highlight members within the organization, as in: “The Commission have presented a report on the application of this Regulation”.

### C. The Language of Human Rights

The study of the language of human rights is especially important due to the role of human rights in our society. Indeed, there are those who say that our present world, what we sometimes proudly describe as “the free world”, starts with the recognition of human rights in the 18th century. Although the topic had attracted attention in the past, as witness the writings by Bartolomé de las Casas and Francisco de Vitoria in Spain, and there was a “Bill of Rights” passed in England in 1689, the real landmarks in the recognition of human rights were the United States Declaration of Independence (1776), the Declaration of the Rights of Man and of the Citizen (1789) and the first amendments to the US Constitution. In the Declaration of Independence, the former colonists proclaimed the equality among men, and defended their right to life, freedom and the pursuit of happiness. In the Declaration of the Rights of Man, a direct product of the Enlightenment, it was stated that lack of respect for freedom had given rise to many of the calamities in History. Finally, the Bill of Rights, which is the name which was given to the ten first amendments to the Constitution, shows how the newborn nation was not willing to simply change masters after escaping the grievances suffered under the English monarchs. Finally, it was centuries later, in 1948, that the desire to avoid the horrors of World War II led to the Universal Declaration of Human Rights, which has been the cornerstone for the present legal instruments at a domestic and international level protecting what we all understand now as “human dignity”.

In the following sections, we shall look at some of the salient features of the language of human rights.<sup>2</sup>

#### 1. Latin-based vocabulary

If, as we have seen in previous sections, one of the most visible features of legal English is the presence of unadapted or adapted Latin words, the same can be said about the language of human rights. This is due, amongst others, to the following reasons:

- a) The topic is strongly linked to educated and learned circles, as can be seen, for instance, in the use of the verb “to ameliorate” instead of “improve”, or the recurrent use of “observe” in contexts where general English would prefer “abide by” or “comply with”;
- b) In many cases, English is used as a *lingua franca* between speakers of many languages, or as the language for international treaties. This leads non-native drafters to use Latin-based cognates, and even natives to use a “Latinized” version of English which they (rightly or wrongly) feel may be more understandable to foreigners;
- c) Many of the subtopics in human rights language include many Latin-based terms, e.g.
  - In all topics related to international relations, French has a great influence, as the *lingua franca* until very recently;
  - In healthcare issues, Latin is still very important as the language of medicine (alongside with Greek);
  - In issues related to gender, French has been very influential due to the work of the great feminist writers (e.g. Hélène Cixous).

---

<sup>2</sup> A more detailed description of the problems that dictionary-makers encounter when compiling a human rights dictionary can be found in Campos (2011; see final bibliography list).



## 2. Euphemisms, dysphemism and political correctness

Another interesting feature of human rights vocabulary is the tendency towards euphemism or dysphemism (depending on the situation), and to what has been called “political correctness”. These tendencies, which sometimes act at the same time, reflect the problems in the relation between language and what such language describes. Firstly, euphemism, which is frequent in politics and in the media, stems from the avoidance of terms which remind us of unpleasant things, e.g. the use of “removal” for the expulsion of persons from a given country. Secondly, dysphemism, the opposite technique, consists in precisely using the most unpleasant and harsh word in order to underline the most negative side of whatever is described, as exemplified by words like “butcher”, “carnage”, “tyrant”, or even the creation of extremely expressive words, such as “genocide” (as we shall see below).

For its part, politically correct language is frequently found in human rights texts in order to avoid discrimination, since it is felt that the use of discriminatory language not only reflects unfair discrimination, but also contributes to reinforcing it. For instance, when we use “chairman” by default for any person presiding over a body, we are presupposing that such person must be male, and therefore contribute to such presupposition being perpetuated: when somebody else hears or reads us, they will automatically assume that a “man” should play such role, which is avoided when we use “chairperson”. This awareness of the role of language has two consequences: one is “inclusive language”, which avoids gender assumptions; the other is the avoidance of labels which may be felt as derogatory to individuals or groups, e.g. “Roma” instead of “gypsy” or “visually impaired” instead of “short-sighted” or “blind”.

## 3. Ideology and point of view in human rights vocabulary

Although the language of human rights (and human rights law) tries to be objective, or at least not excessively subjective, it must be acknowledged that, regarding its ideological component, it is closely related to the language of persuasion and to literary language, as it is a reflection of human attitudes and strives to influence human behaviour. In the language of human rights, most terms, however specific and well-defined, have a great connotative load, and therefore the problem of “meaning” is a capital one when we use a term in this area.

Although there are scholars who argue that there is no such thing as “neutral language” (even in quantum physics), it is generally agreed that some sciences and areas of human knowledge are more “exact” than others. For instance, if we study the language of pharmacy, the scientific community clearly knows what paracetamol is: even if there could be argument about what paracetamol can do to the human body, there is no question about whether a given compound is or not paracetamol. In legal matters, however, such theoretical and practical clarity is not so simple: although the definition of many terms is undisputable (especially if they are defined by statute), the consideration of whether they apply to a given situation or action is not so clear. To quote an example, all legal experts would clearly know what the definition of “murder” is (there is a statutory definition in most jurisdictions), but in order to decide whether a specific killing comes under the category of murder or manslaughter, a judge or a jury is needed. Moreover, there is the problem of comparative law: an instance of “murder” in one country could be a case of “manslaughter” in another.

In the field of human rights, some definitions are conditioned by ideology, or sometimes lack universal consensus. Take, for instance, the changes in the understanding of what “discrimination” or “fair trial” mean, either historically or from one country to another. And even if there are “universal” definitions, what is “universal” is the theoretical definition, not the application. For example, the word “genocide” is

defined by Article II of the Convention on the Prevention and Punishment of the Crime of Genocide, as follows:

In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

This “universal” understanding on what genocide is (by November 2015, the Convention had been ratified or acceded to by 147 countries) disappears when it comes to deciding whether a given act is a case of genocide or not. For instance, the application of the quantitative criterion to the concept of “in whole or in part” was capital on deciding on whether genocide had been committed in Rwanda or the former Yugoslavia. A more extreme case is that of the death of a large number of Armenians in the early 20th century: in some countries it is considered a case of genocide, to the extent that negating such genocide is a crime (e.g. in France, since November 2006), whether in other countries it is a crime to say that a genocide was committed (e.g. in Turkey, under Article 301 of its Criminal Code).

It must be said, in the European context, that the European Court of Human Rights is not formally bound by precedents: it is obvious in the interest of legal certainty and foreseeability of rulings not to change its jurisdiction without important reasons. On the other hand, the Court has reiterated that the ECHR is a “**living instrument**”. The rights enshrined in the Convention have to be interpreted in the light of present day conditions so as to be practical and effective. Sociological, technological and scientific changes, evolving standards in the field of HR and altering views on morals and ethics have to be taken under consideration when applying the Convention. For example the ECtHR has initially refuted that relationships between same-sex couples fall within the scope of family life under article 8 ECHR (*Mata Estevez v Spain*). In *Schalk and Kopf v Austria*, however, the Court has acknowledged that same-sex couples enjoy the protection afforded to family life by art.8 in view of “the rapid evolution of attitudes towards same sex-couples” which had taken place in many Council of Europe MS. On the same basis the meaning of the term “tortures” in respect of art. 3 ECHR is getting wider and wider.

Finally, it must be remembered, also regarding the meaning of terms, that the ECtHR interprets the legal terms employed in the European Convention on Human Rights **autonomously**. Terms contained in the Convention may have a different scope within the legal framework of a contracting state; the Court does not consider itself bound by the meaning which these terms have in a domestic jurisdiction. Thus, the protection afforded by the Convention may be much wider in scope than the protection offered under national law. For example, the notion of family life (and the obligations of the state to respect it) may extend to forms of cohabitation which are not considered as constituting a ‘family’ under the laws of a member state.



## C. EXERCISES

### I. Terminology of the courts

Choose the correct option for each gap. Remember that there is only one officially correct option (the one that appears in the "Rules of court"), but in some cases more than one option would be possible:

#### EUROPEAN COURT OF HUMAN RIGHTS - RULES OF COURT - 1 June 2015

##### Rule 372 – Communications, notifications and (1) \_\_\_\_\_

1. a. summons                      b. calls                      c. citations                      d. summonses

1. Communications or notifications addressed to the Agents or (2) \_\_\_\_\_ of the parties shall be deemed to have been addressed to the parties.

2. a. advocates                      b. solicitors                      c. barristers                      d. counsels

2. If, for any communication, notification or (3) \_\_\_\_\_ addressed to persons other than the Agents or (4) \_\_\_\_\_ of the parties, the Court considers it necessary (5) \_\_\_\_\_ the (6) \_\_\_\_\_ of the Government of the State (7) \_\_\_\_\_ whose territory such communication, notification or (8) \_\_\_\_\_ is to have effect, the President of the Court shall apply directly to that Government in order to obtain the necessary (9) \_\_\_\_\_.

3. a. summons                      b. calls                      c. citations                      d. summonses

4. Same as 2 above

5. a. having                      b. of having                      c. to have                      d. have

6. a. attendance                      b. assistance                      c. sustenance                      d. support

7. a. on                      b. in                      c. at                      d. of

8. Same as 3 above

9. a. helps                      b. paraphernalia                      c. devices                      d. facilities

##### Rule 392 – (10) \_\_\_\_\_ measures

1. The Chamber or, (11) \_\_\_\_\_ appropriate, the President of the Section or (12) \_\_\_\_\_ appointed (13) \_\_\_\_\_ paragraph 4 of this Rule may, (14) \_\_\_\_\_ the request of a party or of any other person (15) \_\_\_\_\_, or (16) \_\_\_\_\_ their own motion, indicate to the parties any (17) \_\_\_\_\_ measure which they consider should be adopted in the interests of the parties or of the proper (18) \_\_\_\_\_.

10. a. improvised                      b. interim                      c. temporary                      d. provisional

11. a. if                      b. as                      c. where                      d. when

12. a. a duty judge                      b. a judge on guard                      c. a guard judge                      d. a shift judge

13. a. pursuant to                      b. below                      c. under                      d. in accordance to

14. a. from                      b. of                      c. on                      d. at

15. a. involved                      b. implicated                      c. implied                      d. concerned
16. a. at                                  b. of                                  c. off                                  d. on
17. Same as 10 above.
18. a. conduct of the proceedings                      c. management of the procedures  
b. conduct of the procedure                      d. control of the proceeding

### Rule 43

#### 1 – Striking out and restoration to the list

The Court may at any stage of the (19) \_\_\_\_\_ decide to strike an application (20) \_\_\_\_\_ its list of cases in accordance with Article 37 of the Convention.

19. a. trial                                  b. procedure                                  c. proceedings                                  d. process
20. a. out of                                  b. from                                  c. off from                                  d. of

2. When an applicant Contracting Party notifies the Registrar (21) \_\_\_\_\_ its intention not to (22) \_\_\_\_\_ with the case, the Chamber may strike the application out of the Court's list under Article 37 of the Convention if the other Contracting Party or Parties concerned in the case agree (23) \_\_\_\_\_ such (24) \_\_\_\_\_.

21. a. with                                  b. of                                  c. on                                  d. off
22. a. proceed                                  b. advance                                  c. carry on                                  d. progress
23. a. on                                  b. with                                  c. to                                  d. at
24. a. adjournment                                  b. disruption                                  c. cessation                                  d. discontinuance

#### Rule 631 – Public character of (25) \_\_\_\_\_

(...)

2. The press and the public may be (26) \_\_\_\_\_ all or part of a (27) \_\_\_\_\_ (28) \_\_\_\_\_ morals, public order or national security in a democratic society, where the interests of (29) \_\_\_\_\_ or the protection of the private life of the parties (30) \_\_\_\_\_, or (31) \_\_\_\_\_ strictly necessary in the opinion of the Chamber in special circumstances where publicity would (32) \_\_\_\_\_ the interests of justice.

25. a. audiences                                  b. trials                                  c. listenings                                  d. hearings
26. a. excluded of                                  b. prohibited from                                  c. excluded from                                  d. banned of
27. Same as 25 above (in the singular).
28. a. for the interest of                                  b. in the interests of                                  c. for the benefit of                                  d. in favour of
29. a. juveniles                                  b. youth                                  c. the youngs                                  d. young
30. a. require so                                  b. this require                                  c. so require                                  d. require this way
31. a. to the extent                                  b. at the amount                                  c. at the degree                                  d. in the scope
32. a. prejudicate                                  b. prejudice                                  c. prejudgete                                  d. perjudicate

3. Any request (33) \_\_\_\_\_ a hearing to be held (34) \_\_\_\_\_ made under paragraph 1 of

this Rule must include reasons and specify whether it concerns all or only part of the hearing.

33. a. by                                      b. off                                      c. of                                      d. for  
 34. a. in closed court                      b. in camera                              c. in private                              d. in chambers

### **Rule 653 – Failure to (35) \_\_\_\_\_**

Where a party or any other person (36) \_\_\_\_\_ fails or (37) \_\_\_\_\_ do so, the Chamber may, provided that it is (38) \_\_\_\_\_ that such a course is consistent with the proper administration of justice, nonetheless proceed with the hearing.

35. a. appear                                      b. come                                      c. turn up                                      d. show up  
 36. a. bound to                                      b. likely to                                      c. due to                                      d. probable to  
 37. a. declines to                                      b. avoids to                                      c. denies to                                      d. neglects to  
 38. a. happy                                      b. fulfilled                                      c. content                                      d. satisfied

### **Rule 704 – (39) \_\_\_\_\_ record of a hearing**

1. If the President of the (40) \_\_\_\_\_ so directs, the Registrar shall be responsible (41) \_\_\_\_\_ the making of a (42) \_\_\_\_\_ record of the hearing. Any such record shall include:

- (a) the composition of the Chamber;  
 (b) a list of those appearing (43) \_\_\_\_\_ the Chamber;  
 (c) the text of the (44) \_\_\_\_\_ made, questions (45) \_\_\_\_\_ and replies given;  
 (d) the text of any (46) \_\_\_\_\_ delivered during the hearing.

39. a. literal                                      b. verbatim                                      c. sic                                      d. word-for-word  
 40. a. Chamber                                      b. Section                                      c. Division                                      d. Courtroom  
 41. a. of                                      b. for                                      c. from                                      d. to  
 42. Same as 39 above.  
 43. a. in front of                                      b. at                                      c. before                                      d. in  
 44. a. remarks                                      b. statements                                      c. allegations                                      d. submissions  
 45. a. put                                      b. made                                      c. formulated                                      d. inquired  
 46. a. judgment                                      b. sentence                                      c. ruling                                      d. award

## **Chapter VIII – Judgments**

### **Rule 741 – Contents of the judgment**

1. A judgment as referred to in Articles 28, 42 and 44 of the Convention shall contain

- (a) the names of the President and the other judges constituting the Chamber or the Committee concerned, and the name of the Registrar or the (47) \_\_\_\_\_;  
 (b) the dates (48) \_\_\_\_\_ which it was adopted and (49) \_\_\_\_\_;  
 (c) a description of the parties;

(d) the names of the Agents, advocates or (50) \_\_\_\_\_ of the parties;

(e) (51) \_\_\_\_\_ of the procedure followed;

(f) the facts of the case;

(g) a summary of the submissions of the parties;

(h) the reasons (52) \_\_\_\_\_;

(i) the operative (53) \_\_\_\_\_;

(j) the decision, if any, (54) \_\_\_\_\_ costs;

(k) the number of judges constituting the majority;

(l) where appropriate, a (55) \_\_\_\_\_ as to which text is authentic.

- |     |                      |                    |                    |                       |
|-----|----------------------|--------------------|--------------------|-----------------------|
| 47. | a. Adjunct Registrar | b. Viceregistrar   | c. Subregistrar    | d. Deputy Registrar   |
| 48. | a. in                | b. on              | c. at              | d. for                |
| 49. | a. delivered         | b. handed down     | c. issued          | d. pronounced         |
| 50. | a. counselors        | b. advisers        | c. coaches         | d. consultants        |
| 51. | a. an account        | b. a report        | c. a version       | d. an explanation     |
| 52. | a. in point of law   | b. on point of law | c. at point of law | d. under point of law |
| 53. | a. decisions         | b. resolutions     | c. dispositions    | d. provisions         |
| 54. | a. with respect of   | b. in respect of   | c. as respects to  | d. respecting of      |
| 55. | a. statement         | b. comment         | c. announcement    | d. warning            |

- II. Please, complete the table below by matching each Latin expression to its translation into English, and then to the legal definition it corresponds to. The first one has been done for you. Then, insert them in the contexts provided.

Latin expressions			
<i>ab initio</i>	<i>erga omnes</i>	<i>jus sanguinis</i>	<i>passim</i>
<i>acta jure imperii</i>	<i>habeas corpus</i>	<i>jus soli</i>	<i>ratio decidendi</i>
<i>actio popularis</i>	<i>in absentia</i>	<i>pari passu</i>	<i>ratione personae</i>

English expressions		
action of the people	everywhere	reason for deciding
acts by right of dominion	from the beginning	right of the blood
against all	in absence	right of the land
by reason of the person	in equal step	you should have the body

Term	Rough translation into English	Definition
actio popularis	action of the people	a lawsuit brought by a third party in the interest of the public as a whole
		acts and omissions in the exercise of State authority
		adverb meaning that a reference may be found in various places in a text.
		binding on all states, with no possible derogation or limitation
		criminal proceedings where the accused is prosecuted without being present
		from the very moment it was made (a contract, a law, etc.)
		jurisdiction depending on whether someone resides within the territory of the court or whether the person is a citizen of the state to which the court belongs
		principle whereby a person's citizenship is acquired as a child through his or her legal/biological relationship to a citizen
		principle whereby citizenship is due to being born within a given territory
		reasons or principles behind a decision
		without preference, equally, in equal measure
		writ issued in order to bring before a court a person who has been detained

**Now, use the above expressions in the following sentences.**

1. A state's immunity for \_\_\_\_\_ includes acts in which its armed forces were involved during wars.
2. Access to \_\_\_\_\_ must be available even during emergencies.
3. Children of nationals acquire the nationality of a parent (\_\_\_\_\_), with some exceptions for children born abroad.
4. Expectant mothers sometimes have resorted to \_\_\_\_\_ provisions in order to travel and thus gain nationality for their children.
5. In certain cases the European Court of Human Rights has declined jurisdiction \_\_\_\_\_.
6. References to this text are made in Smith & Jones (2010), *Human Rights in Perspective*, \_\_\_\_\_.
7. Some human rights principles have an \_\_\_\_\_ effect, and hence they may not be derogated from.
8. Such measures should be taken, \_\_\_\_\_, at both international and national levels.
9. The ECHR does not allow for \_\_\_\_\_. Applications by individuals (or groups of individuals) may only be admitted if the applicant can prove that he was affected by the conduct of a contracting state.
10. The whole process was held to be void \_\_\_\_\_.
11. There are some EU member states which do not allow trials \_\_\_\_\_.
12. There is no distinction in some cases between \_\_\_\_\_ and obiter dicta in the practice of some courts.

**III. In order to complete the following fragments, choose the right option that corresponds to the literal wording of the Universal Declaration of Human Rights. In most contexts, the other options would also be acceptable in principle... but there are not the ones used in the Declaration.**

1. Everyone is entitled in full equality to a fair and public \_\_\_\_\_ by an independent and impartial \_\_\_\_\_, in the determination of his rights and obligations and of any criminal charge against him.
 

a) trial ... court	c) trial ... tribunal
b) hearing ... court	d) hearing ... tribunal
  
2. Everyone charged with a \_\_\_\_\_ offence has the right to be presumed \_\_\_\_\_ until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.
 

a) penal ... not guilty	c) criminal ... not guilty
b) penal ... innocent	d) criminal ... innocent
  
3. Nothing in this Declaration may be \_\_\_\_\_ as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.
 

a) construed	c) interpreted
b) understood	d) read

4. Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully \_\_\_\_\_.

- |             |                |
|-------------|----------------|
| a) achieved | c) implemented |
| b) realized | d) reached     |

5. Everyone who works has the right to just and favourable \_\_\_\_\_ ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

- |                 |                 |
|-----------------|-----------------|
| a) remuneration | c) compensation |
| b) salary       | d) wages        |

6. Everyone has the right to \_\_\_\_\_ of thought, conscience and religion; this right includes \_\_\_\_\_ to change his religion or belief, and \_\_\_\_\_, either alone or in community with others and in public or private, to \_\_\_\_\_ his religion or belief in teaching, practice, worship and observance (**the same word applies to the first three gaps in the sentence**).

- |                         |                         |
|-------------------------|-------------------------|
| a) liberty ... show     | c) freedom ... show     |
| b) liberty ... manifest | d) freedom ... manifest |

7. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

- |                           |                            |
|---------------------------|----------------------------|
| a) difference ... nation  | c) difference ... country  |
| b) distinction ... nation | d) distinction ... country |

8. No one shall be subjected to \_\_\_\_\_ interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

- |                               |                             |
|-------------------------------|-----------------------------|
| a) unjustified ... standing   | c) arbitrary ... standing   |
| b) unjustified ... reputation | d) arbitrary ... reputation |

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

- |                            |                              |
|----------------------------|------------------------------|
| a) submitted ... degrading | c) submitted ... humiliating |
| b) subjected ... degrading | d) subjected ... humiliating |

10. Everyone has the right to seek and to enjoy in other countries asylum from persecution. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

- |                               |                             |
|-------------------------------|-----------------------------|
| a) relied on ... proceedings  | c) invoked ... prosecutions |
| b) relied on ... prosecutions | d) invoked ... proceedings  |

# UNIT 2

## HUMAN RIGHTS; CONCEPTS AND DEFINITIONS, EUROPEAN UNION AND COUNCIL OF EUROPE INSTRUMENTS

### INTRODUCTION

#### Definition

Human rights (fundamental rights) are inalienable rights inherent to all human beings, whatever their nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status. These rights are all interrelated, interdependent and indivisible. In that regard they are a kind of natural law (*ius naturale*)<sup>3</sup>, guaranteed by substantive law in the form of national constitutions or national constitutional law, or internationally in the form of treaties, customary international law, general principles and other sources of international law.<sup>4</sup> Such rights lay down obligations of governments usually to refrain from certain acts (negative rights) or to act in a certain way (positive rights). However, the catalogue of human rights can diverge in view of historical development and society. In that regard some speak about three generations of human rights: first-generation (civil and political rights), second-generation (economic, social and cultural rights) and third-generation (solidarity rights).<sup>5</sup> Fundamental (human) rights are also an essential part of the modern concept of rule of law and they should not be limited except as a result of a fair trial (due process)<sup>6</sup>, although some of them can never be denied,

---

<sup>3</sup> See above the different philosophical notions of *ius naturale* in H.A. Rommen, *The Natural Law*, 1998. The forerunner of human rights was the concept of natural rights and natural law starting with Aristotle, and continued by thinkers such as St. Augustine, Thomas Aquinas, Hobbes, Locke, Hume, Rousseau, etc.

<sup>4</sup> <http://www.ohchr.org/EN/Issues/Pages/WhatAreHumanRights.aspx>

<sup>5</sup> K. Vasak, *The International Dimension of Human Rights*, 1982.

<sup>6</sup> Fair trial is a concept according to Article 6 ECHR. The same or similar concept is called in the US "due process" (see Fifth and Fourteenth Amendments to the US Constitution).



for example the prohibition of torture<sup>7</sup>, human dignity<sup>8</sup> and right to life.<sup>9</sup> The most universal written catalogue in that regard is the Universal Declaration of Human Rights adopted in Paris by the United Nations General Assembly in 1948.<sup>10</sup>

## Historical development

The Cyrus Cylinder<sup>11</sup>, created by Persian king Cyrus the Great, is regarded as the world's first charter of human rights. As stated above, the forerunner of human rights discourse was the concept of natural rights/natural law, especially from the 18th century onwards in the framework of the social contract concept of society, which featured prominently in the political discourse of the American and French Revolutions (especially in the US Constitution and Bill of Rights), and followed by libertarians such as John Stuart Mill. Based on these, the modern concept of human rights developed in the latter half of the 20th century, especially in the aftermath of the Second World War and in view of the crimes committed by totalitarian regimes. The first written documents elaborating a similar concept of fundamental rights as understood today were the *Magna Carta* (1215)<sup>12</sup>, the 1679 *Habeas Corpus Act*, the United States Declaration of Independence (1776)<sup>13</sup>, the French Declaration of the Rights of Man and of the Citizen (1789)<sup>14</sup>, and the Bill of Rights in the United States Constitution (1791) as a "modern" example of a catalogue of fundamental rights. In the 19th century, the 1864 Lieber Code (Instructions for the Government of Armies of the United States in the Field) and the first of the Geneva Conventions in 1864 laid the foundations of International humanitarian law, further developed after the First and Second World Wars. Especially the experience of the latter<sup>15</sup> led to strong development of international criminal law and internationally recognised fundamental rights in the framework of the United Nations, adopting general<sup>16</sup> as well as

<sup>7</sup> See Articles 3 and 15 ECHR, 8th Amendment to the US Constitution, Article 5 of the Universal Declaration of Human Rights, etc.

<sup>8</sup> For example, in the form of absolute prohibition of slavery - Articles 4 and 15 ECHR, 13th Amendment to the US Constitution, Article 4 of the Universal Declaration of Human Rights, etc.

<sup>9</sup> See Article 2 and Protocols 6 and 13 ECHR; see also the decision of the US Supreme Court in *Furman v. Georgia*, 408 U.S. 238 (1972), by which the US Supreme Court temporarily considered the death penalty as a violation of the 8th Amendment to the US Constitution (cruel and unusual punishment). The decision was overturned in *Gregg v. Georgia*, 428 U.S. 153 (1976).

<sup>10</sup> <http://www.un.org/en/universal-declaration-human-rights>. The Declaration is non-binding and was adopted by the United Nations General Assembly in 1948.

<sup>11</sup> In 539 B.C. Cyrus the Great conquered Babylon. In the aftermath he freed the slaves, declared freedom of religion, and established racial equality. This was recorded on a baked-clay cylinder in the Akkadian language with cuneiform script, the so-called Cyrus Cylinder.

[http://www.britishmuseum.org/research/collection\\_online/collection\\_object\\_details.aspx?objectId=327188&partId=1](http://www.britishmuseum.org/research/collection_online/collection_object_details.aspx?objectId=327188&partId=1)  
This ancient record has now been recognized as the world's first charter of human rights. It is translated into all six official languages of the United Nations and its provisions parallel the first four Articles of the Universal Declaration of Human Rights.

<sup>12</sup> "No free man could be arrested, imprisoned or dispossessed of his goods, declared against the law, exiled or injured in any matter and we will not be against him or send anyone against him without a loyal judgment of his equals or in conformity with the law of the country."

<sup>13</sup> "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness."

<sup>14</sup> Article 1, "Men are born and remain free and equal in rights. Social distinctions can be founded only on the common good."

<sup>15</sup> See the Nuremberg and Tokyo war crime tribunals.

<sup>16</sup> 1948 Universal Declaration of Human Rights, 1966 International Covenant on Civil and Political Rights, and 1966 International Covenant on Economic, Social and Cultural Rights.

particular<sup>17</sup> instruments. Also international humanitarian and international criminal law was further developed<sup>18</sup> and fundamental rights became part of almost all democratic states' constitutions. In addition, a variety of regional fundamental rights instruments were adopted, such as the 1981 African Charter on Human and Peoples' Rights, the 1969 American Convention on Human Rights or the 1950 European Convention on Human Rights. Such UN or regional instruments created also court like international bodies, in addition to other bodies created in the UN framework (for example, the United Nations Human Rights Council, or the UN High Commissioner for Human Rights) or in the framework of regional cooperation (for example, Council of Europe).

### European Convention on Human Rights (ECHR)

At a European level, the main instrument for the protection of fundamental rights is the European Convention on Human Rights (ECHR), signed and ratified by all Parties to the Council of Europe (47 states).<sup>19</sup> It was adopted in 1950 and came into force in 1953, setting a special mechanism for the protection of fundamental rights – the European Court of Human Rights (ECtHR), not created only for interstate cases but also for individual petitions. First, the court operated on a dual basis (Commission and Court) based on a more limited system of petitions by individuals. In that regard, under the original Convention scheme, only the Commission and States concerned could refer cases to the Court, provided that the State against which the complaint had been lodged recognised the jurisdiction of the Court. However, through time it became a full-fledged court (a single system) with a right to appeal by individuals against the contracting States.<sup>20</sup> Thus, any individual can lodge a complaint after all domestic remedies have been exhausted and within a period of six months from the date on which the final decision was taken as regards any violations of the rights enlisted in the Convention.<sup>21</sup> The Convention as such consists of basic fundamental rights in the main text and as specified in additional protocols. The following are in the main text of the Convention: right to life (Article 2), prohibition of torture (Article 3), prohibition of slavery and forced labour (Article 4), right to liberty and security (Article 5), right to a fair trial (Article 6), no punishment without law (Article 7), right to respect for private and family life (Article 8), freedom of thought, conscience and religion (Article 9), freedom of expression (Article 10), freedom of assembly and association (Article 11), right to marry (Article 12), right to an effective remedy (Article 13), prohibition of discrimination (Article 14). The protocols add the following ones to this list: protection of property (Article 1 of Protocol 1), right to education (Article 2 of Protocol 1), right to free elections (Article 3 of Protocol 1), prohibition of imprisonment for debt (Article 1 of Protocol 4), freedom of movement (Article 2 of Protocol 4), prohibition of expulsion of nationals (Article 3 of Protocol 4), prohibition of collective expulsion of aliens (Article 4 of Protocol 4), abolition of the death penalty (Article 1 of Protocol 6), procedural safeguards relating to expulsion of aliens (Article 1 of Protocol 7), right of appeal in criminal

<sup>17</sup> For example, the 1979 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the 1966 Convention on the Elimination of All Forms of Racial Discrimination (CERD), the 1989 Convention on the Rights of the Child (CRC), the 1984 United Nations Convention Against Torture (CAT), etc. (adopted 1984, entry into force: 1987), UN Security Council resolution 827 (1993) as regards the creation of the ICTY (International Criminal tribunal for the former Yugoslavia), UN Security Council resolution 955 (1994) as regards the creation of the Rwanda Tribunal and its Statute, etc.

<sup>18</sup> 1949 Geneva Conventions as regards rights of individuals involved in armed conflict (built on the Hague Conventions of 1899 and 1907), 2002 Rome Statute of the International Criminal Court, etc. See A. Cassese, *International Criminal Law*, 3rd ed., 2013.

<sup>19</sup> <http://www.coe.int/en/web/portal/47-members-states>. For the text of the Convention see under [http://www.echr.coe.int/Pages/home.aspx?p=basictexts&c=#n1359128122487\\_pointer](http://www.echr.coe.int/Pages/home.aspx?p=basictexts&c=#n1359128122487_pointer).

<sup>20</sup> See Protocol 9 (1990; entry into force 1994) introducing the right of an individual applicant whose petition has been the subject of a report by the Commission to request the Court to deal with the case, regardless of whether the Commission or the State concerned have referred the case to the Court; and especially Protocol 11 (1994, entry into force 1998) to the ECHR abolishing the Commission and introducing a single court system.

<sup>21</sup> Article 35 ECHR (Admissibility criteria).

matters (Article 2 of Protocol 7), compensation for wrongful conviction (Article 3 of Protocol 7), right not to be tried or punished twice (Article 4 of Protocol 7), equality between spouses (Article 5 of Protocol 7), general prohibition of discrimination (Article 1 of Protocol 12), abolition of the death penalty in all circumstances (Protocol 13). In addition to those specific rights listed in the Convention, the Court created additional rights as a kind of penumbra of the explicit written rights (for example, the right to access to a court<sup>22</sup>, or the right to remain silent<sup>23</sup> as a consequence of a fair trial and presumption of innocence). The Convention as such is “a living instrument, which must be interpreted in the light of present-day conditions”<sup>24</sup> whereby the interpretation of certain rights changes over time (for example, the evaluation of the concept of prohibition of torture, etc.).<sup>25</sup> The classical decision-making of the court was taken by a three-member panel (on admissibility) and on content by a seven-member chamber or by the Grand Chamber (directly based on relinquished jurisdiction by other chambers<sup>26</sup> or based on a kind of re-assessment procedure<sup>27</sup>). However, due to the increase in applications a change in the court system was agreed, namely the decisions on admissibility by a single judge, a three-member panel to decide about repetitive cases (“already the subject of well-established case-law”), and the introduction of pilot judgments and additional admissibility criteria referring to “significant disadvantage”.<sup>28</sup> But even more changes are underway, for example, the shortening of the application period from 6 to 4 months since the final national judgment<sup>29</sup>, and a preliminary procedure for highest national courts<sup>30</sup> as well as negotiations of EU accession are under way.

## EU Charter of Fundamental Rights<sup>31</sup>

The founding treaties of the European Communities (the 1957 Treaty of Rome) due to their economic goals did not have any reference to fundamental rights. However, the Court of Justice started to interpret the Treaties in a very specific way and recognised as early as 1969 that fundamental human rights were “general principles of Community law”.<sup>32</sup> This was even more the case due to the introduction of the concept of primacy of Community (now EU) law by Court of Justice case-law only<sup>33</sup> - EU law takes precedence over domestic law.<sup>34</sup> This triggered a backlash at certain national constitutional

<sup>22</sup> See, for example, *Golder v. UK*, A. no. 4451/70, judgment of 21 February 1975.

<sup>23</sup> See, for example, *Funke v. France*, A. no. 10828/84, judgment of 25 February 1993.

<sup>24</sup> *Tyrer v. UK*, A. no. 5856/72, judgment of 25 April 1978.

<sup>25</sup> See, for example, the evolution of the prohibition of torture, inhuman and degrading treatment (Article 3 ECHR), whereby in *Soering v. UK*, A. no. 14038/88, judgment of 7 July 1989, concerning an extradition request to the US, only the “death row phenomenon” (long periods of waiting before execution) was considered as a violation of Article 3 (not the death penalty as such), in comparison with *Al-Saadoon and Mufdhi v. UK*, A. no. 61498/08, judgment of 2 March 2010, whereby the death penalty as such is considered as a violation of Article 3 ECHR.

<sup>26</sup> Article 30 ECHR.

<sup>27</sup> Article 43 ECHR.

<sup>28</sup> Protocol 14 (2004, entry into force 2010).

<sup>29</sup> Protocol 15 (2013; no entry into force yet).

<sup>30</sup> Protocol 16 (2013; no entry into force yet).

<sup>31</sup> See also under [http://www.europarl.europa.eu/ftu/pdf/en/FTU\\_1.1.6.pdf](http://www.europarl.europa.eu/ftu/pdf/en/FTU_1.1.6.pdf).

<sup>32</sup> *Stauder*, Case 29/69.

<sup>33</sup> Primacy of EU law is still not written in the Treaties and only a Declaration exists attached to the Treaties referring to Court of Justice case-law.

<sup>34</sup> *Costa v ENEL*, Case 6/64.

courts as regards their role and the role of national constitutions. Specifically, the German<sup>35</sup> and Italian constitutional courts put the absolute nature of primacy of Community (now EU) law into question referring specifically to the lack of protection of fundamental rights at Community (now EU) level.<sup>36</sup> Based on such criticism the Court of Justice developed its own case-law on the role of fundamental rights in the European legal order, thus preventing the need to verify the compatibility of Community (now EU) law with the national constitutions.<sup>37</sup> As for the source of those general principles, the Court referred to the common constitutional traditions of the Member States<sup>38</sup>, and to international treaties to which at least a majority of Member States were party, in particular the European Convention on Human Rights (ECHR).<sup>39</sup> A reference to such principles was explicitly codified by the Treaty of Maastricht (1992)<sup>40</sup> and even further reiterated in the Amsterdam Treaty. In addition, a debate took place as regards either accession to the ECHR or the creation of an “EU Bill of Rights”. The first option was ruled out after the Court of Justice rendered Opinion 2/94, according to which the Community under the then existing Treaties lacked the competence to accede to the Convention. Consequently, the second approach was agreed during the 1999 European Council meeting in Cologne followed by the adoption<sup>41</sup> of a non-binding EU Charter of Fundamental Rights solemnly proclaimed on 7 December 2000 by the European Parliament, the Council of Ministers and the European Commission, and further adapted in 2007, especially as regards Article 52 on the scope. The 2009 Treaty of Lisbon marked another milestone by giving the Charter legal value and proclaiming at the same time a duty of the EU to accede to the ECHR.<sup>42</sup> However, such accession is still pending.<sup>43</sup>

The Charter of Fundamental Rights is divided into seven titles: Title I (‘Dignity’) including human dignity, right to life, right to integrity of the person, prohibition against torture, inhuman and degrading treatment and prohibition of slavery; Title II (‘Freedoms’) including the right to liberty and security, respect for private and family life, protection of personal data, the right to marry and to found a family, the right to freedom of thought, conscience and religion, the freedom of expression and the freedom of assembly, freedom of art and sciences, the right to education, the right to choose an occupation and to engage in work, free conduct of business, right to property, and right to asylum; Title III (‘Equality’) including equality before the law, non-discrimination, respect for cultural, religious and linguistic diversity, equality between men and women, rights of children, the elderly and persons with disabilities; Title IV (‘Solidarity’) including protection for the rights of workers, including the rights to collective bargaining and action and to fair and just working conditions, entitlement to social security, the right

<sup>35</sup> *Bundesverfassungsgericht*, Judgment of 29 May 1974, Case 2 BvL 52/71.

<sup>36</sup> *Frontini v. Ministero delle Finanze*, Case No 183/73, 27 December 1973.

<sup>37</sup> *Bundesverfassungsgericht*, Judgment of 22 October 1986, Case 2 BvR 197/83.

<sup>38</sup> *Internationale Handelsgesellschaft*, Case 11/70.

<sup>39</sup> *Nold*, Case 4/73, and *Rutili*, Case 36/75.

<sup>40</sup> Article F(2): “The Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law.”

<sup>41</sup> The text was adopted by a Convention composed of representatives of the heads of state or government of the Member States (15 at that time), one representative of the President of the Commission, 16 Members of the European Parliament, and 30 members of national parliaments (two from each parliament). Observer status was granted to two representatives of the Court of Justice and two representatives of the Council of Europe.

<sup>42</sup> Article 6(1) TEU: “The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties.”

<sup>43</sup> The Court of Justice adopted opinion 2/13 stating that the initial agreement did not provide for sufficient protection of the EU’s specific legal arrangements and the Court’s exclusive jurisdiction.

of access to health care and the principles of environmental and consumer protection; Title V ('Citizens' Rights') including the right to vote and to stand as a candidate in elections to the European Parliament and in municipal elections, the right to good administration, and the rights to petition, to have access to documents, to diplomatic protection and to freedom of movement and of residence; Title VI ('Justice') including the right to an effective remedy and a fair trial, presumption of innocence and the right of defence, the principles of legality and proportionality of criminal offences and penalties, and the right to protection against double jeopardy (*ne bis in idem*); and Title VII of the Charter including general provisions on the interpretation and application of the Charter.

The above list shows that the Charter is a very modern "Bill of Rights" of the newest generation combining classical fundamental rights (civic/political) with socio-economic rights. Although the added value of the Charter is its binding character as a "federal Bill of rights", it has certain deficits as regards its interpretation and application. As regards its personal scope of application, the Charter is very broad as most of the rights are granted to 'everyone' with some exceptions. More problematic is its material scope as according to Article 51 of the Charter its provisions "are addressed to the institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law". This means that purely internal situations are excluded (as long as they do not endanger the basic concept of rule of law as enshrined in Article 2 TEU). However, such a limitation of the Charter is artificial and it is questionable whether it can survive in the future due to problems of reverse discrimination and equality before the law as regards purely internal situations in EU Member States.<sup>44</sup> An interesting comparison between the US Bill of Rights (the fundamental rights catalogue to the US Constitution) and the EU Charter can be made in that regard, as historically such a distinction in the US could not be maintained.<sup>45</sup> In addition, in Article 52, the Charter provides that: "In so far as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law from providing more extensive protection." Moreover, Article 53 of the Charter states that "nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by Union law and international law and by international agreements to which the Union or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' constitutions." However, this bears the danger that if the Charter is interpreted only at ECHR minimum, EU law could be on fundamental rights protection less strict than some national constitutions, raising again the "Solange" dilemma, a real issue in the field of mutual recognition in criminal law. The problem is a real one as shown by the Court of Justice *Melloni* judgment,<sup>46</sup> dealing with the relationship between national constitutional standards and EU law as regards the question of primacy of EU law. The Court of Justice basically stated that EU harmonisation rules preclude the use of higher national constitutional rules as regards protection of fundamental rights in cases of mutual

<sup>44</sup> The Court of Justice already started to expand the term of implementing EU law – see Case C-617/10, *Åkerberg Fransson*, judgment of 26 February 2013, using a very extensive interpretation as regards implementation of EU law that includes national tax evasion procedures due to their connection with the VAT Directive.

<sup>45</sup> See US Supreme Court, *Barron v Baltimore*, 32 US (7 Pet) 243 (1833), stating that the United States Bill of Rights could not be applied to state governments. However, later the US Supreme Court incorporated most of the Bill of Rights to purely internal situations. See Y. Kamisar et al, *Basic Criminal Procedure* (14th edn, 2015), pp 25–38. See also A. Erbeznic, Mutual Recognition in EU Criminal Law and Fundamental Rights – The Necessity for a Sensitive Approach, in A. Weyembergh, C. Briere, *The Needed Balances in EU Criminal Law*, 2018.

<sup>46</sup> Court of Justice, Case C-399/11 *Melloni* ECLI:EU:C:2013:107.

recognition.<sup>47</sup> In that regard the Court of Justice opened a possible dispute with national constitutional courts on the question of primacy of EU law.<sup>48</sup> Thus, everything will depend on the Court's interpretation of the Charter as well as EU legislators work when adopting law, especially criminal law.<sup>49</sup>

## BIBLIOGRAPHY

- African Charter on Human and Peoples' Rights, 1981
- American Convention on Human Rights, 1969
- Bill of Rights, US Constitution
- *Bundesverfassungsgericht*, Judgment of 29 May 1974, Case 2 BvL 52/71
- *Bundesverfassungsgericht*, Judgment of 22 October 1986, Case 2 BvR 197/83
- Court of Justice EU, *Costa v ENEL*, Case 6/64.
- Court of Justice EU, *Stauder*, Case 29/69
- Court of Justice EU, *Internationale Handelsgesellschaft*, Case 11/70
- Court of Justice EU, *Nold*, Case 4/73, and *Rutili*, Case 36/75
- Court of Justice, Court of Justice, *Melloni*, Case C-399/11
- Court of Justice EU, Åkerberg Fransson, Case C-617/10
- Declaration of the Rights of Man and of the Citizen, 1789
- ECtHR, *Golder v. UK*, A. no. 4451/70, judgment of 21 February 1975
- ECtHR, *Tyrer v. UK*, A. no. 5856/72, judgment of 25 April 1978
- ECtHR, *Soering v. UK*, A. no. 14038/88, judgment of 7 July 1989
- ECtHR, *Funke v. France*, A. no. 10828/84, judgment of 25 February 1993
- ECtHR, *Al-Saadoon and Mufdhi v. UK*, A. no. 61498/08, judgment of 2 March 2010
- European Convention on Human Rights, 1950, ad its additional Protocols
- EU Charter of Fundamental Rights
- *Habeas Corpus Act*, 1679
- Kamisar Y. et al, *Basic Criminal Procedure*, 14th ed., 2015
- *Magna Carta*, 1215
- Vasak K., *The International Dimension of Human Rights*, 1982
- Universal Declaration of Human Rights, UN, 1948, <http://www.un.org/en/universal-declaration-human-rights>
- United States Declaration of Independence, 1776
- US Supreme Court, *Furman v. Georgia*, 408 U.S. 238 (1972)

<sup>47</sup> See paragraphs 35–46.

<sup>48</sup> See the latest decision of the Spanish Constitutional Court adopting the *Solange* doctrine – <http://www.tribunalconstitucional.es/es/jurisprudencia/restrad/Paginas/JCCJCC262014en.aspx>.

<sup>49</sup> In that regard two examples can be provided in the area of EU criminal law. For example, Directive (EU) 2016/343 on presumption of innocence introduced the right to remain silent as an absolute right in the whole of the EU (a higher standard than the ECtHR level). On the other hand, Directive 2013/48/EU on the right of access to a lawyer is much more problematic, as it introduced a broad derogation, denying access to a lawyer at the preliminary/police stage (much lower than some national constitutions).



- US Supreme Court, *Gregg v. Georgia*, 428 U.S. 153 (1976)
- Weyembergh A., Briere C., *The Needed Balances in EU Criminal Law*, 2018

## LANGUAGE EXERCISES

### A. READING COMPREHENSION

The following exercises are based on the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions (European Commission, Brussels, 13.5.2015).<sup>50</sup>

#### I. Introduction

**Reading A.** Go over the introductory section (first page) and complete paragraphs 1 and 2 with the words and phrases in the box in basic form (you might need to adapt the word to correspond with the text).

<i>legal pathways</i>	<i>imperative</i>	<i>life</i>	<i>reunification</i>
<i>type of flow</i>	<i>entrepreneurship</i>	<i>reap the benefit</i>	<i>challenge</i>
<i>step</i>	<i>ten-point plan</i>	<i>plight</i>	<i>loss of life</i>
<i>shores</i>	<i>approach</i>	<i>coming year</i>	<i>peril</i>

1. Throughout history, people have migrated from one place to another. People try to reach European (1) \_\_\_\_\_ for different reasons and through different channels. They look for (2) \_\_\_\_\_, but they also risk their (3) \_\_\_\_\_, to escape from political oppression, war and poverty, as well as to find family (4) \_\_\_\_\_, (5) \_\_\_\_\_, knowledge and education. Every person's migration tells its own story. Misguided and stereotyped narratives often tend to focus only on certain (6) \_\_\_\_\_, overlooking the inherent complexity of this phenomenon, which impacts society in many different ways and calls for a variety of responses. This Agenda brings together the different steps the European Union should take now, and in the (7) \_\_\_\_\_, to build up a coherent and comprehensive (8) \_\_\_\_\_ to (9) \_\_\_\_\_ and address the (10) \_\_\_\_\_ deriving from migration.

2. The immediate (11) \_\_\_\_\_ is the duty to protect those in need. The (12) \_\_\_\_\_ of thousands of migrants putting their lives in (13) \_\_\_\_\_ to cross the Mediterranean has shocked us all. As a first and immediate response, the Commission put forward a (14) \_\_\_\_\_ - \_\_\_\_\_ for immediate action. The European Parliament and the European Council have lent their support to this plan and Member States have also committed to concrete (15) \_\_\_\_\_, notably to avert further (16) \_\_\_\_\_.

<sup>50</sup> [https://www.unodc.org/documents/brussels/News/2017\\_communication\\_on\\_the\\_european\\_agenda\\_on\\_migration\\_en.pdf](https://www.unodc.org/documents/brussels/News/2017_communication_on_the_european_agenda_on_migration_en.pdf).

**Reading B.** Now read and complete paragraphs 3 – 5 below with the words and phrases provided in the box in basic form. If necessary, adapt each word in correspondence with the text.

<i>to fall short (present perfect)</i>	<i>insufficient</i>	<i>to halt</i>	<i>deep seated</i>
<i>to respond (present perfect)</i>	<i>root</i>	<i>core measures</i>	<i>serious doubt</i>
<i>one-off response</i>	<i>to best effect</i>	<i>societal cohesion</i>	<i>safe haven</i>
<i>migration policy</i>	<i>integrate</i>	<i>balancing act</i>	<i>economic demands</i>

3. The response was immediate but (1) \_\_\_\_\_. This cannot be a (2) \_\_\_\_\_ - \_\_\_\_\_. Emergency measures have been necessary because the collective European policy on the matter (3) \_\_\_\_\_. While most Europeans (4) \_\_\_\_\_ to the plight of the migrants, the reality is that across Europe, there are (5) \_\_\_\_\_ about whether our (6) \_\_\_\_\_ is equal to the pressure of thousands of migrants, to the need to (7) \_\_\_\_\_ migrants in our societies, or to the (8) \_\_\_\_\_ of a Europe in demographic decline.

4. To try (9) \_\_\_\_\_ the human misery created by those who exploit migrants, we need to use the EU's global role and wide range of tools to address the (10) \_\_\_\_\_ causes of migration. Some of these are (11) \_\_\_\_\_ but must be addressed. Globalisation and the communication revolution have created opportunities and raised expectations. Others are the consequence of wars and crises from Ukraine to the Middle East, Asia and North Africa. The impact of global poverty and conflict do not end at national frontiers.

Europe should continue to be a (12) \_\_\_\_\_ for those fleeing persecution as well as an attractive destination for the talent and entrepreneurship of students, researchers and workers. Upholding our international commitments and values while securing our borders and at the same time creating the right conditions for Europe's economic prosperity and (13) \_\_\_\_\_ is a difficult (14) \_\_\_\_\_ that requires coordinated action at the European level.

5. This calls for a set of (15) \_\_\_\_\_ and a consistent and clear common policy. We need to restore confidence in our ability to bring together European and national efforts to address migration, to meet our international and ethical obligations and to work together in an effective way, in accordance with the principles of solidarity and shared responsibility. No Member State can effectively address migration alone. It is clear that we need a new, more European approach. This requires using all policies and tools at our disposal – combining internal and external policies (16) \_\_\_\_\_. All actors: Member States, EU institutions, International Organisations, civil society, local authorities and third countries need to work together to make a common European migration policy a reality.

## II. Immediate action

*In this section, read the first part and fill the gaps with the appropriate term(s) based on the near synonyms provided in square brackets.*

The first part of this European Agenda on Migration responds to the need for (1) \_\_\_\_\_ [quick] and determined action in response to the human tragedy in the whole of the Mediterranean. The European Council statement (23 April 2015) and the European Parliament Resolution a few days later, illustrated the (2) \_\_\_\_\_ [agreement reached] for rapid action to save lives and to (3) \_\_\_\_\_ [increase] EU action.



This swift response must also serve as the (4) \_\_\_\_\_ [*plan, scheme*] for the EU's reaction to future crises, whichever part of the common external (5) \_\_\_\_\_ [*frontier*] comes under pressure from East to West and from North to South.

### Saving lives at sea

Europe cannot stand by whilst lives are being lost. Search and (6) \_\_\_\_\_ [*saving*] efforts will be stepped up to restore the level of intervention provided under the former Italian Mare (7) \_\_\_\_\_ [Latin = *noster, 'our'*] operation. To triple the budget for the Frontex (8) \_\_\_\_\_ [*shared, common*] operations Triton and Poseidon, the Commission has already presented an (9) \_\_\_\_\_ [*correcting*] budget for 2015 and will present its proposal for 2016 by the end of May. When implemented, this will expand both the capability and the geographical scope of these operations, so that Frontex can (10) \_\_\_\_\_ [*carry out*] its dual role of coordinating operational border support to Member States under pressure, and helping to save the lives of migrants at sea. In parallel to this increase in EU funding, assets (ships and aircraft) are being (11) \_\_\_\_\_ [*positioned*] by several Member States. This welcome solidarity will need to be maintained for as long as the migratory pressure (12) \_\_\_\_\_ [*continues*]. The new Triton Operational Plan will be presented by the end of May.

### III. Listening comprehension A

Please, watch a video<sup>51</sup> of a press conference with First Vice-President Frans TIMMERMANS, HRVP Federica MOGHERINI, and Commissioner Dimitris AVRAMOPOULOS.

Watch the first section of the video (up to 2:50 min) and fill the gaps with the missing words (two to six words long):

1. complete package for \_\_\_\_\_
2. immediate need first of all to \_\_\_\_\_
3. assist frontline countries with \_\_\_\_\_
4. This is not about \_\_\_\_\_
5. reinforcing the \_\_\_\_\_
6. transit countries such as \_\_\_\_\_, \_\_\_\_\_
7. which are bearing \_\_\_\_\_ of refugees
8. To \_\_\_\_\_ we will adopt measures to step up the prevention
9. criminal activities: \_\_\_\_\_ to justice

### IV. Listening comprehension B

Watch the rest of the video (start at 2:50 min), where solutions sought to resolve the migrant crisis are further detailed and add the missing terms.

The European Agenda is presented today and a part of it is the Action Plan we announced ten days ago. We will strengthen (1) \_\_\_\_\_ so that migrants who have no right to stay on European (2)

<sup>51</sup> Source: <https://www.youtube.com/watch?v=nQpg7T0KEhY>

\_\_\_\_\_ will be (3) \_\_\_\_\_. We need to be (4) \_\_\_\_\_. On the other hand, to enforce solidarity we are mobilizing an additional (5) \_\_\_\_\_ in emergency funding to support frontline member states. We will propose a strengthening of the emergency mechanism to organize a fair relocation of asylum seekers from the Member States under pressure to other Member States based on a distribution scheme. One more crucial element of our emergency response is, there is the (6) \_\_\_\_\_. Together with the United Nations High Commissioner for Refugees we want to bring (7) \_\_\_\_\_ to the European Union 20,000 refugees from third-countries. And we will finance this Action with (8) \_\_\_\_\_. For implementing (9) \_\_\_\_\_ and the (10) \_\_\_\_\_ we have developed a distribution scheme based on objective, (11) \_\_\_\_\_ and (12) \_\_\_\_\_ criteria. These criteria are:

1. The (13) \_\_\_\_\_ of the population;
2. The total (14) \_\_\_\_\_;
3. The number of (15) \_\_\_\_\_ and persons already settled; and
4. The (16) \_\_\_\_\_.

So, as you can see, the Agenda strikes the (17) \_\_\_\_\_ between fighting smuggling and (18) \_\_\_\_\_ the (19) \_\_\_\_\_ and protecting the refugees. Now we need to start implementing these actions. Given the importance and the urgency of this situation, the Commission will already adopt by the end of May a recommendation for a resettlement scheme. A (20) \_\_\_\_\_ proposal to trigger an emergency relocation mechanism within the European Union, guidance on (21) \_\_\_\_\_, an Action Plan on smuggling, and will provide information on new Triton operation planning.

We will also launch a public consultation on the (22) \_\_\_\_\_. Moreover, together with Federica [Mogherini] we will intensify our contacts with third-countries to address the root causes of migration.

In a spirit of greater solidarity we are determined to implement this comprehensive approach which will improve significantly the management of migration in Europe. But we all need to work together (23) \_\_\_\_\_. The Commission has exercised all its (24) \_\_\_\_\_ and the Directives' instructions given by President Juncker are very clear on that from the very beginning of the life of this Commission. You'll remember that it was very top on the priority from the very beginning. And it's mobilizing all its resources to implement these actions. (25) \_\_\_\_\_, not everything depends on us. It is a (26) \_\_\_\_\_ responsibility.

I sincerely hope and wish that the Member States will do their part to make this Agenda a reality. Thank you very much for your attention.

## B. FURTHER LANGUAGE PRACTICE

### I. EU human rights acronyms and abbreviations

Match the twenty acronyms/abbreviations with the corresponding descriptions.

EMN	Frontex	CEAS	JOT MARE	CSDP
PACE	VIS	SAR	CJEU	EEAS
EASO	ICCPR	GDP	SOLAS	ICESCR
RABIT	CRPD	EBSS	CBRN	UNHCR

No.	Acronym/ abbreviation	Description
1		Chemical, biological, radiological and nuclear materials that could harm society by way of dissemination or impact.
2		System for the exchange of data between Schengen States enabling authorized national authorities to enter and update visa data and to consult the data electronically.
3		Mechanism that gives rapid operational assistance for a limited period to a requesting Member State that faces urgent and exceptional pressure in specific border points from third-country citizens expecting to enter the MS's territory illegally.
4		Total market value of services and goods produced by a country during a specific time period.
5		Body established by Council Decision 2008/381/EC for the purpose of meeting the information needs of Union institutions, Member States' authorities and institutions and the general public. It provides updated, objective, reliable and comparable information on migration and asylum.
6		European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union.
7		Common European Asylum System
8		Court of Justice of the European Union (prior to December 2009, European Court of Justice).
9		United Nations Convention on the Rights of Persons with Disabilities
10		Common system for the exchange of information and cooperation between EU Member States and Frontex. The objective is to enhance surveillance and increase reaction capability at external borders to detect, prevent and combat irregular immigration and cross-border crime and protect and/or save migrants' lives.
11		International Covenant on Economic, Social and Cultural Rights
12		International Covenant on Civil and Political Rights
13		Parliamentary Assembly of the Council of Europe
14		Search and Rescue
15		Safety of Life at Sea
16		Common Security and Defence Policy
17		Joint maritime information operation
18		United Nations High Commissioner for Refugees
19		European External Action Service
20		EU agency that focuses on 3 major responsibilities: contributing to the coherent implementation and development of the CEAS, supporting and strengthening practical cooperation among Member States on asylum and providing and/or coordinating the provision of operational support to Member States subjected to particular pressure of their asylum/reception systems.

## II. Metaphors in Human Rights language

Contrary to what many may believe, there are plenty of metaphors in legal language. Please, fill in the gaps in the following sentences with the words given, and then match the metaphorical identification to the expression resulting from it. The first one has been done for you.

### Missing words

*burden, clash, core, distance, fuel, gratuitous, outweigh, propagate, proportionality, undermine*

### Metaphors

AN IDEA IS A (FLESHY) FRUIT WITH SEEDS

AN IDEA IS A LIVING BEING WHICH CAN REPRODUCE ITSELF

CONFLICTING LAWS ARE LIKE CARS COLLIDING WITH EACH OTHER

FINDING EVIDENCE IS HEAVY

UNDESIRABLE HUMAN ACTIONS ARE FIRES

IMPORTANT THINGS ARE HEAVIER THAN LESS IMPORTANT THINGS

SOCIETY IS A BUILDING

UNNECESSARY THINGS HAVE NO MONETARY VALUE

TO AGREE IS TO BE TOGETHER, TO DISAGREE IS TO BE SEPARATED

WHEN SOMETHING IS SUITABLE, IT HAS THE RIGHT SIZE

1. The existence of regulations relating specifically to publications of foreign origin would seem, in the Court's view, to **clash** head on with the wording of paragraph 1 of Article 10 of the Convention.  
**(CONFLICTING LAWS ARE LIKE CARS COLLIDING WITH EACH OTHER)**
2. It was held that it was not clear that the need to satisfy the public's concern to know the truth may \_\_\_\_\_ the need to protect national security. (\_\_\_\_\_)
3. it thus enables everyone to participate in the free political debate which is at the very \_\_\_\_\_ of the concept of a democratic society. (\_\_\_\_\_)
4. The purpose of the report could not objectively be regarded as having been to \_\_\_\_\_ racist ideas and opinions. (\_\_\_\_\_)
5. There was no proof that the description of events given in the articles was totally untrue or calculated to \_\_\_\_\_ a defamation campaign. (\_\_\_\_\_)
6. The suspect, a known right-wing extremist, was also suspected of attempts to \_\_\_\_\_ democratic society. (\_\_\_\_\_)
7. In the Court's view the editorial could be considered polemical but did not constitute a \_\_\_\_\_ personal attack, as the author gave an objective explanation. (\_\_\_\_\_)

8. A journalist had been convicted of failing to impart fair information by quoting excerpts from an article that questioned the honesty of a body of civil servants, where the journalist did not \_\_\_\_\_ himself from the comments. (\_\_\_\_\_)
9. A judgment that Article 10 had not been violated was delivered in the McVicar case, concerning the \_\_\_\_\_ of proof placed on a journalist and his conviction of defaming a sportsman by accusing him of using illegal performance-enhancing drugs. (\_\_\_\_\_)
10. As the case involved a restriction of freedom of expression in a matter of public interest, the Court carefully considered the \_\_\_\_\_ of the measures imposed. (\_\_\_\_\_)

### III. Fill in the gaps in the following text:

## EUROPEAN CONVENTION ON HUMAN RIGHTS

### ARTICLE 3

#### Prohibition of torture

No one shall be (1) \_\_\_\_\_ to torture or to inhuman or degrading treatment or punishment.

### ARTICLE 6

#### Right to a fair trial

1. In the determination of his civil rights and obligations or of any (2) \_\_\_\_\_ charge against him, everyone is entitled to a (3) \_\_\_\_\_ and public hearing (4) \_\_\_\_\_ a reasonable time by an independent and impartial tribunal established by (5) \_\_\_\_\_. Judgment shall be (6) \_\_\_\_\_ publicly but the press and public may be excluded from all or part of the (7) \_\_\_\_\_ 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 (8) \_\_\_\_\_ would prejudice the interests of justice.

2. Everyone charged with a criminal offence shall be (9) \_\_\_\_\_ innocent until (10) \_\_\_\_\_ guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

(a) to be informed promptly, in a (11) \_\_\_\_\_ which he understands and in detail, of the nature and cause of the (12) \_\_\_\_\_ against him;

(b) to have adequate time and facilities for the preparation of his (13) \_\_\_\_\_;

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient (14) \_\_\_\_\_ to pay for legal assistance, to be given it free when the interests of justice so require;

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same (15) \_\_\_\_\_ as witnesses against him;

(e) to have the free assistance of an (16) \_\_\_\_\_ if he cannot understand or speak the language used in (17) \_\_\_\_\_.

**IV. After reading the following summary of facts, fill in the gaps in the text below. Sometimes a choice is given, and sometimes you have to provide the correct term.**

**Sanader v. Croatia  
Press release**

**ECHR 054 (2015)  
12.02.2015**

**Summary of facts**

The applicant, Mr. Mile Sanader, is a Croatian and Serbian national who was born in 1957 and lives in Vrđnik, Serbia.

The applicant was charged by the Croatian prosecuting authorities with war crimes against prisoners of war in 1992, while he was living in the then occupied parts of Croatia. He was tried in *absentia*, was convicted as charged and was sentenced to 20 years' imprisonment.

The judgment was eventually upheld by the Croatian Supreme Court in 2000 and the courts subsequently issued an arrest warrant in this respect.

After learning of his conviction, the applicant requested the Croatian courts to reopen the proceedings, denying that he had committed the crime. His request was dismissed in a decision eventually upheld by the Supreme Court in January 2011.

**Fill in the gaps with the most appropriate term. Sometimes you are given a choice and sometimes you have to provide the correct term:**

*Source: Press release issued by the Officer of the court. HUDOC Database, <http://www.echr.coe.int/Pages/home.aspx?p=home&c=>*

Following (1) \_\_\_\_\_ of war crimes in his absence, (2) \_\_\_\_\_ should have had a real possibility of a rehearing of his case

- (1) a. trial                      b. conviction                      c. condemnation                      d. sentence  
(2) a. defendant                      b. suspect                      c. perpetrator                      d. criminal

In today's **Chamber** (3) \_\_\_\_\_ in the case of Sanader v. Croatia (application no. 66408/12) the European Court of Human Rights (4) \_\_\_\_\_, unanimously, that there had been:

- (3) \_\_\_\_\_  
(4) \_\_\_\_\_

**a (5) \_\_\_\_\_ of Article 6 § 1 (right to a (6) \_\_\_\_\_ trial)** of the European Convention on Human Rights

- (5) \_\_\_\_\_  
(6) \_\_\_\_\_

The case essentially concerned the complaint by a man convicted in his absence of war crimes – (7) \_\_\_\_\_ in 1991 as a participant in Serb paramilitary forces – that he was unable to obtain a rehearing of his case.

(7) \_\_\_\_\_

The Court (8) \_\_\_\_\_ that the possibilities under Croatian law to obtain a retrial, as suggested by the Croatian Government, had not provided Mr Sanader with sufficient certainty with the opportunity of (9) \_\_\_\_\_ at a new trial. In particular, by obliging him to (10) \_\_\_\_\_ before the national authorities and to (11) \_\_\_\_\_ an address of residence in Croatia in order to (12) \_\_\_\_\_ a retrial, the Croatian authorities had created a disproportionate obstacle to his use of the remedy.

(8) \_\_\_\_\_

(9) a. attending      b. turning up      c. showing up      d. appearing

(10) \_\_\_\_\_

(11) \_\_\_\_\_

(12) a. demand      b. order      c. request      d. ask for

### Principal facts

The (13) \_\_\_\_\_, Mile Sanader, is a Croatian and Serbian national who was born in 1957 and lives in Vrdnik (Serbia).

(13) a. claimant      b. applicant      c. petitioner      d. postulant

In November 1992 the Croatian prosecuting authorities (14) \_\_\_\_\_ Mr Sanader with war crimes (15) \_\_\_\_\_ prisoners of war. He was (16) \_\_\_\_\_ of having participated in a group of Serb paramilitary forces who, in September 1991, had shot 27 prisoners of war. He was (17) \_\_\_\_\_ in his absence and – on the basis of several witnesses' (18) \_\_\_\_\_ – convicted as charged, and sentenced to 20 years' imprisonment. The judgment was eventually (19) \_\_\_\_\_ by the Croatian Supreme Court in September 2000. The courts subsequently (20) \_\_\_\_\_ an arrest warrant in his respect.

(14) \_\_\_\_\_

(15) a. against      b. of      c. to      d. from

(16) a. speculated      b. susceptible      c. suspicioned      d. suspected

(17) \_\_\_\_\_

(18) a. testifications      b. statements      c. declarations      d. submissions

(19) \_\_\_\_\_

(20) \_\_\_\_\_

After Mr Sanader had learned of his conviction, he asked the Croatian courts to (21) \_\_\_\_\_ the proceedings, denying that he had committed the crime. His request was (22) \_\_\_\_\_ in a decision eventually upheld by the Supreme Court in January 2011. His constitutional complaint was declared (23) \_\_\_\_\_ in February 2012.

- |                      |                 |                 |                |
|----------------------|-----------------|-----------------|----------------|
| (21) a. reopen       | b. retry        | c. rehear       | d. repeat      |
| (22) a. discarded    | b. rejected     | c. dismissed    | d. denied      |
| (23) a. inadmissible | b. inadmittable | c. inadmissible | d. inadmitable |

**V. Now, choose what you think is the most appropriate option for each of the gaps:**

**Decision of the Court  
Article 6**

The Court observed that (1) \_\_\_\_\_ – given the escalating war in Croatia and the fact that he lived (2) \_\_\_\_\_ – it had been impossible for the authorities (3) \_\_\_\_\_ or to secure his presence. In such circumstances, it was possible under national law (4) \_\_\_\_\_ if there were highly important reasons for doing so. The Court accepted that a trial in the Mr Sanader's absence, having regard to the circumstances of the case, (5) \_\_\_\_\_ and the public interest in effectively prosecuting war crimes, had not in itself been contrary to Article 6.

1. a. at the time the proceedings against Mr Sanader were opened  
b. at the moment the proceedings against Mr Sanader were started
2. a. in territory out of the authorities' control  
b. on territory outside the authorities' control
3. a. to notify him with the proceedings  
b. to notify him of the proceedings
4. a. to celebrate a hearing in the absence of the defendant  
b. to hold a hearing in the absence of the defendant
5. a. namely the gravity of the alleged crime  
b. naming the gravity of the suspected crime

However, (6) \_\_\_\_\_, namely the fact that he had had no knowledge of his prosecution and (7) \_\_\_\_\_ and that he had not attempted to evade trial or (8) \_\_\_\_\_, the crucial question for the Court was whether national legislation provided him (9) \_\_\_\_\_ with the opportunity of appearing at a new trial. The Croatian Government, (10) \_\_\_\_\_, had referred to two possibilities under national law to obtain a retrial: first, a remedy specifically applicable to trials (11) \_\_\_\_\_; and second, a general remedy (12) \_\_\_\_\_.



6.
  - a. having regard of Mr. Sanader's posture
  - b. having regard to Mr Sanader's position
7.
  - a. of the accusations against him
  - b. of the charges against him
8.
  - a. waive of his right to appear in court
  - b. waive his right to appear in court
9.
  - a. with sufficient certainty
  - b. with certainty enough
10.
  - a. in its declarations to the court
  - b. in their submissions to the Court
11.
  - a. held in the absence of the defendant
  - b. ran in the absence of the accused
12.
  - a. for seeking the reopening of the proceedings
  - b. for seeking of the reopening of the procedure

As regards the first remedy, the Court observed that (13) \_\_\_\_\_, it required a person in Mr Sanader's position to appear (14) \_\_\_\_\_ the national authorities and to provide an address of residence in Croatia during (15) \_\_\_\_\_. However, this would (16) \_\_\_\_\_ lead to his detention based on the conviction in his absence. The possibility that (17) \_\_\_\_\_ before obtaining a retrial could be postponed, as the Croatian Government had suggested, was not very likely in practice.

13.
  - a. according to the case-law of the national courts
  - b. according to the law-case of the national courts
14.
  - a. in front of
  - b. before
15.
  - a. the criminal procedure
  - b. the criminal proceedings
16.
  - a. in the ordinary course of action
  - b. in the normal action of course
17.
  - a. the execution of the conviction
  - b. the enforcement of the sentence

**VI. Finally, in the following exercise, which includes the rest of the text, you will be given a synonym in the gap and you have to provide the appropriate term. You are given one or in some cases two initial letters of each as a clue.**

The Court (1) UN\_\_\_\_\_ [emphasized] that under its case-law there could be no question of an accused being obliged to (2) S\_\_\_\_\_ [give himself up] to custody in order to (3) SE\_\_\_\_\_ [obtain] the right to be retried, as that would mean making the exercise of the right to a fair hearing (4) CO\_\_\_\_\_ [dependent] on the accused offering up his liberty as a (5) GU\_\_\_\_\_ [security]. Moreover, under the relevant national law the mere reopening of the (6) P\_\_\_\_\_ [case] would not have an effect on the (7) VA\_\_\_\_\_ [legitimacy] of the judgment delivered in the previous proceedings. Such judgment would remain (8, **two words**) I\_\_\_\_\_ F\_\_\_\_\_ [in operation] until the end of the retrial and only then could it possibly be (9, **two words**) S\_\_\_\_\_ A\_\_\_\_\_ [overturned]. Against that background the Court considered that by obliging Mr Sanader to (10) A\_\_\_\_\_ [show up] before the national authorities and to (11) PR\_\_\_\_\_ [give] an address of residence in Croatia during the criminal proceedings in order to (12) R\_\_\_\_\_ [apply for] a retrial, the Croatian authorities had created a disproportionate (13) O\_\_\_\_\_ [impediment] to his use of the remedy.

As regards the second – general – remedy to which the Government had referred, the Court (14) NO\_\_\_\_\_ [remarked] that it was applicable only to a restricted (15) CA\_\_\_\_\_ [class] of cases, since the condition for its use was the existence of new (16) E\_\_\_\_\_ [proof] or facts capable of leading to (17) A\_\_\_\_\_ [absolution] or a more (18) L\_\_\_\_\_ [indulgent] sentence. The Court noted that Mr Sanader, having been tried in his absence, had had no opportunity to challenge the factual (19) FI\_\_\_\_\_ [conclusions] of the judgment by which he had been convicted.

The Court (20) C\_\_\_\_\_ [came to the conclusion] that Mr Sanader had not been provided with sufficient certainty with the opportunity of obtaining a (21) FR\_\_\_\_\_ [new, clean, unpolluted] determination of the charges against him by a court in (22) F\_\_\_\_\_ [complete] respect of his defence rights. There had accordingly been a violation of Article 6.

In view of that finding, the Court did not consider it necessary to (23) E\_\_\_\_\_ [analyse, review] Mr Sanader's complaint about the alleged (24) IN\_\_\_\_\_ [defectiveness] of his legal representation by the (25, **two hyphenated words**) L\_\_\_\_\_ - A\_\_\_\_\_ [publicly-funded] lawyer during the proceedings (26) CO\_\_\_\_\_ [carried out] in his absence.

**Just satisfaction (Article 41)**

The Court (27) H\_\_\_\_\_ [considered, decided] that Croatia was to pay Mr Sanader 4,000 euros (EUR) (28, **three words**) I\_\_\_\_\_ R\_\_\_\_\_ O\_\_\_\_\_ [for] non-pecuniary (29) D\_\_\_\_\_ [harm] and EUR 2,500 (30, **three words**) I\_\_\_\_\_ R\_\_\_\_\_ O\_\_\_\_\_ [for] costs and expenses.

# UNIT 3

## RIGHT TO A FAIR TRIAL IN THE ECHR AND IN THE EU CHARTER OF FUNDAMENTAL RIGHTS. BASIC CONCEPTS.

### INTRODUCTION: RIGHT TO A FAIR TRIAL

Access to a court and complex set of minimal rules regulating due process of law is a core fundamental right and a central concept in the broader field of justice. It is commonly called right to a fair trial.

The idea of right to a fair trial is enshrined in many international treaties. Article 6 of the ECHR was inspired by Article 10 and 11(1) of the Universal Declaration of Human Rights of 1948. It also has a counterpart –with minor differences– in Article 14 of the International Covenant on Civil and Political Rights of 1966.

#### **EU Charter of fundamental rights**

At the European Union level the provisions concerning the right to a fair trial are included in the **EU Charter of Fundamental Rights** from December 2000. Its Chapter 6 entitled “Justice” in the provisions of Arts. 47-50 covers such rights as:

- right to effective remedy (Art. 47.1),
- right to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law (Art. 47.2),
- right to legal representation and to legal aid (Art. 47.3),
- presumption of innocence (Art. 48.1),
- rights of the defense in the criminal proceedings (Art. 48.2),
- principle of non-retroactivity (Art. 49.1,2),
- proportionality between penalties and criminal offences (Art. 49.3),
- ne bis in idem principle (Art. 50),

To ensure the effective and uniform application of EU legislation and to prevent divergent interpretations, national courts may, and sometimes must (in the case of courts of last resort), turn to the Court of Justice with so-called preliminary questions to ask about the interpretation of Union law, in order to ascertain whether their national legislation complies with that law.

### European Convention of Human Rights in general

Among the most widely recognized sources of the right to fair trial is **Art. 6 of the European Convention of Human Rights**. This article occupies a central place in the system of the European Convention on Human Rights. Art. 34 of the Convention enables any persons claiming to be victims of a violation of their Convention rights to take their individual claims to the European Court of Human Rights. In this way provisions of Art. 6 ECHR have been widely explained and interpreted by the case-law of European Court of Human Rights. The case-law of this Court on Article 6 is a complex body of rules. It is generally agreed that this provision is the most frequently cited one of the Convention, both at the national and international levels. This Article contains a variety of rights which are all related to the good administration of justice, not only criminal, but also in civil and administrative matters. One should not underestimate the role of the ECtHR in the process of development of the idea of the right to fair trial. For example, some of the procedural rights which were not specifically mentioned in art. 6 ECHR were rather inferred from the case-law of the European Court of Human Rights (for example the right against self-incrimination, or the doctrine of entrapment).

### Guarantees common to civil and criminal proceedings

Some rights enshrined in Art. 6 ECHR are common to both civil and criminal proceedings. These include:

- right of access to a court,
- institutional guarantees concerning the notion of Tribunal,
- procedural requirements encompassing among others:
- equality of arms,
- adversarial hearing,
- public hearing,
- reasonable time guarantee

Another group of rights deriving from art. 6 ECHR is specific only for criminal cases, namely:

- right of the accused to remain silent and not to incriminate oneself,
- use of unlawfully obtained evidence,
- doctrine of entrapment,
- presumption of innocence,
- right to the defense.

According to the interpretation of the ECtHR, **right of access to the court** is not an absolute right both in criminal and civil matters (*Deweert v. Belgium*; see also *Kart v. Turkey*); however, its limitations must not restrict the exercise of the right to such an extent that the very essence of the right is undermined. The limitations must pursue a legitimate aim and a balance must be struck between the means employed and the aim sought to be achieved.

The institutional guarantees expressed by the notion of "**the independent and impartial tribunal established by law**" included in Art. 6 § 1 of ECHR are fundamental to the right to fair trial, as long as it is directly and explicitly expressed in the text of Convention. It can be considered as a group of requirements referring to the notion of tribunal:

- its attribute of **being established by law** ("the judicial organization in a democratic society must not depend on the discretion of the Executive, but it should be regulated by law emanating from Parliament", *Zand v Austria*) applies not only to the institutional establishment, but also to the specific composition of the court in a particular case.

- **being independent**, which encompasses:
  - the manner of appointment of its members (a certain structural degree of separation of the body from the executive is required, the presence of judicial or legally qualified members in a tribunal is a strong indication of its independence),
  - the duration of their office (members shall be appointed for the indefinite period of time or for a fixed period which should not be too short),
  - the existence of guarantees against outside pressures,
  - the question whether the body presents an appearance of independence (from the point of view of an independent observer),
- **being impartial** (impartiality generally means absence of prejudice or bias; however, under Article 6 § 1 of the Convention, a distinction can be drawn between a subjective approach, based on the personal conviction of a given judge in a given case, and an objective approach, that is, determining whether, from the point of view of an outside observer, quite apart from the judge's personal conduct, there are ascertainable facts which may raise doubts as to his impartiality).

Procedural guarantees emanating from Art. 6 ECHR in general terms are common both for civil and criminal proceedings.

**Equality of arms** requires that each party shall be given a reasonable opportunity to present his case under conditions that do not place him at a substantial disadvantage compared to his opponent (see for example *Bobek v. Poland*, § 56).

The **right to adversarial proceedings**, closely related to equality of arms, means the opportunity for parties to a criminal or civil trial to have knowledge of and comment on all evidence adduced or observations filed by the other party in order to influence the court's decision. According to ECtHR jurisdiction, access to the materials of a nature "vital" to the outcome of the case must be granted (*McMichael v. the United Kingdom*); however, access to less important evidence may be restricted.

Notion of the **public hearing**, expressed in Art. 6 § 1 ECHR encompasses such principles as publicity of court proceedings (both the holding of public hearings and the public delivery of judgments; see *Sutter v. Switzerland*), the right to an oral hearing and presence at trial (particularly important in respect of the defendant in criminal proceedings). A public hearing is an essential feature of the right to a fair trial. It provides for the right of the applicant to claim that third persons and media be allowed to attend the hearing. The public character of proceedings protects litigants against the administration of justice in secret without public scrutiny; in this way it maintains public confidence in the courts. The requirement of a public hearing does not have an absolute character, the exceptions are admissible "... where the interests of juveniles or 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" (Art. 6 § 1 ECHR).

It is commonly said that "justice delayed is justice denied" which justifies the **reasonable time guarantee** expressly pronounced in Art. 6 § 1 ECHR. Which length of the proceedings is reasonable is assessed, in the light of Strasbourg Court case-law, by a cumulative test involving three main criteria such as:

- the complexity of the case,
- the applicant's conduct and
- the conduct of the relevant administrative and judicial authorities.

The complexity of a case may stem, for instance, from the nature of the facts that are to be established, the number of accused persons and witnesses, international elements, the joinder of the case to other cases, and the intervention of other persons in the procedure (see for example: *Neumeister v. Austria*). The defendant cannot be blamed for taking full advantage of the resources and tools afforded by national law in the defense of his interests; nevertheless his or her conduct constitutes an objective fact which cannot be attributed to the respondent State. Reasonable diligence is required from the authorities in each procedural step –in all criminal cases and when they are one of the parties to a civil case. Article 6 § 1 imposes on the Contracting States the duty to organize their judicial systems in such a way that their courts can meet each of its requirements (see *Abdoella v. the Netherlands*).

#### **Guarantees specific to criminal proceedings.**

Some guarantees of fair trial are specific only to criminal proceedings. If we take under consideration that this type of the proceedings can end up in deprivation of liberty of the accused, the requirement of particular procedural precautions becomes obvious.

Although not specifically mentioned in Article 6, **the right to remain silent and the privilege against self-incrimination** are generally recognized international standards which lie at the heart of the notion of a fair procedure under Art. 6. Such principles prevent the prosecution in a criminal case to prove their case with recourse to evidence obtained through methods of coercion or oppression, in defiance of the will of the accused (see *Saunders v. the United Kingdom*). It concerns not only usage of direct coercion, such as torture (see *Yusuf Gezer v. Turkey*, *Jalloh v. Germany*), but also, for example, a situation in which an informer was placed in the same prison cell as the applicant, with the specific purpose of obtaining evidence against him. The Strasbourg Court found that the applicant's admissions had been the product of persistent questioning and he had been subject to psychological pressures which undermined the voluntariness of the statements (see *Allan v. the United Kingdom*).

Use of **unlawfully obtained evidence** is another subject of Strasbourg Court case-law. Accepting the evidence obtained by means involving a serious breach of Article 3 (such as torture) will in most circumstances be contrary to Art. 6, but evidence gathered in breach of another article of the Convention (for example Art. 8) does not necessarily infringe on fairness of the proceedings (see *Bykov v. Russia*).

**Entrapment**, from the point of view of Strasbourg Tribunal case-law, is a situation where the officers involved in covert investigation do not confine themselves to investigating criminal activity in an essentially passive manner, but exert such an influence on the subject as to incite the commission of an offence that would otherwise not have been committed. If the actions of the agent constituted entrapment and the evidence obtained was used against the accused, it is a violation of Art. 6 § 1 of the ECHR (see *Ramanauskas v. Lithuania*).

The principle of **the presumption of innocence** is expressed in Art. 6 § 1 of the ECHR. This provision primarily disallows premature declarations of guilt by any public official. First of all it "requires, inter alia, that when carrying out their duties, the members of a court should not start with the preconceived idea that the accused has committed the offence charged; the burden of proof is on the prosecution, and any doubt should benefit the accused" (see *Barberá, Messegué and Jabardo v. Spain*). Not only the courts but also other State organs are bound by the principle of presumption of innocence, like for example police officers (see *Allenet de Ribemont v. France*) or Minister of Justice (see *Garlicki v. Poland*).

**The defense rights** is one of the most complex group of procedural precautions included in the ECHR (Art. 6 § 3). It encompasses firstly the right to defense in the material sense, which means that the accused must have the opportunity to organize his defense in an appropriate way and without restriction as to the ability to put all relevant defense arguments before the trial court and effectively influence the outcome of the proceedings (*Can v. Austria*). The defense must be given additional time

after certain actions in the proceedings in order to adjust its position (to prepare a request, lodge an appeal, to assess a new evidence of the prosecution, or to assess a sudden and drastic change in the opinion of an expert) (see *Great Britain v. France*). On the other hand, right to the defense in the formal sense means right of the accused to defend himself in person or through legal assistance by a lawyer of his own choosing. Other guarantees covered by the scope of Art. 6 § 3 are, among others, the right to information about the charges and about reclassification of the charges, right to examine a witness, right to legal aid (if the accused lacks sufficient means to pay for legal assistance or if granting legal aid is in the interest of justice) and the right to free assistance of an interpreter.

## BIBLIOGRAPHY

- Universal Declaration of Human Rights (UDHR), adopted by the UN General Assembly under its resolution 217 (III) of 10 December 1948 (Arts. 8, 10, 11).
- European Convention on Human Rights, Rome 4 Nov. 1950 (Art. 6).
- International Covenant on Civil and Political Rights, adopted on 16 December 1966 (Arts. 14-15).
- Charter of Fundamental Rights of the European Union, 7 Dec. 2000 (Arts. 47-50).
- Amnesty International. Fair Trials Manual. London: Amnesty International Publications, 1998.
- *Legal Digest of International Fair Trial Rights*, OSCE Office for Democratic Institutions and Human Rights, Warsaw 2012 (<http://www.osce.org/odihr/94214?download=true>).
- Handbook on European law relating to access to justice ([http://www.echr.coe.int/Documents/Handbook\\_access\\_justice\\_ENG.pdf](http://www.echr.coe.int/Documents/Handbook_access_justice_ENG.pdf)).
- Guide on Art. 6: Rights to fair trial (civil limb) ([http://www.echr.coe.int/Documents/Guide\\_Art\\_6\\_ENG.pdf](http://www.echr.coe.int/Documents/Guide_Art_6_ENG.pdf)).
- Guide on Art. 6: Rights to fair trial (criminal limb) (<https://rm.coe.int/1680304c4e>).
- Nuala Mole and Catharina Harby, The right to a fair trial. A guide to the implementation of Article 6 of the European Convention on Human Rights (<https://rm.coe.int/168007ff49>).
- Dovydas Vitkauskas and Grigoriy Dikov, Protecting the right to a fair trial under the European Convention on Human Rights ([http://www.echr.coe.int/LibraryDocs/Vitkauskas2012\\_EN.pdf](http://www.echr.coe.int/LibraryDocs/Vitkauskas2012_EN.pdf)).

## LANGUAGE EXERCISES

### C. READING COMPREHENSION

#### I. Think about the following questions, before you read the text.

1. Have you ever gone through the experience of the absence of the assigned counsel of one of the parties at a hearing? If so, what did you do; if not, what would you do?
2. Would granting an adjournment be one of the procedures you would follow?
3. Does the absence of an assigned counsel have any bearing on the right to a fair trial?
4. Do you happen to know whether assigned counsel have a code of conduct?

5. Would you consider the absence of the lawyer in a criminal case to be professional misconduct? Would you impose a fine?
6. What kind of explanation justifying the lawyer's absence would you be ready to accept? Would you require the explanation in the form of a certificate, or would you be ready to accept a phone call or an email?

## II. Now, read the following texts:

**Vamvakas vs. Greece**  
Press release

**ECHR 117 (2015)**  
**09.04.2015**

### **Absence of assigned counsel: Court of Cassation failed to ensure practical and effective respect for defence rights.**

In today's **Chamber judgment** in the case of Vamvakas v. Greece (no.2) (application no. 2870/11) the European Court of Human Rights held, unanimously, that there had been **a violation of Article 6 §§ 1 and 3 (c) (right to a fair hearing / to be assisted by counsel) of the European Convention on Human Rights.**

The case concerned the unexplained absence of the applicant's assigned counsel from a Court of Cassation hearing in the criminal proceedings against him.

The Court found that the Court of Cassation had failed to ensure practical and effective respect for Mr Vamvakas' defence rights. When faced with the manifest default of the assigned lawyer, it should have adjourned the proceedings to clarify the situation rather than dismiss the appeal on points of law as not maintained, especially as the decision was final.

### **Principal facts**

The applicant, Alexandros Vamvakas, is a Greek national who was born in 1953.

On 16 January 2006 Mr Vamvakas was sentenced to eight years' imprisonment for fraud and forgery to the detriment of a bank. When a hearing was to be held on 20 May 2009, Mr Vamvakas informed the Criminal Court of Appeal that he would not be present but would be represented by two lawyers. However, neither of them turned up. The court assigned him a lawyer and adjourned the hearing until 27 May 2009 to give the lawyer time to study the file.

On 27 May 2009 the Court of Appeal reduced Mr Vamvakas' sentence to seven years' imprisonment.

On 1 June 2009 Mr Vamvakas appealed on points of law and asked the President of the Court of Cassation to assign him a lawyer to represent him in the proceedings. In the light of Mr Vamvakas' indigence, on 2 January 2010 the President appointed Mr F.K. to represent him at any hearings.

In a judgment of 25 February 2010 the Court of Cassation dismissed the appeal on the grounds that the applicant, who had been summoned to the hearing, had not appeared. According to Mr Vamvakas, he had contacted Mr F.K., who had assured him that he would be at the hearing; however, Mr F.K. did not attend the hearing nor did he inform Mr Vamvakas of the reasons for his absence, either beforehand or afterwards.



### 30 **Complaints, procedure and composition of the Court**

Relying on Article 6 § 1 (right to a fair hearing) and 6 § 3 (c) (right to be assisted by counsel), Mr Vamvakas alleged that he did not have effective legal assistance in the context of his appeal on points of law, because the lawyer who had been assigned to him by the Court of Cassation was not present at the hearing and his appeal was dismissed as a result.

### 35 **Decision of the Court**

Article 6 §§ 1 and 3 (c) (right to a fair hearing and right to be assisted by counsel)

As the Court had stated on many occasions, the purpose of the Convention was to protect rights that were not theoretical or illusory but practical and effective, and the appointment of counsel did not in itself ensure the effectiveness of defence rights. The State sometimes had to act where problems of representation before the courts were drawn to its attention. However, Article 6 § 3 (c) obliged authorities to intervene only where the default of an assigned lawyer was manifest. In such cases, when put on notice, the competent authorities had to replace the defaulting lawyer or oblige him to perform his mission, without which the notion of free legal assistance would be meaningless.

Where a lawyer, especially one who had been officially assigned, decided not to act in a case or was prevented from appearing at a hearing, he or she had a duty to inform the assigning authority of the situation and to do all that was necessary as a matter of urgency to preserve his or her client's rights and interests. Mr Vamvakas' lawyer, appointed on 2 January 2010 for the hearing of 5 February 2010, did not seem at any time to have explained that he was unable to pursue his mission. It was unlikely that, as he had said, he had contacted the registry of the Court of Cassation to request the adjournment of the hearing, because he would certainly have been informed that a telephone call was not a proper means of notification for that purpose under domestic law – it was necessary for a written request to be sent or for a fellow lawyer to appear on the day of the hearing to ask for an adjournment.

Since it was impossible under Greek law to reverse a decision to find an appeal on points of law inadmissible, it had been for the Court of Cassation to enquire about the reasons for the nonappearance of Mr Vamvakas' lawyer. The Court of Cassation had indeed been confronted with a situation of "manifest default" – the unexplained absence of the lawyer Mr F.K. from the hearing held one month and three days after his appointment, without any request for adjournment having been received from him – requiring the court to adjourn its proceedings in order to clarify the situation rather than dismiss the appeal on points of law as not maintained.

Consequently, as the Court of Cassation had failed to ensure practical and effective respect for Mr Vamvakas' defence rights, the Court found that there had been a violation of Article 6 §§ 1 and 3 (c).

### 65 **Article 41 (just satisfaction)**

The Court held that Greece was to pay Mr Vamvakas 2,000 euros (EUR) in respect of non-pecuniary damage.

### III. Explain the meaning of the italicized words/expressions:

1. *Court of Cassation*:
2. *Assigned counsel*:
3. *Practical and effective respect for Mr. Vamvakas' defence rights*:
4. *To appeal on points of law*:
5. *To the detriment of*:

6. To *dismiss* the appeal:
7. *Effective* legal assistance:
8. When put *on notice*:
9. *Competent* authorities:
10. *Means of* notification:
11. *Domestic* law:
12. *Fellow* lawyer:
13. To *reverse* a decision:
14. *Just satisfaction*:
15. Non-pecuniary

**IV. Explain the meaning of the following words and, where possible, give synonyms or near-synonyms**

1. counsel:
2. chamber:
3. application:
4. unanimously:
5. violation:
6. proceedings:
7. adjourned:
8. decision:
9. final:
10. sentenced:
11. turned up:
12. represent:
13. judgment:
14. summoned:
15. illusory:
16. default:
17. notification:

**V. Provide antonyms for the following:**

- |               |                  |                    |
|---------------|------------------|--------------------|
| 1. effective: | 10. fair:        | 19. assisted:      |
| 2. explained: | 11. practical:   | 20. respect:       |
| 3. manifest:  | 12. final:       | 21. present:       |
| 4. inform:    | 13. legal:       | 22. theoretical:   |
| 5. competent: | 14. meaningless: | 23. unnecessarily: |
| 6. able:      | 15. likely:      | 24. certainty:     |
| 7. proper:    | 16. written:     | 25. possible:      |
| 8. reverse:   | 17. admissible:  | 26. appearance:    |
| 9. explained: | 18. absence:     |                    |

## VI. Fill in the gaps with the appropriate preposition:

Decision (1) \_\_\_\_\_ the Court

Article 6 §§ 1 and 3 (c) (right (2) \_\_\_\_\_ a fair hearing and right (3) \_\_\_\_\_ be assisted by counsel)

As the Court had stated (4) \_\_\_\_\_ many occasions, the purpose of the Convention was (5) \_\_\_\_\_ protect rights that were not theoretical or illusory but practical and effective, and the appointment of counsel did not (6) \_\_\_\_\_ itself ensure the effectiveness (7) \_\_\_\_\_ defence rights. The State sometimes had to act where problems of representation before the courts were drawn (8) \_\_\_\_\_ its attention. However, Article 6 § 3 (c) obliged authorities (9) \_\_\_\_\_ intervene only where the default (10) \_\_\_\_\_ an assigned lawyer was manifest. (11) \_\_\_\_\_ such cases, when put (12) \_\_\_\_\_ notice, the competent authorities had to replace the defaulting lawyer or oblige him to perform his mission, (13) \_\_\_\_\_ which the notion of free legal assistance would be meaningless.

Where a lawyer, especially one who had been officially assigned, decided not to act (14) \_\_\_\_\_ a case or was prevented (15) \_\_\_\_\_ appearing at a hearing, he or she had a duty (16) \_\_\_\_\_ inform the assigning authority (17) \_\_\_\_\_ the situation and to do all that was necessary as a matter of urgency to preserve his or her client's rights and interests. Mr Vamvakas' lawyer, appointed (18) \_\_\_\_\_ 2 January 2010 (19) \_\_\_\_\_ the hearing of 5 February 2010, did not seem (20) \_\_\_\_\_ any time to have explained that he was unable to pursue his mission. It was unlikely that, as he had said, he had contacted the registry (21) \_\_\_\_\_ the Court of Cassation to request the adjournment (22) \_\_\_\_\_ the hearing, because he would certainly have been informed that a telephone call was not a proper means (23) \_\_\_\_\_ notification (24) \_\_\_\_\_ that purpose (25) \_\_\_\_\_ domestic law – it was necessary (26) \_\_\_\_\_ a written request to be sent or (27) \_\_\_\_\_ a fellow lawyer to appear (28) \_\_\_\_\_ the day of the hearing to ask (29) \_\_\_\_\_ an adjournment.

Since it was impossible (30) \_\_\_\_\_ Greek law to reverse a decision to find an appeal (31) \_\_\_\_\_ points of law inadmissible, it had been (32) \_\_\_\_\_ the Court of Cassation to enquire (33) \_\_\_\_\_ the reasons (34) \_\_\_\_\_ the nonappearance of Mr Vamvakas' lawyer. The Court of Cassation had indeed been confronted (35) \_\_\_\_\_ a situation of "manifest default" – the unexplained absence of the lawyer Mr F.K. (36) \_\_\_\_\_ the hearing held one month and three days (37) \_\_\_\_\_ his appointment, (38) \_\_\_\_\_ any request for adjournment having been received (39) \_\_\_\_\_ him – requiring the court to adjourn its proceedings in order (40) \_\_\_\_\_ clarify the situation rather than dismiss the appeal (41) \_\_\_\_\_ points of law as not maintained.

Consequently, as the Court of Cassation had failed to ensure practical and effective respect (42) \_\_\_\_\_ Mr Vamvakas' defence rights, the Court found that there had been a violation of Article 6 §§ 1 and 3 (c).

## VII. Rephrase the following sentences, using the clue provided and making any necessary changes:

- The State sometimes had to act where problems of representation before the courts were drawn to its attention.  
IF \_\_\_\_\_
- However, Article 6 § 3 (c) obliged authorities to intervene only where the default of an assigned lawyer was manifest.  
AUTHORITIES \_\_\_\_\_
- (...) the competent authorities had to replace the defaulting lawyer or oblige him to perform his mission, without which the notion of free legal assistance would be meaningless.  
THE NOTION \_\_\_\_\_

5. (...) the lawyer had a duty to inform the assigning authority of the situation.  
THE ASSIGNING AUTHORITY \_\_\_\_\_
6. Mr Vamvakas' lawyer, appointed on 2 January 2010 for the hearing of 5 February 2010, did not seem at any time to have explained that he was unable to pursue his mission  
IT SEEMS THAT \_\_\_\_\_
7. It was unlikely that, as he had said, he had contacted the registry of the Court of Cassation to request the adjournment of the hearing, because he would certainly have been informed that a telephone call was not a proper means of notification  
IF HE HAD \_\_\_\_\_
8. (...) it was necessary for a written request to be sent.  
A WRITTEN REQUEST \_\_\_\_\_
9. Since it was impossible under Greek law to reverse a decision to find an appeal on points of law inadmissible, it had been for the Court of Cassation to enquire about the reasons for the nonappearance of Mr Vamvakas' lawyer.  
THE COURT OF CASSATION HAD \_\_\_\_\_
10. (...) the Court found that there had been a violation of Article 6 §§ 1 and 3 (c).  
A VIOLATION \_\_\_\_\_

## D. FURTHER LANGUAGE PRACTICE

### I. Rewrite these sentences using the passive voice. Introduce any necessary changes:

1. In order to obtain a fair trial, a person needs to have access to the court.
2. The ECHR has upheld many claims of immunity on the basis that there is a public interest consideration.
3. Nobody can sue an MP for defamation.
4. Would the judge have imposed the right sentence in that case?
5. Juries believe that some offenders are more dangerous than others.
6. In certain circumstances it is possible to try a criminal defendant in his absence.
7. Did the defendant tell her solicitor before the hearing?
8. The parties must fill in the appropriate forms.
9. The prosecutor had not noticed me in the courtroom.
10. Counsel found the case to be hopeless.
11. Will the firm hire a new solicitor?
12. The parties have not agreed to this issue.
13. Will the defendant have given evidence by tomorrow?
14. The judge concluded that it would be possible to have a fair trial.

## II. Fill in the gaps with synonyms of the words in brackets (from Guide on Article 6 of the European Convention on Human Rights)

1. The principle of 'equality of arms' is inherent in the ..... (wider) concept of a fair trial.
2. Equality of arms implies that each party must be ..... (given) a reasonable opportunity to present his case under conditions that do not place him at a ..... (considerable) disadvantage vis-à-vis the other party.
3. This principle was found to have been ..... (violated) in a number of cases.
4. A party's appeal was not ..... (sent, communicated to) the other party, who therefore had no possibility to ..... (answer).
5. Time has ..... (stopped) to run against one of the parties only.
6. Only one of the two key witnesses was ..... (allowed) to be heard.
7. The opposing party enjoyed significant advantages as regards access to relevant information, occupied a dominant position in the ..... (trial) and ..... (used) considerable influence with regard to the court's ..... (evaluation).
8. The opposing party held positions or functions which put them at an advantage and the court made it difficult for the other party to ..... (dispute) them seriously by not allowing it to ..... (bring forward) relevant documentary or witness evidence.

## III. Fill in the gaps using the clues given (from Guide on Article 6 of the European Convention on Human Rights)

1. It is ..... (admissible, neg.) for one party to make ..... (submit, noun, pl.) to a court without the knowledge of the other and on which the latter has no opportunity to comment.
2. If ..... (observe, noun, pl.) submitted to the court are not communicated to either of the parties there will be no ..... (infringe, noun) of equality of arms as such, but rather of the ..... (fair, noun) of the ..... (proceed, noun, pl.).
3. Examples of ..... (fail, noun) to observe the equality of arms principle: this principle was found to have been breached in a number of cases because one of the parties had been placed at a clear disadvantage.
4. In ..... (administration, adj.) proceedings the reasons given by the ..... (administration, adj.) authority were too summary and general to enable the ..... (noun for person) to mount a reasoned challenge to their ..... (assess, noun); and the tribunals of fact declined to allow the ..... (appellant, verb).
5. The ..... (deny, noun) of legal aid to one of the parties deprived them of the opportunity to present their case ..... (effective, adv.) before the court in the face of a far wealthier opponent.
6. The ..... (prosecute, noun for person) intervened in support of the ..... (argue, noun) of the applicant's ..... (oppose, noun for person).
7. The Court found compatible with Article 6.1 a difference of ..... (treat, noun) in respect of the ..... (hear, noun) of the parties' witnesses as it had not, in practice, influenced the outcome of the proceedings.
8. The Court has distinguished between the system of a ..... (complain, noun) accompanied by a civil-party action and an action brought by the public prosecutor, who is vested with public ..... (authorise, noun)

# UNIT 4

## CONFLICTING RIGHTS: FREEDOM OF EXPRESSION, PRIVATE LIFE, FREEDOM OF RELIGION. INTERNET. HATE SPEECH

### INTRODUCTION

Freedom of expression is considered a fundamental right in (almost) every country of the world and it is universally recognised and protected as an instrument of reaction against the idea of the control of expression by the State and public authorities. Indeed, each Constitution in Europe sets this freedom among the essential rights; it constitutes one of the basic foundations of a democratic society and one of the conditions for its progress and for the development of every person.

Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms states:

1. "Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises".
2. "The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary".

Nevertheless, the right to freedom of expression can clash with other fundamental rights –equally guaranteed by national Constitutions and by the same European Convention–; this potential confrontation and the attempt at reconciliation have brought about many issues, both from a theoretical and a judicial point of view.

Accordingly, the European Court of Human Rights has highlighted that the real question is whether, how and how much "balancing the conflicting interest that results from exercising two or more fundamental freedoms" i.e. the right to communicate religious beliefs to the public, or the right to respect to privacy, and the right of other persons to respect to their right to freedom of thought, conscience and religion, on the one hand, and freedom of expression on the other.

The interpretation given to Article 10 of the Convention by the ECtHR is extensive. It involves the freedom to express opinions as well as to receive them, in an impartial and unbiased way, including not only in matters of public interest but even for *artistic expressions* or any kind of idea, thus offering the opportunity to “take part in the public exchange of cultural, political and social information”.

It is worth mentioning the most comprehensive judicial interpretation of this right in *Handyside v. the United Kingdom* (ECtHR judgment of 7 December 1976, § 49): “Freedom of expression constitutes one of the essential foundations of [a democratic] society, one of the basic conditions for its progress and for the development of every man. Subject to paragraph 2 of Article 10 [of the European Convention on Human Rights], it is applicable not only to ‘information’ or ‘ideas’ that are favorably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no ‘democratic society’. This means, amongst other things, that every ‘formality’, ‘condition’, ‘restriction’ or ‘penalty’ imposed in this sphere must be proportionate to the legitimate aim pursued.”

Freedom of expression is a fundamental right, rather than absolute and unlimited as are other essential rights (e.g. the right to life). As remarked in *Erbakan v. Turkey* (ECtHR judgment of 6 July 2006, § 56) “Tolerance and respect for the equal dignity of all human beings constitute the foundations of a democratic, pluralistic society. That being so, as a matter of principle it may be considered necessary in certain democratic societies to sanction or even prevent all forms of expression which spread, incite, promote or justify hatred based on intolerance ..., provided that any ‘formalities’, ‘conditions’, ‘restrictions’ or ‘penalties’ imposed are proportionate to the legitimate aim pursued.”

One of the most controversial issues concerning freedom of expression is related to its relationship and possible conflict with the so called “hate speech”.

This problem is also magnified by the lack of a universally acknowledged definition of the very term “hate speech” and the absence of objective criteria to identify the concept as well as its requirements.

An acceptable starting point may be the Council of Europe’s Committee of Ministers Recommendation 97(20) reciting that “hate speech shall be understood as covering all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin”.

The European Court for Human Rights assumed two different courses of action to solve the conflict between sanctioning incitement to hatred and freedom of expression.

The first approach is based on the exclusion from the protection of the Convention of opinions amounting to hate speech and negating the fundamental values of the Convention, applying article 17 (prohibition of abuse of rights). The second one is founded on the restriction of the protection (provided for by Article 10, paragraph 2, of the Convention) when the limitation of “hate speech” is not adequate to destroy the fundamental values of the Convention.

In the first approach, the freedom of expression, in some cases, could be restricted on the grounds of a superior and general interest; in fact, according to paragraph 2 of Article 17, “the exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law”. In *Lawless vs. Ireland* (1957–61), which was the first international decision that involved the interpretation of international human rights law and the first one filed against a country, the Court clearly highlighted the importance of this rule and its relation with other articles of the Convention in the terms mentioned above.

Subsequent case-law related this interpretation with the clear purpose of preventing an abuse of a right as well as the risk of undermine the same freedoms the Convention should protect.<sup>52</sup>

In the second category of cases, the Court acknowledged an interference in the freedom of expression but legitimated it on the basis of the existence of three different requirements:

- if the interference is prescribed by law
- if it pursues one or more legitimate aims
- if it is necessary in a democratic society to achieve these aims.

As regards the first requirement, in the Court's case-law the expression "in accordance with the law" ... requires:

- that the opposed measure should have some basis in domestic law;
- that it may refer to any measure with the force of law in effect at a given time;
- that "quality" of the law must clearly and precisely define the conditions and forms of any limitations and must be free from any arbitrary application;
- that the person concerned must be able to foresee the consequences for him/herself, and be compatible with the rule of law.

In any case, the term "law" needs to be understood in its "substantive" sense, not its "formal" one, including both laws of a lower rank than statutes as well as unwritten law.

Concerning the second requirement (interference with freedom of expression), interference pursues one or more of the legitimate aims referred to in Article 10(2) if restrictions to the exercise of freedom of expression are authorised:

- to protect the general interest (national security, territorial integrity or public safety, prevention of disorder or crime, protection of health or morals),
- to protect other individual rights (protection of the reputation or rights of others or prevention of the disclosure of information received in confidence;
- to maintain the authority and impartiality of the judiciary.

The assessment of the third condition ("what is necessary in a democratic society") is much more controversial.

According to the European Court's case-law, it is necessary to determine if the reasons adduced by the national authorities to justify the interference appear "relevant and sufficient" or whether the interference corresponds to a "pressing social need", using means that seem proportionate to the legitimate aim pursued.

For this purpose, the Court grants national authorities a "margin of appreciation" that, broadly speaking,

---

<sup>52</sup> Accordingly, in *Garaudy v. France* the Court held that the applicant's right to freedom of expression has not been infringed as author of a book entitled *The Founding Myths of Modern Israel* and convicted him of the offences of disputing the existence of crimes against humanity, defamation in public of a group of persons – in this case, the Jewish community – and incitement to racial hatred. The Court declared the application inadmissible (incompatible *ratione materiae*). It considered that the content of the applicant's remarks had amounted to Holocaust denial, and pointed out that denying crimes against humanity was one of the most serious forms of racial defamation and incitement to hatred of Jews. As such acts were manifestly incompatible with the fundamental values which the Convention sought to promote, the Court applied Article 17 (prohibition of abuse of rights) and held that the applicant was not entitled to rely on Article 10 (freedom of expression) of the Convention. A similar decision was adopted in *Norwood v. United Kingdom*.



refers to the room for manoeuvre that the Strasbourg institutions are prepared to accord national authorities in fulfilling their obligations under the European Convention on Human Rights.

The doctrine of Margin of Appreciation plays a decisive role in ensuring that the Convention is workable throughout the Contracting States despite the number of differences found in the national systems of Contracting States.<sup>53</sup>

Although the European Convention on Human Rights remains the reference point for the protection of the right to freedom of expression, there are other non-binding texts, treaties or instruments on the same topics that deserve to be briefly mentioned:

- The European Social Charter in the field of economic and social rights;
- The Additional Protocol to the Convention on Cybercrime in relation to the dissemination of messages of hatred through the Internet;
- Article 19 of the Universal Declaration of Human Rights;
- Articles 19-20 of the International Covenant on Civil and Political Rights.

## BIBLIOGRAPHY

- Anne Weber, *Manual on Hate Speech*, Council of Europe Publishing, 2009.
- Council of Europe, Committee of Ministers, Recommendation NO. (97) 20 on "Hate Speech", 2008.
- European Parliament, Directorate-General for Internal Policies, Policy Department C, Citizen's rights and constitutional affairs, 2015.
- Roger Kiska, Hate speech: a comparison between the European Court of Human Rights and the United States Supreme Court jurisprudence, *Regent University Law Review*, 2012.
- Ethical Journalism And Human Rights, Commissioner for Human Rights, Strasbourg, 8 November 2011.
- <https://www.opensocietyfoundations.org/sites/default/files/echr-reform-margin-of-appreciation.pdf>
- *Norwood v. the United Kingdom*, European Court of Human Rights, 16 November 2004 (Application No. 23131/03).
- *Garaudy v. France*, European Court of Human Rights, 24 June 2003 (Application No. 65831/01).
- *Vejdeland and others v. Sweden*, European Court of Human Rights, 9 February 2012 (Application no. 1813/07).

---

<sup>53</sup> In *Gündüz v. Turkey*, 4 December 2003, (Application no. 35071/97), the applicant was a self-proclaimed member of an Islamist sect, openly calling for the introduction of Sharia law. He was convicted of inciting the population to hatred and hostility on the basis of a distinction founded on membership of a religion or denomination. He alleged a violation of his right to freedom of expression. The Court held that there had been a violation of Article 10 (freedom of expression) of the Convention because the applicant, who had represented the extremist ideas of his sect, with which the public was already familiar, had been taking an active part in an animated public discussion. The Court considered that the applicant's remarks could not be regarded as a call to violence or as hate speech based on religious intolerance because the mere fact of defending sharia, without calling for violence to introduce it, could not be regarded as hate speech. An opposite decision was taken in *Vejdeland and others v. Sweden*, European Court of Human Rights, 9 February 2012 (Application no. 1813/07).

- *Erbakan v. Turkey*, European Court of Human Rights, 6 July 2006.
- *Handyside v. the United Kingdom*, European Court of Human Rights, 7 December 1976.
- *Gündüz v. Turkey*, European Court of Human Rights, 4 December 2003, (Application no. 35071/97).

## LANGUAGE EXERCISES

### A. READING COMPREHENSION

#### I. Think about the following questions, before you read the text.

- Do you think that the Internet is a tool that spreads and protects freedom of expression?
- Is it possible in your country to close down an Internet website, for any reason?

#### II. Now, read the following text:

#### Internet ASBOs for hate crimes: what are the challenges?<sup>54</sup>

In the struggle against internet trolls, cyber bullying and the general way in which the advent of the internet has caused problems for the criminal law, over the weekend the latest idea to combat the evils of the internet appeared: Internet ASBOs. Quite aside from the fact that Parliament repealed the ASBO last October (as they were considered to be ineffective and were being worn as “a badge of honour” by errant youngsters) and so perhaps the term is somewhat inappropriate, one has to wonder whether this is this a good idea.

The proposal, or at least the idea that the APPG Inquiry into Anti-semitism has asked the CPS to look into, is that users of social media who persistently spread racial hatred online could be made the subject of a court order prohibiting them from accessing social media.

One assumes this would work in the same way that a Sexual Offences Prevention Order prohibits a person convicted of a sexual offence accessing the internet, possessing any device without the capability of storing internet history and from deleting that history or any other such permutation of restrictions designed to protect individuals from online sexual offending. Similarly, in the way that a restraining order prohibits an abusive ex-partner from contacting etc. the victim of harassment, or a Criminal Behaviour Order (the ASBO replacement: side note, little more than a rebrand) prohibits a youth from congregating with certain individuals etc., an “internet ASBO” could prohibit the use of social media sites.

This is not a new idea, merely the expansion of something that has been around for quite some time: the behaviour order. England and Wales has many behaviour orders, enabling courts to prohibit various types of behaviour, and so in theory at least, there is nothing objectionable about extending this power to online abuse.

However, an examination of the practical challenges of policing those who breach such an order

<sup>54</sup>(<http://www.halsburyslawexchange.co.uk/internet-asbos-for-hate-crime-what-are-the-challenges>; copyright Reed Elsevier (UK) Limited, trading as LexisNexis; first published on Halsbury’s Law Exchange in February 2015.

may prove to be the death knell of the internet ASBO. We know already that the police do not have sufficient time or resources to “police the internet” and there have been many examples in recent years of widespread flouting of court orders (e.g. the images purporting to be of Venables/Thompson that seem to do the rounds every couple of years). The question remains: is this workable? If the order is unable to be enforced, then what use is it?

Behaviour orders are preventive, not punitive, and so the idea is that they stop future offending (being imposed after the commission of an offence). Undoubtedly they are a useful tool, but in some cases perhaps the issue of internet abuse should be tackled in a more proactive rather than reactive way, in order to stop the offending giving rise to the order taking place in the first place.

It will certainly be interesting to see what the CPS’s response is.

### III. Find words and expressions in the text corresponding to the following definitions:

1. \_\_\_\_\_ (noun) harassing someone online by sending or posting derogatory messages
2. \_\_\_\_\_ (adjective) something that is unacceptable, wrong, or could be aptly subject to criticism and objection
3. \_\_\_\_\_ (noun) hostility towards, or discrimination against Jews
4. \_\_\_\_\_ (adj + noun) court order protecting someone who may be the victim of abuse, threats, stalking or harassment

### IV. Say whether the following statements are true or false:

1. ASBOs had the effect of making youngsters ashamed of their actions.
2. The proposal entails preventing some people from using Facebook or Twitter, for example.
3. This is the first time in Britain that an order may prohibit a certain type of behaviour.
4. The police have been unable in some cases to stop people from violating court orders about Internet usage.
5. Behaviour orders are aimed at stopping people from doing things, and not at punishing people who do them.
6. The author of the text is not very sure about the overall effectiveness of these measures.

### V. Explain, in your own words, what is meant by the following phrases and sentences:

1. death knell
2. little more than a rebrand
3. a badge of honour
4. a more proactive rather than reactive way

## B. FURTHER LANGUAGE PRACTICE.

### Word formation: Freedom of Religion:

Fill in the gaps with the correct word, derived from the one in brackets.<sup>55</sup>

In January 2004 and August 2003 Y and Z, respectively, entered Germany and applied for asylum and protection there as refugees (plural noun, from *refuge*).

In support of their respective (1) \_\_\_\_\_ (plural noun, from *to apply*) they claimed that their (2) \_\_\_\_\_ (noun, from *member*) of the Muslim Ahmadiyya community, which is an Islamic reformist movement, had forced them to leave their country of origin. [...]

By decisions of 4 May and 8 July 2004, the Bundesamt rejected Y's and Z's applications for asylum as (3) \_\_\_\_\_ (adjective, from *to found*) finding that the (4) \_\_\_\_\_ (noun, from *to require*) for being granted refugee status were not satisfied.

In those decisions, the Bundesamt also held that there were no obstacles to Y's and Z's (5) \_\_\_\_\_ (noun, from *to deport*) to Pakistan under the (6) \_\_\_\_\_ (adjective, *to apply*) national law and declared them liable to deportation to that country. The Bundesamt justified its decisions essentially on the ground that there was (7) \_\_\_\_\_ (adjective, *to suffice*) evidence to support the (8) \_\_\_\_\_ (noun, *to contend*) that the applicants in question had left their country of origin on account of a well-founded fear of (9) \_\_\_\_\_ (noun, *to persecute*) there.

Y brought an (10) \_\_\_\_\_ (noun, from *to act*) against before the Verwaltungsgericht Leipzig (Administrative Court, Leipzig), which, by (11) \_\_\_\_\_ (noun, *to judge*) of 18 May 2007, annulled the Bundesamt's decision and ordered the Bundesamt to place on the record that, as a refugee, Y satisfied the requirements for a (12) \_\_\_\_\_ (noun, *to prohibit*) of his deportation to Pakistan.

## II. Passives: Freedom of expression<sup>56</sup>

Fill in the gaps in the following sentences with the verbs proposed, in the passive form and the tense which is most suitable in this case. In all cases, consider why the passive (and not the active) is not used (e.g. the agent is not known, the agent is irrelevant, the result or the recipient is more important than whoever did something, etc.)

*breach, bring, convict, demonstrate, interfere, make, order, regard*

1. The existence of facts can \_\_\_\_\_, whereas the truth of value judgments is not susceptible of proof.
2. In May 1990, the Court gave judgment in the *Weber* case, in which a Swiss journalist \_\_\_\_\_ of disclosing information on a current case at a press conference.

<sup>55</sup> from Case\_of\_Y\_&\_Z,\_religionCELEX\_62011CJ0071\_EN\_TXT.

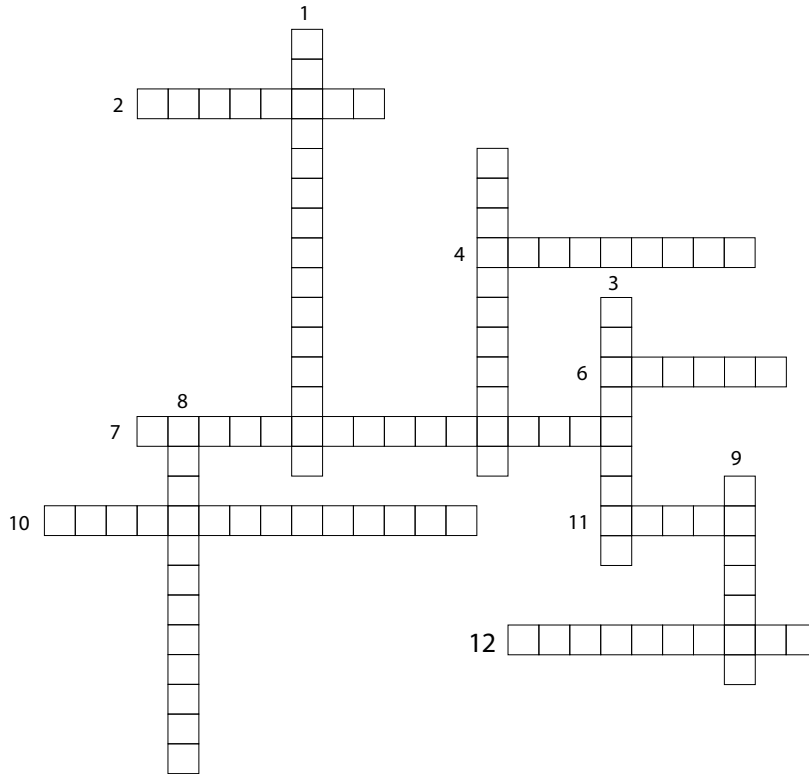
<sup>56</sup> (all examples from "Freedom of Expression in Europe: Case-law concerning Article 10 of the European Convention on Human Rights" [2007], Council of Europe Publishing; available at <http://www.echr.coe.int/LibraryDocs/DG2/HRFILES/DG2-EN-HR-FILES-18%282007%29.pdf>).

3. In November 1991, two applications \_\_\_\_\_ before the Court against the United Kingdom concerning temporary injunctions imposed in July 1986 on the *Observer* and *Guardian* newspapers.
4. In June 1992, the Court concluded that there had been a violation of Article 10 in the *Thorgeir Thorgeirson* case, in which the applicant \_\_\_\_\_ to pay a fine following the publication in a daily newspaper of two articles alleging police brutality.
5. In the *Schwabe* judgment of August 1992, the Court concluded there had been a violation of Article 10, as the interference could not \_\_\_\_\_ as “necessary in a democratic society for the protection of the reputation of others”.
6. In a judgment delivered in December 1994 in the *Vereinigung Demokratischer Soldaten Österreichs and Gubi* case, the Court found that the two applicants’ freedom of expression \_\_\_\_\_ with.
7. In the *Vereniging Weekblad Bluf!* judgment, delivered in February 1995, the Court found unanimously that Article 10 \_\_\_\_\_.
8. As the information \_\_\_\_\_ available to a large number of people, its protection as a state secret was no longer justified from the point of view of Article 10.

**III. Now, transform the following sentences into the passive, in such a way that the object, or the recipient, is emphasized. In each case, decide whether the author of the action or process is worth omitting (i.e. if relevant information is lost).**

1. The Court also held in the *Ekin Association* case that the rights recognised by Article 10 of the Convention are valid “regardless of frontiers”.
2. The Court has described freedom of expression as “one of the basic conditions for the progress of democratic societies and for the development of each individual”.
3. The state may interfere with freedom of expression in certain circumstances.
4. According to the Court, such an interpretation would require a legislative provision clearly authorising it.
5. In September 1994, the Court delivered a judgment finding a violation of Article 10 in the *Jersild* case.
6. The Ministry of Defence had refused permission for the magazine *Der Igel* to be distributed to soldiers in barracks, a prohibition that the Court found unnecessary in a democratic society.
7. Only “an overriding requirement in the public interest” could justify interference with the protection of journalists’ sources.
8. In a sphere in which it is unlikely that any certainty exists, it would be particularly unreasonable to restrict freedom of expression only to generally accepted ideas.

### III. Crossword: homophobic persecution.



#### Down

1. act of making something or someone illegal; also treating a person as if he/she was as a criminal
3. practice of persecuting, especially due to somebody's origin, religion or ideology
5. (adjective) not a citizen of any country
8. act of putting someone in prison
9. person forced to leave a country because of war or for political reasons

#### Across

2. (verb) impose a penalty on someone or against a specific behaviour
4. levels of achievement considered acceptable or desirable
6. governmental protection given to someone who has left another country in order to escape from harm
7. unfair, unreasonable because of lack of proportion
10. (adjective) treating a person differently in an unfair way
11. extent of application of a norm
12. instrument whereby somebody is punished

**Now, use the words in the crossword to fill in the gaps in the text:**

1. Article 10(1)(d) of Council Directive 2004/83/EC of 29 April 2004 on minimum \_\_\_\_\_ for the qualification and status of third-country nationals or \_\_\_\_\_ persons as refugees or as persons who otherwise need international protection and the content of the protection granted must be interpreted as meaning that the existence of criminal laws, such as those at issue in each of the cases in the main proceedings, which specifically target homosexuals, supports the finding that those persons must be regarded as forming a particular social group.
2. Article 9(1) of Directive 2004/83, read together with Article 9(2)(c) thereof, must be interpreted as meaning that the \_\_\_\_\_ of homosexual acts per se does not constitute an act of persecution. However, a term of \_\_\_\_\_ which may \_\_\_\_\_ homosexual acts and which is actually applied in the country of origin which adopted such legislation must be regarded as being a \_\_\_\_\_ which is \_\_\_\_\_ or \_\_\_\_\_ and thus constitutes an act of persecution.
3. Article 10(1)(d) of Directive 2004/83, read together with Article 2(c) thereof, must be interpreted as meaning that only homosexual acts which are criminal in accordance with the national law of the Member States are excluded from its \_\_\_\_\_. When assessing an application for \_\_\_\_\_ status, the competent authorities cannot reasonably expect, in order to avoid the risk of \_\_\_\_\_, the applicant for \_\_\_\_\_ to conceal his homosexuality in his country of origin or to exercise reserve in the expression of his sexual orientation.

## V. Connectors

Match the two halves of the sentences, using the connectors provided. The first one has been done for you.<sup>57</sup>

<p>A person who transmitted information to a media publisher could be considered a discloser ...</p> <p>A system was put in place ...</p> <p>If it had not played such a role, that service provider could not be held liable for the data which it had stored at the request of an advertiser ...</p> <p>In order to establish whether the liability of a referencing service provider could be limited under Article 14 of Directive 2000/31/EC, it was necessary to examine ...</p> <p>On 1 October 2009 Delfi announced on its Internet portal that persons who had posted offensive comments were not allowed to post a new comment ...</p> <p>The applicant company alleged that its freedom of expression had been violated, in breach of Article 10 of the Convention, ...</p> <p>The data subject's fundamental rights, as a general rule, overrode the interest of Internet users, ...</p> <p>The Internet could, on the one hand, significantly enhance the exercise of certain human rights and fundamental freedoms ...</p> <p>The operator played such a role ...</p>	<p><i>but</i></p> <p><i>by the fact that</i></p> <p><i>even if</i></p> <p><i>unless</i></p> <p><i>until</i></p> <p><i>when</i></p> <p><i>whereby</i></p> <p><i>whether</i></p> <p><i>while</i></p>	<p>... having obtained knowledge of the unlawful nature of those data or of that advertiser's activities, it had failed to act expeditiously to remove or to disable access to the data concerned.</p> <p>... on the other, it could adversely affect these and other such rights.</p> <p>... they had read and accepted the rules of commenting.</p> <p>... he or she was not the publisher of the article in question.</p> <p>... it had been held liable for the third-party comments posted on its Internet news portal.</p> <p>... it provided assistance which entailed, in particular, optimising the presentation of the offers for sale in question or promoting them</p> <p>... that balance might, however, depend on the nature of the information in question and its sensitivity for the data subject's private life and on the interest of the public in having that information</p> <p>... the role played by that service provider was neutral.</p> <p>... users could notify the applicant company of any inappropriate comments.</p>
---	--	---

1. A person who transmitted information to a media publisher could be considered a discloser **even if he or she was not the publisher of the article in question.**
2. A system was put in place ...
3. If it had not played such a role, that service provider could not be held liable for the data which it had stored at the request of an advertiser...

<sup>57</sup> *Delfi AS v. Estonia* (ECHR, Grand Chamber)



4. In order to establish whether the liability of a referencing service provider could be limited under Article 14 of Directive 2000/31/EC, it was necessary to examine ...
5. On 1 October 2009 Delfi announced on its Internet portal that persons who had posted offensive comments were not allowed to post a new comment ...
6. The applicant company alleged that its freedom of expression had been violated, in breach of Article 10 of the Convention, ...
7. The data subject's fundamental rights, as a general rule, overrode the interest of Internet users, ...
8. The Internet could, on the one hand, significantly enhance the exercise of certain human rights and fundamental freedoms ...
9. The operator played such a role ...

## VI. Listening comprehension: human rights and the Internet.

Watch the video in Youtube entitled "Internet Freedom and Human rights (<https://www.youtube.com/watch?v=JN8vXFUv8sA>) and say whether the following statements are true or false:

1. Internet has put an end to the absolute power of States over information.
2. Individuals have so far not been able to use the Internet to fight for human rights.
3. The only technique to censor websites used by states is permanent blocking.
4. According to Mr. La Rue, existing human rights standards can be applied to the new situations created.
5. This is not necessarily the view held by the Swedish Foreign Minister.
6. Google products (search engines, etc.) are universally accepted by all Governments.
7. Ms. Esterhuysen is in general in favour of restrictions as a way to control the Internet.

## VII. Based on the same video, fill in the gaps in the following sentences. In order to help you, the definition of the missing word or expression has been inserted.

1. States can no longer \_\_\_\_\_ (implement, make effective) control based on the notion of a \_\_\_\_\_ (complete ownership or control) of information.
2. Websites continue to be blocked in many countries, either permanently, or through use of \_\_\_\_\_ (done or applied at the precise moment when something is needed) blocking.
3. Safeguards must be put in place to ensure that no restriction on accessing online content is \_\_\_\_\_ (capricious, unreasonable, with no justification) or \_\_\_\_\_ (beyond what is necessary or usual).
4. All standards of human rights principles apply \_\_\_\_\_ (when connected to the Internet) as they do \_\_\_\_\_ (when not connected to the Internet).

5. Overall forty countries \_\_\_\_\_ (delete or eliminate for political, moral or other reasons) the net in some form or fashion.
6. It requires strengthening the \_\_\_\_\_ (principle that all people and institutions are subject to and accountable to the law) and the capacity for \_\_\_\_\_ (regular administration of the law whereby people's legal rights are protected) and law enforcement.
7. Internet has to be seen as a necessary element for other rights: access to information, access to education, to \_\_\_\_\_ (right to hold public meetings and form associations without hindrance by a government)

# UNIT 5

## CURRENT CHALLENGES OF IMMIGRATION AND ASYLUM. SCOPE OF PROTECTION PROVIDED BY EU LAW AND ECHR

### INTRODUCTION

The right to asylum is a human right, a right acknowledged to every human being.

In an etymological perspective, the word *asylum* has its roots in the Greek term *ἀσυλος* (ἀ - "without" and *συλάω* "ransack, use violence"; so, "inviolable") and shows a religious origin: it should consist in the right to obtain sanctuary that anyone obtains (a fugitive slave, a criminal, a prisoner of war), taking refuge in a sacred place (building or fence or forest or mountain devoted to divinity), or touching a sacred object (altar or statue of gods and, in the latter days, even emperors), so that they could in no way be offended or raped. The *ratio* of this right lies in the primitive conception that the holiness of a sacred place or object is communicated by contact, and almost by irradiation, so that, if one is in a sacred place or in the immediate proximity of a sacred object, he/she also acquires that condition. Moving from that religious origin, the modern concept of asylum evolved throughout the centuries, thus turning to a legal form of protection of the sacred nature of human dignity.

This right has now been invoked by the vast majority of migrants arriving in Europe, considered safer and respectful of human rights, at least in comparison with countries in which serious human rights abuses are endemic or the machinery of the State has broken down to such a degree that it can no longer offer protection to its citizens. During the early 1990s, Europe registered a significant increase in migration flows of people asking for sanctuary, largely as a result of the Balkan wars and the exodus from the former Yugoslavia countries. The late 1990s saw another rise in applications during the Kosovo crisis, in particular the events of the Spring of 1999, which brought about refugee movements in Europe on a scale unseen since the Second World War. The trend in the first years of the new millennium unsurprisingly showed an increase in asylum seekers from Africa and Middle East and in the last few years, especially in 2015, it reached the dimension of a real exodus.

As a general rule, States have a sovereign right to control the entry and continued presence of non-nationals in their territory. Only if exclusion from the territory or from protection would involve a breach of some provision of international law, are states bound to admit aliens.

Notwithstanding the rising interest in migration problems, in many parts of Europe (and at least in the 27 of the 47 Council of Europe member states which are now also members of the European Union), there exist four main simultaneous and, often, overlapping legal regimes for the international protection of asylum seekers and refugees:

- Art. 14 of the Universal Declaration of Human Rights (and other relevant international treaties such as the 1966 International Covenant on Civil and Political Rights, ICCPR, the UN Convention on the Rights of the Child, UNCRC, the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, UNCAT);
- the 1951 Geneva Convention relating to the Status of Refugees and its 1967 Protocol;
- the law of the European Union and the Charter of Fundamental Rights (2000; in particular, art. 18 and 19 of the Charter);
- the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and its protocols.

The 1951 Geneva Convention is the *lex specialis* of asylum and its pre-eminence as the key international instrument for protecting those who fall within its scope is undisputable. This handbook, though, is primarily about the safeguards provided by EU law and ECHR regarding asylum and refugee protection, and therefore references to other sources will be restricted to a minimum.

Article 78 of the Treaty on the Functioning of the European Union (2007, Lisbon Treaty) provides for the creation of a Common European Asylum System (CEAS) which must respect States' obligations under the 1951 Geneva Convention. Accordingly, "The Union shall develop a common policy on asylum, subsidiary protection and temporary protection with a view to offering appropriate status to any third-country national requiring international protection and ensuring compliance with the principle of non-refoulement. This policy must be in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees, and other relevant treaties."

Among the main measures mentioned by Art. 78, we can recall a uniform status of asylum or subsidiary protection for nationals of third countries, valid throughout the Union; a common system of temporary protection for displaced persons in the event of a massive inflow; common procedures for the granting and withdrawing of uniform asylum or subsidiary protection status; criteria and mechanisms for determining which Member State is responsible for considering an application for asylum or subsidiary protection; and standards concerning the conditions for the reception of applicants for asylum or subsidiary protection;

Several European legislative instruments have been, in fact, adopted to implement this provision.

The current CEAS, partially revised, consists mainly in three Directives and two Regulations:

- European Parliament and Council Directive 2013/32/EU of 26 June 2013 on common procedures for granting and withdrawing international protection (Recast Asylum Procedure Directive, APD);
- European Parliament and Council Directive 2013/33/EU of 26 June 2013 laying down minimum standards for the reception of applicants for international protection (Reception Conditions Directive);
- European Parliament and Council Directive 2011/95/EU of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (Recast Qualification Directive);

- European Parliament and Council Regulation (EU) N.604/2013 of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (Revised Dublin Regulation);
- European Parliament and Council Regulation (EU) N.603/2013 of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints (Revised Eurodac Regulation).

Other sources of European Union law help to complete the Asylum acquis, such as the Family Reunification Directive, the Long-Term Residents Directive, the Students Directive, the Researchers Directive, the Employer Sanctions Directive, the Blue Card Directive, the Frontex Regulation, the Anti-Trafficking Directive or the Seasonal Workers Directive.

Although Article 18 of the Charter guarantees the right to asylum and Article 19 enshrines the principle of non refoulement, EU law does not provide for ways to facilitate the arrival of asylum seekers. Individuals who wish to seek asylum in the EU are primarily nationals of countries requiring a visa to enter the EU. As these individuals often do not qualify for an ordinary visa, they may have to cross the border in an irregular manner.

The EU asylum acquis only applies from the moment an individual has arrived at the border, including territorial waters and transit zones. Nevertheless, there are many individuals whose situation falls outside the scope of the 1951 Geneva Convention and of the EU measures, but who are protected by the ECHR.

The ECHR in principle is not so limited, as it protects "everyone" without distinction. The Convention prohibits arbitrariness and hence requires that decisions about the acceptance of aliens be in accordance with the law –which for EU states includes EU law– or it may be simply because Article 53 of the ECHR provides that "Nothing in this Convention shall be construed as limiting or derogating from any of the human rights and fundamental freedoms which may be ensured under the laws of any High Contracting Party or under any other agreement to which it is a Party".

The ECtHR has repeated in many cases that the ECHR and its Protocols do not contain a right to asylum, and that Contracting States have the right as a matter of well-established international law to control the entry, residence and expulsion of aliens. However, the ECtHR has pointed out that this right is not unqualified. The right is subject to States' treaty obligations, including obligations under the ECHR. Thus, the ECHR contains various protections, both explicit and implicit, in relation to expulsion and other forms of removal, including protection against refoulement.

The European Court has frequently stated that it has no power to rule on whether a state has acted in conformity with its obligations under other treaties, except in so far as it is required to determine whether there has been an interference with rights guaranteed by the Convention (particularly Article 3, 5, 6, 8 and 13 of the Convention).

The Court has recalled that its sole task under Article 19 of the ECHR is to ensure the observance of the engagements of the Contracting Parties to the ECHR and it is not the Court's task to directly apply the level of protection offered in other inter-national instruments.

This approach may be problematic when the national law protecting ECHR rights is either directly applicable EU law (regulations) or derived from EU law (transposed directives or framework decisions).

## BIBLIOGRAPHY

- European Union Agency for Fundamental Rights *Handbook on European law relating to asylum, borders and immigration*, Council of Europe, ed. 2014.
- UNHCR, *Manual on the Case Law of the European Regional Courts: the Court of Justice of the European Union and the European Court of Human Rights Refugees, asylum-seekers, and stateless persons*, 1st edition, June 2015.
- Nuala Mole and Catherine Meredith, *Asylum and the European Convention on Human Rights*, Council of Europe Publishing, 2010.
- Yannis Ktistakis *Protecting Migrants Under The European Convention On Human Rights And The European Social Charter*, Council of Europe, February 2013.
- European Parliament resolution of 12 April 2016 on the situation in the Mediterranean and the need for a holistic EU approach to migration, 2015/2095(INI) P8\_TA(2016)0102.
- Blanca Garcés-Mascareñas, *Why Dublin “Doesn’t Work”*, 135 Notes Internacionals Cidob, Nov. 2015.
- Costello, Cathryn and Emily Hancox, *The UK, the Common European Asylum System and EU Immigration Law*, Migration Observatory policy primer, Compas, University of Oxford, UK, May 2014.

## LANGUAGE EXERCISES

### A. READING COMPREHENSION

#### I. Think about the following questions, before you read the text.

1. What is the difference between ‘evolution’ and ‘revolution’?
2. Why do you think the author placed letter ‘R’ between brackets?
3. In your opinion, is the ECtHR ruling in the case *Tarakhel v. Switzerland* an evolution or a revolution?

#### II. Now, read the following texts:

#### Tarakhel v. Switzerland: Another Step in a Quiet (R)evolution?<sup>58</sup>

0 By Nesa Zimmermann, Ph.D. University of Geneva

The Court’s recent ruling in *Tarakhel v. Switzerland* became famous almost before it was delivered. The case has received strong media attention, and some claimed the judgment signified “the end of the Dublin system”. However, the importance of the *Tarakhel* judgement should not be overrated. For one

<sup>58</sup> Reproduced with kind permission from <https://strasbourgobservers.com/2014/12/01/tarakhel-v-switzerland-another-step-in-a-quiet-revolution/>

5 thing, it remains yet to be seen to what extent the Court's ruling can and will be applied to other cases. Besides, even though the case has been called a "principled decision in favour of vulnerable persons", it consists, from a scholarly point of view, of a series of adjustments: a case contributing to the evolution of existing case law rather than a revolution on its own.

### The facts of the case

10 The case concerned an Afghan couple with six children, the youngest being born in 2012, after the family had arrived in Switzerland. They had entered the Dublin system at the Italian border in July 2011, where they were registered and placed in a reception facility. Due to poor living conditions in particular, they left the centre about ten days later, traveling first to Austria, then to Switzerland. There, they applied again for asylum, but their request was unsuccessful and the Swiss authorities ordered their return to Italy.

15 Before the Strasbourg Court, the applicants submitted that their return to Italy, in the absence of individual guarantees concerning their care, would expose them to inhuman and degrading treatment contrary to Article 3 and violate their rights under Article 8. They considered the Italian asylum system to be deficient in three ways: significant delays in processing times, insufficient capacity of reception facilities, and unsafe and poor living conditions in the centres. Having requested provisional measures, the family obtained the right to remain in Switzerland until the delivery of the Grand Chamber judgement.

### 20 The Court's reasoning

The Court chose not to examine the complaints under Article 8. It briefly examined Article 13, but found no violation. Hence, the core of the judgement revolved around Article 3. Not surprisingly, therefore, the central issue lay in ascertaining whether the circumstances of the case met the minimum threshold of severity required. Concerning a potential removal from one "Dublin state" to another, a second important question arose: as the Court recalled, the Dublin system relies upon the presumption that all participating states respect their human rights obligations under the Convention. However, this presumption can be rebutted, and if so, states are under a Convention obligation to apply the Dublin sovereignty clause and suspend the transfer(s) concerned. This was the case in *M.S.S. v. Belgium and Greece*, where the Court found systemic failures in the Greek asylum system, and barred all removals to that country.

30 The Court took great care to distinguish *Tarakhel* from its famous predecessor, *M.S.S.* It specified that, in terms of scale as well as severity, "the current situation in Italy [could] in no way be compared" to the one prevailing in Greece at the relevant time. Even if the Italian asylum system did not "collapse" in a way comparable to the Greek situation, the Court accepted the existence of severe shortcomings, particularly in the lack of reception facilities (less than 10,000 places available in all of Italy and 15,000 to 30,000 new asylum applicants arriving every year). The Court also cited instances of violence, insalubrity, and separation of families in some centres.

35 The Court considered the available information to cast "serious doubts" on the system's current capacities. It concluded accordingly that "the possibility that a significant number of asylum seekers may be left without accommodation or accommodated in overcrowded facilities without any privacy, or even in insalubrious or violent conditions, [could] not be dismissed as unfounded" (§115).

40 Moving to the applicants' particular situation, the Court underlined that asylum seekers were part of a "particularly underprivileged and vulnerable" population group and as such needed special protection under Article 3 (§118). While this echoed *M.S.S.*, the Court stressed that the applicants' situation was

not comparable to the latter. However, the Court also reiterated the relativity of the minimum level of severity threshold under Article 3. In this regard, the Court recalled that the child's vulnerability had been considered in prior case law to be a "decisive factor", even when the children were accompanied by their parents (§99). This led the Court to accept that the applicants' fears of poor living conditions, especially concerns about being placed in facilities incompatible with the children's needs and the risk of being separated, were not unfounded.

Differentiating the case at hand from *M.S.S.*, the Court established that a general ban on returns to Italy, even if restricted to families with small children, was unjustified. Instead, it considered that the circumstances of the case required the Swiss authorities to obtain specific assurances from their Italian counterparts that, on arrival, the family would not be separated, and would be received in facilities adapted to the children's age. The Court concluded that removal in the absence of such assurances would violate Article 3.

### 55 **Some comments**

The seminal case of *M.S.S.* has been qualified as "the end of mutual confidence" in the Dublin system. The big question after the ruling was to determine the circumstances under which the Convention requires Dublin states to "distrust" each other.

Whereas the European Court of Justice has interpreted *M.S.S.* to mean that "systemic deficiencies" in a state's asylum system rebutted the Dublin presumption and later that *only* systemic deficiencies were able to do so, other Courts, in particular the UK Supreme Court, ruled that *M.S.S.* could not possibly require asylum seekers to prove the failure of a country's asylum system. Instead, the UK Supreme Court accepted that the Dublin presumption could be rebutted if the applicant showed "substantial grounds for believing" that he or she, personally, would be at a "real risk" of treatment contrary to Article 3 (§52). The Court has applied this reasoning in *Tarakhel*.

As such, the test of showing *substantial grounds* and a *real risk* can hardly be qualified as revolutionary. On the contrary, it relies on firmly established Article 3 case law. Still, its application in a Dublin context is somewhat novel and further narrows the scope of the Dublin presumption. It has accordingly been criticised by the dissenting judges. Regardless, it would seem that they would have been prepared to accept this test, if only they had been convinced of a real risk of treatment sufficiently severe to pass the Article 3 threshold. Ultimately, it was on this aspect that the majority decision was challenged. Two points should be made in answer to these criticisms.

First, it seems that the Court's –admittedly somewhat easy– acceptance of a real risk of treatment contrary to Article 3 in *Tarakhel* stems from the applicants' special vulnerability as a family with children. Indeed, contrary to earlier cases, and to *M.S.S.* specifically, the applicants did not show that they had personally suffered ill-treatment, nor that they were more at risk of suffering ill-treatment than other asylum seekers susceptible of being returned to Italy. Despite that, the Court was convinced that their particular vulnerability made Article 3 protection necessary. Unlike the dissenting judges' suggestion, this special vulnerability distinguishes *Tarakhel* from other recent cases of Dublin returns to Italy. Indeed, most cases cited by the minority opinion did not concern families. One concerned a parent with small children, but it was determined that they had received sufficient care from the competent Italian authorities.

Second, the Court's solution is a nuanced one, adapted to the applicants' relatively lower risk: the Court does not ban the return of asylum seekers, or even of families with children, to Italy. Instead, it required the Swiss authorities to obtain specific assurances as to the treatment of vulnerable individuals upon their return to Italy. In the applicants' case, this concerned the guarantee that they would not be separated, and that they would be received in facilities adapted to the children's specific needs.



The Court thus created an intermediate category where Dublin returns can take place, but only after specific guarantees are obtained. If it is true that this introduces another requirement somewhat alien to the “Dublin spirit” of mutual trust, the case’s outcome seems perfectly proportionate in view of the Court’s findings concerning the Italian asylum system. It should be recalled that the Court did indeed depict shortcomings in that system, some of which were quite severe. Moreover, the Court’s reasoning, even if it is not as explicit on this point as some may have wished, shows the importance of vulnerability considerations in assessing a case’s severity, and the Court’s increased willingness to use vulnerability as a heuristic device. In this sense, *Tarakhel* can be considered one further step in what scholarly opinion has labelled a quiet revolution in the Court’s reasoning.

However, the case leaves us with a question: which cases fall into this intermediate category? Indeed, even if *Tarakhel* confirms that all asylum seekers are particularly vulnerable, as observed in *M.S.S.* and repeated in subsequent cases, it follows from the Court’s reasoning that the case’s outcome would have been different if it hadn’t concerned a family with young children. The relation between different degrees of vulnerability, and even different degrees of particular vulnerability, remains unclear and underexplored. Only careful analysis of these issues will allow exploiting the possibilities of vulnerability reasoning while avoiding its potential shortfalls. Hence, there is still room for evolution, and it is to be hoped that future cases will examine in more detail the many questions raised by the Court’s still recent vulnerability reasoning.

### III. Decide whether the statements below are true or false.

1. The case *Tarakhel v. Switzerland* concerns an Afghan couple with six children who applied for asylum in Switzerland.
2. The Swiss authorities ordered their return to Italy, based on the Dublin regulation.
3. The applicants in the case submitted that their return to Italy would expose them to inhuman treatment, amounting to violation of Articles 3 and 8.
4. The Court chose to not to discuss Article 3 and to focus on Article 8.
5. According to the Court, the presumption that all “Dublin states” respect their human rights obligations cannot be rebutted.
6. The Court distinguished *Tarakhel* from its predecessor, *M.S.S. v. Belgium and Greece*, showing that the situation in Italy cannot be compared, in terms of severity, with the one in Greece.
7. The Court holds that, apart from a few minor shortcomings, the Italian asylum system works well and cannot expose asylum seekers to inhuman or degrading conditions.
8. Consequently, the Court concluded that a significant number of asylum seekers may be left without accommodation or accommodated in degrading conditions could be dismissed.
9. Considering the applicants’ particular vulnerability, as a couple with small children, the Court required the Swiss authorities to obtain specific assurances from the Italian authorities that the family would not be separated on their return to Italy.
10. This Court ruling introduced a new requirement, that of obtaining special assurances, thus creating a new category where Dublin returns can take place.

**IV. Provide near-synonyms or explanations for the words and phrases in bold type below.**

1. **the Court's ruling**
2. The presumption **can be rebutted**
3. The Court **barred** all removals to that country.
4. **dissenting** judges
5. case **cited**

**V. Fill in the gaps with synonyms of the words in brackets.**

1. The Court ..... (stresses) that compliance with fundamental rights is essential.
2. The applicants ..... (disputed) the transfer decision.
3. Given the ..... (present) deficiencies in the Italian system, transfers of vulnerable categories may raise human rights issues.
4. The Court held that there was a (n)..... (infringement) of Article 3 ECHR.
5. The transfer to Italy cannot be justified in the absence of ..... (preceding) individualised guarantees from the Italian authorities.
6. In 2013, 135,700 asylum seekers were ..... (given) asylum in the EU Member States.
7. The central issue lays in ..... (determining) whether the circumstances of the case met the minimum threshold of severity required.
8. The Court accepted the existence of severe ..... (deficiencies).
9. The Court underlined that asylum seekers were part of a 'particularly ..... (disadvantaged) and vulnerable' population group.
10. The Commission will carefully ..... (evaluate) the ECtHR judgment as to its implications for the functioning of the asylum system in Italy and the EU.

**VI. Fill in the gaps, using the clues given.**

1. The ..... (suspend, noun) of the transfer to Italy could be justified.
2. Mr Tarakhel and his family, Afghan ..... (nation, noun for persons, pl.), arrived in Italy by boat.
3. The Swiss authorities did not have enough ..... (assure, noun, pl.) that the applicants would be taken charge of in an adequate manner.
4. Italy has to improve the arrangements for the ..... (guardian, abstract noun) of children.
5. There was a large number of ..... (arrive, noun, pl.) by sea to Italy over the past year.
6. Additional emergency funding was mobilised to an ..... (precedent, adj., neg.)
7. The Court ruling can hardly be described as ..... (revolution, adj.)
8. The Court concluded that ..... (remove, noun) in the absence of specific assurances from the Italian authorities would violate Article 3.

9. There are serious doubts about the capacity of the ..... (receive, noun) system for asylum-seekers in some Member States.

**VII. Fill in the gaps with the negative forms of the words in brackets.**

1. The allegation that a significant number of asylum-seekers removed to that country might be left without accommodation was not ..... (founded).
2. The applicants feared that they might be accommodated in ..... (salubrious) conditions.  
They applied for asylum, but their request was ..... (successful).
3. The applicants complained about the ..... (sufficient) capacity of the reception facilities and the ..... (safe) and poor living conditions in the centres.
4. They were concerned about being placed in facilities ..... (compatible) with the children's needs.
5. They feared they might be exposed to ..... (human) and degrading treatment.
6. It is important to determine the circumstances under which the Dublin states are required to ..... (trust) each other.

**VIII. Give the negative forms of the following words, then use them to create sentences.**

adequate  
applicable  
available  
effective  
possibility  
regular  
significant

**IX. Fill in the gaps with the appropriate particles**

1. Compliance ..... Fundamental rights in the operation of the Dublin system must be ensured ..... all cases.
2. It is primarily ..... Member States to draw conclusions from this judgment, and ..... particular to assess what implications it should have for the decisions which they may take ..... relation to 'Dublin transfers' ..... Italy.
3. The core of the judgment revolved ..... Article 3.
4. The Dublin system relies ..... the presumption that all participating states respect their human rights obligations ..... the Convention.
5. On the request of the Swiss authorities, Italy accepted to take back the applicants in accordance ..... the Dublin Regulation.
6. There are serious doubts ..... the capacity ..... the reception system ..... asylum-seekers in several Member States.

7. Contrary ..... other cases, the applicants did not show that they had personally suffered ill-treatment, nor that they were more ..... risk of suffering ill-treatment than other asylum-seekers susceptible ..... being returned ..... Italy.
8. The Court established that a general ban ..... returns to Italy, even if restricted ..... families with small children, was unjustified.

### X. Put the verbs in brackets into the right tense.

1. The applicants submitted that their transfer ..... (expose) them to inhuman and degrading treatment.
2. The Court recalled that the child's vulnerability ..... (consider, passive) in prior case law to be a 'decisive factor'.
3. The Court underlined that asylum-seekers ..... (be) part of a vulnerable population group.
4. The Court considered that the circumstances of the case ..... (require) the Swiss authorities to obtain specific assurances from their Italian counterparts.
5. The Swiss authorities had to obtain assurances that the family ..... (separate, passive, neg.)

### XI. Rewrite the following sentences into the passive voice.

1. The European Commission will carefully assess the ECtHR judgment.
2. The European Court of Human Rights issued a judgment in the case Tarakhel v. Switzerland.
3. The Swiss authorities had to obtain assurances that the Italian authorities would take care of the applicants in an adequate manner.
4. In many EU Member States, the authorities granted protection to asylum-seekers.
5. They entered the Dublin system at the Italian border in 2011, where the authorities registered them and placed them in a reception facility.

## B. FURTHER LANGUAGE PRACTICE

### I. The vocabulary of migration and asylum

Match the 20 terms with the corresponding definitions.

<i>temporary protection</i>	<i>non-refoulement</i>	<i>Blue card</i>	<i>risk of absconding</i>
<i>refugee</i>	<i>third-country national</i>	<i>asylum</i>	<i>Committee on Migration and Asylum</i>
<i>irregular migrant</i>	<i>migrant smuggling</i>	<i>displaced person</i>	<i>Geneva Convention of 1951 and Protocol of 1967</i>
<i>Dublin Regulation</i>	<i>Frontex</i>	<i>applicant</i>	<i>expulsion</i>
<i>burden of proof</i>	<i>overstayer</i>	<i>Eurodac</i>	<i>prima facie refugee</i>

1. \_\_\_\_\_: a core principle of international refugee law that prohibits States from returning refugees in any manner whatsoever to countries or territories in which their lives or freedom may be threatened on account of their race, religion, nationality, membership of a particular social group or political opinion. It provides that no one shall expel or return ("*refouler*") a refugee against his or her will, in any manner whatsoever, to a territory where he or she fears threats to life or freedom.
2. \_\_\_\_\_: someone who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion.
3. \_\_\_\_\_: a person who is not a citizen of the EU within the meaning of Article 20(1) TFEU and who is not a national of a State that takes part in this regulation by virtue of an agreement with the EU.
4. \_\_\_\_\_: non-European country national/stateless person who has forwarded a formal request for international protection in relation to which no final decision has yet been made.
5. \_\_\_\_\_: an EU law that determines the Member State responsible for examining an application for asylum seekers looking for international protection within the EU under the Geneva Convention and the EU Qualification Directive.
6. \_\_\_\_\_: an IT system which, via collecting, transmitting and comparing fingerprints, is to assist in determining which EU State is responsible for examining an application for asylum lodged in an EU State pursuant to the Dublin Regulation requirements.
7. \_\_\_\_\_: European Border and Coast Guard Agency whose mission is to promote, coordinate and develop European border management in line with the EU fundamental rights charter and the concept of Integrated Border Management.
8. \_\_\_\_\_: form of protection given by a State, on its territory, internationally or nationally recognized, in the form of employment, social welfare and health care to persons who are in fear of persecution for reasons of race, religion, nationality or membership in a particular group or political opinion in their own countries.
9. \_\_\_\_\_: non-EU national or stateless persons who have been constrained to leave their country or region of origin and find themselves unable to return in safe and permanent conditions because of the situation that exists in that country.
10. \_\_\_\_\_: card that gives highly-qualified non-EU workers the right to live and work in an EU state, if they have top professional qualifications (university degree, employment contract or binding job offer).
11. \_\_\_\_\_: a European Commission-led expert group mandated to facilitate an informal exchange of points of view between Member State administrations and the Commission services on political and legal issues in relation to migration, border and asylum.
12. \_\_\_\_\_: removal of a non-EU national subject to expulsion decision based on a serious and present threat to public order or to national security and safety (e.g. conviction punishable by penalty involving deprivation of liberty for at least one year).
13. \_\_\_\_\_: person who enters a country, generally seeking employment, without the necessary documents and permits, such as a non-EU national present on the territory of a Schengen State.

14. \_\_\_\_\_: in the EU context, a person who has legally entered but then remained in an EU Member State beyond the permitted duration of their stay without the appropriate visa (typically 90 days or six months), or of their visa and / or residence permit.
15. \_\_\_\_\_: the UN multilateral treaty that represents the key legal document defining who is a refugee and who is not, the rights of refugees and the legal obligations that States have towards them.
16. \_\_\_\_\_: procurement for the purpose of obtaining, directly or indirectly, a financial benefit, by way of the illegal entry of a person into a State that the person is not a national or permanent resident of.
17. \_\_\_\_\_: exceptional procedure to provide, in the event of a mass influx of displaced persons from non-EU countries, non-permanent solace to avoid the collapse of the efficient operation of the asylum system.
18. \_\_\_\_\_: the likelihood, based on objective criteria, that an individual subject to transfer procedure may disappear.
19. \_\_\_\_\_: in the context of refugee status determination procedures, the duty of the applicant to establish their case, to produce evidence that they have a well-founded fear of persecution.
20. \_\_\_\_\_: person recognized as a refugee, by a State or UNHCR, on the basis of objective criteria related to the circumstances in their country of origin, which justify a presumption that they meet the criteria of the applicable refugee definition.

## II. Fill in the gaps with near-synonyms of the words in brackets.

1. A common policy on asylum is a constituent part of the European Union's objective of ..... (gradually) ..... (setting up) an area of ..... (freedom), security and justice open to those who, forced by circumstances, ..... (look for) international protection in the Union.
2. It is necessary to establish the identity of applicants for international protection and of persons ..... (arrested) in connection with the ..... (illegal) crossing of the external ..... (frontiers) of the Union.
3. The powers ..... (given) to law enforcement authorities to access Eurodac should be without prejudice to the right of an applicant for international protection to have his or her application processed in due course in the accordance with the relevant law.
4. Europol plays a ..... (central, essential) role with respect to cooperation between Member States' authorities in the field of ..... (international) crime investigation in ..... (helping, assisting) Union-wide crime prevention.
5. The fact that it is temporarily or permanently impossible to take and/or to transmit fingerprint data [...] should not ..... (negatively) affect the examination of or the decision on the application for international protection lodged by that person.
6. [...] access should be ..... (permitted) only on condition that comparisons with the national fingerprint databases of the Member State and with the automated fingerprinting identification systems of all other Member States under Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in ..... (fighting) terrorism and cross-border crime did not lead to the establishment of the identity of the

data subject. That condition requires the requesting Member State to ..... (carry out) comparisons with the automated fingerprinting identification systems of all other Member States.

7. Transfers of personal data obtained by a Member State or Europol pursuant to this Regulation from the Central System to any third country or international organisation or private entity established in or outside the Union should be ..... (forbidden).
8. It is appropriate to monitor and ..... (assess) the performance of Eurodac at regular intervals.
9. It is appropriate to ..... (limit) the territorial scope of this Regulation so as to align it on the territorial scope of Regulation (EU) No 604/2013.

### III. Fill in the gaps with antonyms of the words in brackets:

1. For the purposes of protection of personal data, and to ..... (include) systematic comparisons which should be ..... (allowed), the processing of Eurodac data should only take place in ..... (general) cases and when it is necessary for the purposes of ..... (enabling), detecting or investigating terrorist offences or other ..... (minor) criminal offences.
2. Access should be ..... (denied) only on condition that comparisons with the national fingerprint databases of the Member State [...] did not lead to the establishment of the identity of the data subject.
3. Transfers of personal data obtained by a Member State or Europol pursuant to this Regulation from the Central System to any third country or international organisation or ..... (public) entity in or outside the Union should be ..... (permitted), in order to ensure the right to asylum and to safeguard applicants for international protection from having their data ..... (concealed) to a third country.
4. Member States should provide for a system of effective, proportionate and ..... (persuasive) penalties to sanction the processing of data entered in the Central System contrary to the purpose of Eurodac.
5. Deficiencies in, or the collapse of, asylum systems, ..... (seldom) aggravated or contributed to by particular pressures on them, can ..... (safeguard) the smooth functioning of the system put in place under this Regulation, which could lead to a risk of a ..... (respect) of the rights of applicants [...].

### IV. What do these acronyms stand for?

- |           |           |              |
|-----------|-----------|--------------|
| 1. ECHR:  | 5. SIS:   | 9. ECRE:     |
| 2. ECtHR: | 6. ECRIS: | 10. Eurodac: |
| 3. UNCHR: | 7. CEAS:  |              |
| 4. VIS:   | 8. EASO:  |              |

## V. Fill in the gaps using the words given.

*respect, safeguards, detecting, committed, comparison, database, strictness, conditions. Data*

This Regulation also lays down the (1) ..... under which requests for (2) ..... of fingerprint data with Eurodac (3) ..... for the purposes of preventing, (4) ..... or investigating terrorist offences or other serious criminal offences should be allowed and the necessary (5) ..... to ensure the protection of the fundamental right to (6) ..... for the private life of individuals whose personal data are processed in Eurodac. The (7) ..... of those conditions reflects the fact that the Eurodac (8) ..... registers fingerprint data of persons who are not presumed to have (9) ..... a terrorist offence or other serious criminal offence.

## VI. Choose the correct options to complete the text below (excerpted from Regulation No 604/2013, "Dublin Regulation")

A process for early (1) ....., preparedness and management of asylum crises serving to prevent a (2) ..... in, or the collapse of, asylum systems, with EASO playing a (3) ..... role using its powers under Regulation (EU) No 439/2010, should be (4) ..... in order to ensure robust cooperation within the framework of this Regulation and to develop (5) ..... trust among Member States with respect to asylum policy.

- |     |                  |                |                |
|-----|------------------|----------------|----------------|
| (1) | a) prevention    | b) warning     | c) discovery   |
| (2) | a) deterioration | b) improvement | c) failure     |
| (3) | a) principal     | b) key         | c) principle   |
| (4) | a) realised      | b) created     | c) established |
| (5) | a) common        | b) mutual      | c) shared      |

Such a process should (6) ..... that the Union is (7) ..... as soon as possible when there is a concern that the smooth functioning of the system set up by this Regulation is being (8) ..... as a result of particular pressure on, and/or deficiencies in the asylum (9) ..... of one or more Member States.

- |     |                 |                 |                |
|-----|-----------------|-----------------|----------------|
| (6) | a) assure       | b) enable       | c) ensure      |
| (7) | a) alerted      | b) communicated | c) told        |
| (8) | a) deteriorated | b) jeopardized  | c) safeguarded |
| (9) | a) systems      | b) politics     | c) rules       |

Such a process would allow the Union to promote (10) ..... measures at an early stage and pay the (11) ..... political attention to such situations.

- |      |             |              |                |
|------|-------------|--------------|----------------|
| (10) | a) coercive | b) detecting | c) preventive  |
| (11) | a) most     | b) good      | c) appropriate |

Solidarity, which is a pivotal element in the CEAS, goes hand in hand with mutual trust. By (12) ..... such trust, the process for early warning, preparedness and management of (13) ..... crises could improve the steering of (14) ..... measures of genuine and practical solidarity towards Member States, in order to (15) ..... the affected Member States in general and the applicants in particular.



- |                   |               |             |
|-------------------|---------------|-------------|
| (12) a) enhancing | b) raising    | c) giving   |
| (13) a) economic  | b) immigrants | c) asylum   |
| (14) a) general   | b) good       | c) concrete |
| (15) a) help      | b) assist     | c) prepare  |

In accordance with Article 80 TFEU, Union acts should, whenever necessary, contain measures to give (16) ..... to the principle of solidarity, and the process should be (17) ..... by such measures.

- |                |              |                |
|----------------|--------------|----------------|
| (16) a) rise   | b) effect    | c) prominence  |
| (17) a) helped | b) sustained | c) accompanied |

The conclusions on a Common (18) ..... for genuine and practical solidarity towards Member States facing particular (19) ..... on their asylum systems, including through mixed migration (20) ....., adopted by the Council on 8 March 2012, provide for a 'tool box' of existing and potential new (21) ....., which should be taken into account in the context of a (22) ..... for early warning, preparedness and crisis management.

- |                   |             |                 |
|-------------------|-------------|-----------------|
| (18) a) Frame     | b) Context  | c) Framework    |
| (19) a) pressures | b) crises   | c) deficiencies |
| (20) a) floods    | b) flows    | c) flaws        |
| (21) a) laws      | b) measures | c) means        |
| (22) a) mechanism | b) rule     | c) support      |

## VII. Fill in the gaps with the negative form of the words in brackets.

- [...] it is necessary to establish the identity of applicants for international protection and of persons apprehended in connection with the ..... (lawful) crossing of the external borders of the Union.
- It is also desirable to allow each Member State to check whether a third-country national or stateless person found ..... (legally) staying on its territory has applied for international protection in another Member State.
- It is also necessary to require the Member States promptly to take and transmit the fingerprint data of every applicant for international protection and of every third-country national or stateless person who is apprehended in connection with the ..... (regular) crossing of an external border of a Member State, if they are at least 14 years of age.
- The fact that it is temporarily or permanently ..... (possible) to take and/or to transmit fingerprint data, due to reasons such as ..... quality of the data for appropriate comparison, technical problems, reasons linked to the protection of health or due to the data subject being ..... (fit) or ..... (able) to have his fingerprints taken owing to circumstances beyond his or her control, should not adversely affect the examination of or the decision on the application for international protection lodged by that person.
- It is appropriate to monitor and evaluate the performance of Eurodac at regular intervals, including in terms of whether law enforcement access has led to ..... (direct) discrimination against applicants for international protection [...].

6. The Member State of origin shall ..... (mark) or ..... (block) data concerning a third-country national or stateless person whose data were previously marked or blocked [...] if his or her status is revoked or ended [...].
7. The records must be protected by appropriate measures against ..... (authorised) access.
8. If a Member State or the Agency has evidence to suggest that data recorded in the Central System are factually ..... (accurate), it shall advise the Member State of origin as soon as possible.
9. Each transmission shall have a reference number making it possible ..... (ambiguously) to identify the case to which it relates and the Member State making the request.
10. The number must also make it possible to determine whether the transmission relates to [...] an exchange of information on the family, sibling or relative of an ..... (accompanied) minor [...].

### VIII. Insert the appropriate particles:

*against, as, at, between, by, for, in, of, throughout, to, under, with, within*

1. The first phase ..... the creation of a CEAS that should lead, ..... the longer term, ..... a common procedure and a uniform status, valid ..... the Union, for those granted international protection, has now been completed.
2. With respect ..... the treatment of persons falling ..... the scope of this Regulation, Member States are bound by their obligations ..... instruments of international law, including the relevant case-law ..... the European Court of Human Rights.
3. It is necessary to set up a system known ..... 'Eurodac', consisting ..... a Central System, which will operate a computerised central database ..... fingerprint data, as well ..... of the electronic means of transmission ..... the Member States and the Central System.
4. The Hague Programme called ..... the improvement of access ..... existing data filing systems in the Union.
5. The possibility to compare a latent fingerprint ..... the fingerprint data which is stored in Eurodac in cases where there are reasonable grounds for believing that the perpetrator or victim may fall ..... one of the categories covered ..... this Regulation will provide the designated authorities of the Member States ..... a very valuable tool ..... preventing, detecting or investigating terrorist offences or other serious criminal offences, when for example the only evidence available ..... a crime scene are latent fingerprints.
6. With a view ..... ensuring equal treatment ..... all applicants and beneficiaries ..... international protection, as well as in order to ensure consistency ..... the current Union asylum acquis, [...], it is appropriate to extend the scope of this Regulation in order ..... include applicants ..... subsidiary protection and persons eligible for subsidiary protection.
7. Requests ..... comparison with data stored ..... the Central System should be made by the operating units ..... the designated authorities to the National Access Point.

8. It is appropriate to monitor and evaluate the performance of Eurodac ..... regular intervals, including in terms ..... whether law enforcement access led to indirect discrimination ..... applicants for international protection.
9. The Central System shall ensure, ..... the request of a Member State, that the comparison referred ..... in paragraph 3 covers the fingerprint data previously transmitted by that Member State, ..... addition ..... the data from other Member States.
10. The measures provided ..... in this Regulation are in accordance ..... the opinion of the Committee.

### IX. Fill in the gaps with the plural forms of the nouns in brackets.

1. In order to ensure equal treatment for all applicants and ..... (beneficiary) of international protection, [...] the scope of this Regulation encompasses applicants for subsidiary protection and ..... (person) eligible for subsidiary protection.
2. Any Member State should be able to derogate from the responsibility ..... (criterion), in particular on humanitarian and compassionate ..... (ground).
3. Fingerprint ..... (datum) should be erased immediately once third-country nationals or stateless persons obtain citizenship of a Member State.
4. The request shall also include, as applicable, a copy of all the ..... (evidence) showing that the requested Member State is responsible for examining the application for international protection.
5. It is necessary to lay down clearly the respective ..... (responsibility) of the Commission and of the Agency, in respect of the Central System and the Communication Infrastructure, and of the Member States, as regards data processing, data security, access to, and correction of recorded data.
6. Europol plays a key role with respect to cooperation between Member States' ..... (authority) in the field of crime investigation in supporting Union-wide crime prevention, ..... (analysis) and investigation.
7. A common leaflet on Dublin/Eurodac, as well as a specific leaflet for unaccompanied ..... (minor), a standard form for the exchange of relevant ..... (information) on unaccompanied ..... (minor), [...], are not provided for in Regulation (EC) No 1560/2003.
8. A process for early warning, preparedness and management of asylum ..... (crisis) should be established.
9. Each Member State shall ensure that its national supervisory authority has access to ..... (advice) from persons with sufficient ..... (knowledge) of fingerprint ..... (datum).

## X. Fill in the gaps, using the clues given:

1. Member States should ensure the ..... (transmit, noun) of fingerprint data of an appropriate quality for the purpose of ..... (compare, noun) by means of the ..... (computer, vb., past participle) fingerprint ..... (recognize, noun) system.
2. Given that most third-country ..... (nation, noun for persons, pl.) or ..... (state, adjective, neg.) persons who have stayed in the Union for several years will have obtained a settled status or even ..... (citizen, abstract noun) of a Member State after that period, a period of ten years should be considered a reasonable period for the ..... (store, noun) of fingerprint data.
3. National ..... (supervise, adj.) authorities should monitor the ..... (lawful, abstract noun) of the processing of ..... (person, adj.) data by the Member States.
4. In order to increase the ..... (efficient, noun) of the system and to improve the ..... (cooperate, noun) between national ..... (authorize, noun, pl.), the rules regarding the transmission and processing of requests for the purpose of taking charge and taking back, the requests for ..... (inform, noun), the cooperation on reuniting family members and other relatives in the case of ..... (company, verb, past participle, neg.) minors and ..... (depend, adj.) persons, as well as carrying out of transfers, need to be amended.
5. Technical ..... (adapt, noun, pl.) are necessary in order to respond to the ..... (evolve, noun) of the standards ..... (apply, adj.) and the practical ..... (arrange, noun, pl.) for using the electronic transmission network set up by the Regulation (EC) No 1560/2003.
6. The request shall also include, as applicable, a copy of all the proof and ..... (circumstance, adj.) evidence showing that the requested Member State is responsible for the ..... (apply, noun) for international protection.
7. [...] the transferring and the responsible Member States must resume ..... (communicate, noun) in order to allow for a new transfer to be organised as soon as possible, in accordance with Article 8, and no later than two weeks from the moment the authorities become aware of the ..... (cease, noun) of the circumstances that caused the delay or ..... (postpone, noun).
8. A Member State which [...] cannot carry out the transfer within the normal time limit of six month from the date of ..... (accept, noun) of the request to take charge or take back the person concerned or of the final ..... (decide, noun) on an appeal or review where there is a ..... (suspend, adj.) effect, shall inform the Member State responsible before the end of that time limit.

# ANSWER KEY

## Unit 1

### Exercise I

(1) d; (2) a; (3) a; (4) advocates; (5) c; (6) b; (7) a; (8) summons; (9) d; (10) b (c or d would also be possible); (11) c; (12) a; (13) a (c would also be possible); (14) d; (15) d; (16) b; (17) interim (c or d would also be possible); (18) a; (19) c; (20) a; (21) b; (22) a; (23) c; (24) d; (25) d; (26) c; (27) hearing; (28) b; (29) a; (30) c; (31) a; (32) b; (33) d; (34) b (a, c and d would also be possible); (35) a (b, c and d would also be possible although they are too colloquial); (36) c; (37) a; (38) d; (39) b (a would also be possible); (40) a (c would also be possible for the UK); (41) b; (42) verbatim (a would also be possible); (43) c (a would also be possible, but it is very colloquial); (44) d; (45) a; (46) c; (47) d; (48) b; (49) a (b, c and d would also be possible); (50) b; (51) a; (52) a; (53) d; (54) b; (55) a.

### Exercise II

*Terms, rough translations and definitions:*

*actio popularis* ("action of the people"): a lawsuit brought by a third party in the interest of the public as a whole; *acta jure imperii* ("acts by right of dominion"): acts and omissions in the exercise of State authority; *passim* ("everywhere"): adverb meaning that a reference may be found in various places in a text; *erga omnes* ("against all"): binding on all states, with no possible derogation or limitation; *in absentia* ("in absence"): criminal proceedings where the accused is prosecuted without being present; *ab initio* ("from the beginning"): from the very moment it was made (a contract, a law, etc.); *ratione personae* ("by reason of the person"): jurisdiction depending on whether someone resides within the territory of the court or whether the person is a citizen of the state to which the court belongs; *jus sanguinis* ("right of the blood"): principle whereby a person's citizenship is acquired as a child through his or her legal/biological relationship to a citizen; *jus soli* ("right of the land"): principle whereby citizenship is due to being born within a given territory; *ratio decidendi* ("reason for deciding"): reasons or principles behind a decision; *pari passu* ("in equal step"): without preference, equally, in equal measure; *habeas corpus* ("you should have the body"): writ issued in order to bring before a court a person who has been detained.

*Sentences:*

(1) *acta jure imperii*; (2) *habeas corpus*; (3) *jus sanguinis*; (4) *jus soli*; (5) *ratione personae*; (6) *passim*; (7) *erga omnes*; (8) *pari passu*; (9) *actio popularis*; (10) *ab initio*; (11) *in absentia*; (12) *ratio decidendi*.

### Exercise III

(1) d; (2) b; (3) c; (4) b; (5) a; (6) d; (7) d; (8) d; (9) b; 10 (c).

## Unit 2

### READING COMPREHENSION

#### Exercise I

I/A: (1) shores; (2) legal pathways; (3) lives; (4) reunification; (5) entrepreneurship; (6) types of flows; (7) coming years; (8) approach; (9) reap the benefits; (10) challenges; (11) imperative; (12) plight; (13) peril; (14) ten-point plan; (15) steps; (16) loss of life.

I/B. (1) insufficient; (2) one-off response; (3) has fallen short; (4) have responded; (5) serious doubts; (6) migration policy; (7) integrate; (8) economic demands; (9) to halt; (10) root; (11) deep seated; (12) safe haven; (13) societal cohesion; (14) balancing act; (15) core measures; (16) to best effect.

### Exercise II

(1) swift; (2) consensus; (3) step up; (4) blueprint; (5) border; (6) rescue; (7) nostrum; (8) joint; (9) amending; (10) fulfil; (11) deployed; (12) persists.

### Exercise III (Listening comprehension A)

(1) Europe's migration policy; (2) save lives; (3) bold actions; (4) opening or closing borders; (5) Frontex operations Triton and Poseidon; (6) Jordan, Turkey; (7) the brunt of this plague; (8) fight smuggling; (9) to disrupt, to bring the perpetrators.

### Exercise IV (Listening comprehension B)

(1) Frontex; (2) soil; (3) repatriated; (4) firm; (5) sixty million Euros; (6) settlement scheme; (7) safely and legally; (8) fifty million Euros; (9) relocation; (10) settlement; (11) quantifiable; (12) verifiable; (13) size; (14) GDP; (15) asylum applications; (16) unemployment rate; (17) right balance; (18) addressing; (19) root causes of migration; (20) legislative; (21) fingerprinting; (22) Blue Card; (23) to make it happen; (24) power of initiative; (25) Nevertheless; (26) shared.

## FURTHER LANGUAGE PRACTICE

### Exercise I

1) CBRN; 2) VIS; 3) RABIT; 4) GDP; 5) EMN; 6) Frontex; 7) CEAS; 8) CJEU; 9) CRPD; 10) EBSS; 11) ICESCR; 12) ICCPR; 13) PACE; 14) SAR; 15) SOLAS; 16) CDPR; 17) JOT MARE; 18) UNHCR; 19) EEAS; 20) EASO.

### Exercise II

(1) clash; conflicting laws are like cars colliding with each other; (2) outweigh; important things are heavier than less important things; (3) core; an idea is a (fleshy) fruit with seeds; (4) propagate; an idea is a living being which can reproduce itself; (5) fuel; undesirable human actions are fires; (6) undermine; society is a building; (7) gratuitous; unnecessary things have no monetary value; (8) distance; to agree is to be together, to disagree is to be separated; (9) burden; finding evidence is heavy; (10) proportionality; when something is suitable, it has the right size.

### Exercise III

(1) subjected; (2) criminal; (3) fair; (4) within; (5) law; (6) pronounced; (7) trial; (8) publicity; (9) presumed; (10) proved; (11) language; (12) accusation; (13) defence; (14) means; (15) conditions; (16) interpreter; (17) court.

### Exercise IV

(1) b; (2) a; (3) judgment; (4) held; (5) violation; (6) fair; (7) committed; (8) found; (9) d; (10) appear; (11) provide; (12) c; (13) b; (14) charged; (15) a; (16) d; (17) tried; (18) b; (19) upheld; (20) issued; (21) a; (22) d; (23) a.

### Exercise V

(1) a; (2) b; (3) b; (4) b; (5) a; (6) b; (7) b; (8) b; (9) a; (10) b; (11) a; (12) a; (13) a; (14) b; (15) b; (16) a; (17) b.

### Exercise VI

(1) underlined; (2) surrender; (3) secure; (4) conditional; (5) guarantee; (6) proceedings; (7) validity; (8) in force; (9) set aside; (10) appear; (11) provide; (12) request; (13) obstacle; (14) noted; (15) category; (16) evidence; (17) acquittal; (18) lenient; (19) findings; (20) concluded; (21) fresh; (22) full; (23) examine; (24) inadequacy; (25) publicly-funded; (26) conducted; (27) held; (28) in respect of; (29) damage; (30) in respect of.

## Unit 3

### READING COMPREHENSION

#### Exercise I & II

(Open answers)

#### Exercise III

- (1) *Court of Cassation*: A court of cassation is a high instance court that exists in some judicial systems. Courts of cassation do not re-examine the facts of a case, they are only competent for verifying the interpretation of the law. In this way they differ from systems which have a supreme court which can rule on both the facts and the law of a case.
- (2) *Assigned counsel*: lawyer appointed to appear for/on behalf of someone.
- (3) *Practical and effective respect* for Mr. Vamvaka's defence rights (I.11-12): respect that worked in practice and which had real effects.
- (4) To appeal *on points of law*: to appeal on the basis of the law, not of the facts.
- (5) To the *detriment of*: to the loss/disadvantage of.
- (6) To *dismiss* the appeal: to refuse to hear/try a case that has been appealed.
- (7) *Effective legal assistance*: legal assistance which is efficient/useful/adequate/effectual.
- (8) When *put on notice*: when notified/advised/informed.
- (9) *Competent authorities*: with jurisdiction, relevant.
- (10) *Means of notification*: ways/channels used to notify/inform.
- (11) *Domestic law*: national law.
- (12) *Fellow lawyer*: a colleague.
- (13) To *reverse* a decision: not to uphold, to overturn.
- (14) *Just satisfaction*: under Art. 41 of the ECHR, " If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party".
- (15) *Non-pecuniary*: non-monetary.

### Exercise IV

(1) *Counsel*: advocate, lawyer who can appear for a party before a court; (2) *Chamber*: section, division (UK); (3) *Application*: request (usually in writing); (4) *Unanimously*: by common consent, with one accord, without opposition; (5) *Violation*: breach, contravention, infraction; (6) *Proceedings*: case, action, suit; (7) *Adjourned*: defer, postpone, put off; (8) *Decision*: judgment; (9) *Final*: absolute, conclusive, irrevocable, that cannot be appealed; (10) *Sentenced*: punished; (11) *Turned up*: appeared, showed up; (12) *Represent*: appear for; (13) *Judgment*: decision; (14) *Summoned*: convoked, called; (15) *Illusory*: deceitful, deceptive, false, misleading, untrue; (16) *Default*: failure, neglect, omission; (17) *Notification*: information, notice.

### Exercise V

(1) ineffective; (2) unexplained; (3) nonmanifest; (4) misinform; (5) incompetent; (6) unable; (7) improper; (8) uphold; (9) unexplained; (10) unfair; (11) impractical; (12) provisional, temporary, interim, non-final; (13) illegal; (14) meaningful; (15) unlikely; (16) unwritten; (17) inadmissible; (18) presence; (19) unassisted; (20) disrespect; (21) absent; (22) practical; (23) unnecessary; (24) uncertainty; (25) impossible; (26) non-appearance.

### Exercise VI

(1) of; (2) to; (3) to; (4) on; (5) to; (6) in; (7) of; (8) to; (9) to; (10) of; (11) in; (12) on; (13) without; (14) in; (15) from; (16) to; (17) of; (18) on; (19) for; (20) at; (21) of; (22) of; (23) of; (24) for; (25) under; (26) for; (27) for; (28) on; (29) for; (30) under; (31) on; (32) for; (33) about; (34) for; (35) with; (36) from; (37) after; (38) without; (39) from; (40) to; (41) on; (42) for.

### Exercise VII

- (1) IF problems of representation before the courts were drawn to its attention, the State sometimes had to act.
- (2) AUTHORITIES had to intervene, under Article 6 § 3 (c), only where the default of an assigned lawyer was manifest.
- (3) THE NOTION of free legal assistance would be meaningless without the competent authorities replacing the defaulting lawyer or oblige him to perform his mission.
- (4) THE ASSIGNING AUTHORITY had to be informed/should have been informed of the situation by the lawyer.
- (5) IT SEEMS THAT Mr Vamvaka's lawyer, appointed on 2 January 2010 for the hearing of 5 February 2010, at no time had explained that he was unable to pursue his mission.
- (6) IF HE HAD contacted the registry of the Court of Cassation to request the adjournment of the hearing, he would certainly have been informed that a telephone call was not a proper means of notification.
- (7) A WRITTEN REQUEST should have been sent.
- (8) THE COURT OF CASSATION HAD to enquire about the reasons for the nonappearance of Mr Vamvakas' lawyer, since it was impossible under Greek law to reverse a decision to find an appeal on points of law inadmissible.
- (9) A VIOLATION of Article 6 §§ 1 and 3 (c) was found by the Court.



## FURTHER LANGUAGE PRACTICE

### Exercise I

- (1) In order to obtain a fair trial, access to the court is needed (by a person).
- (2) Many claims of immunity have been upheld by the ECHR on the basis that there is a public interest consideration.
- (3) An MP cannot be sued for defamation.
- (4) Would the right sentence have been imposed by the judge in that case?
- (5) Some offenders are believed to be more dangerous than others by juries.
- (6) In certain circumstances a criminal defendant can be tried in his absence.
- (7) Was her solicitor told before the hearing?
- (8) The appropriate forms must be filled in by the parties.
- (9) I had not been noticed by the prosecutor in the courtroom.
- (10) The case was found to be hopeless by counsel.
- (11) Will a new solicitor be hired by the firm?
- (12) This issue has not been agreed to by the parties.
- (13) Will evidence have been given by the defendant by tomorrow?

### Exercise II

- (1) broader; (2) afforded; substantial; (3) breached; (4) served on; respond; (5) ceased; (6) permitted; (7) proceedings; wielded; assessment; (8) challenge, adduce

### Exercise III

- (1) inadmissible; submissions; (2) observations; infringement; fairness; proceedings; (3) failure; (4) administrative; administrative; appeal; assessment; applicant; (5) denial; effectively; (6) prosecutor; argument; opponent; (7) treatment; hearing; (8) complaint; authorization

## Unit 4

### READING COMPREHENSION

#### Exercise I

- (a) & (b): open answer.

#### Exercise III

- (1) cyberbullying; (2) objectionable; (3) antisemitism; (4) restraining order.

#### Exercise IV

- (1) false; (2) true; (3) false; (4) true; (5) true; (6) true.

### Exercise V

- (1) a sign that announces the death of something; metaphorically, a sign that something will not work
- (2) a new name for an already existing thing, whereby the external image changes, but the substance remains pretty much the same
- (3) something you are proud of
- (4) acting before something happens, and not after it does

## FURTHER LANGUAGE PRACTICE

### Exercise I

(1) applications; (2) membership; (3) unfounded; (4) requirements; (5) deportation; (6) applicable; (7) insufficient; (8) contention; (9) persecution; (10) action; (11) judgment; (12) prohibition.

### Exercise II

(1) can be demonstrated; (2) had been convicted; (3) were brought; (4) was ordered; (5) be regarded ; (6) had been interfered ; (7) had been breached ; (8) had been made.

### Exercise III

- (1) *It was also held (by the Court) in the Ekin Association case that the rights recognised by Article 10 of the Convention are valid "regardless of frontiers"*
- (2) *Freedom of expression has been described by the Court as "one of the basic conditions for the progress of democratic societies and for the development of each individual".*
- (3) *Freedom of expression may be interfered with by the state in certain circumstances.*
- (4) *According to the Court, for such an interpretation a legislative provision would be required clearly authorising it.*
- (5) *In September 1994, a judgment was delivered by the Court finding a violation of Article 10 in the Jersild case. (or ... "whereby a violation was found of Article 10"...)*
- (6) *Permission had been refused by the The Ministry of Defence for the magazine Der Igel to be distributed to soldiers in barracks, a prohibition that the Court found unnecessary in a democratic society.*
- (7) *Interference with the protection of journalists' sources could only be justified by "an overriding requirement in the public interest".*
- (8) *In a sphere in which it is unlikely that any certainty exists, it would be particularly unreasonable that freedom of expression should be restricted / for freedom of expression to be restricted only to generally accepted ideas.*

### Exercise IV

#### Crossword

Down: (1) criminalization; (3) persecution; (5) stateless; (8) imprisonment; (9) refugee

Across: (2) sanction; (4) standards; (6) asylum; (7) disproportionate; (10) discriminatory; (11) scope; (12) punishment

#### Sentences

(1) standards, stateless;

- (2) criminalization, imprisonment, sanction, punishment, disproportionate, discriminatory;
- (3) scope, refugee, persecution, asylum

### Exercise V

- (1) A person who transmitted information to a media publisher could be considered a discloser even if he or she was not the publisher of the article in question.
- (2) A system was put in place whereby users could notify the applicant company of any inappropriate comments.
- (3) If it had not played such a role, that service provider could not be held liable for the data which it had stored at the request of an advertiser, unless, having obtained knowledge of the unlawful nature of those data or of that advertiser's activities, it had failed to act expeditiously to remove or to disable access to the data concerned.
- (4) In order to establish whether the liability of a referencing service provider could be limited under Article 14 of Directive 2000/31/EC, it was necessary to examine whether the role played by that service provider was neutral.
- (5) On 1 October 2009 Delfi announced on its Internet portal that persons who had posted offensive comments were not allowed to post a new comment until they had read and accepted the rules of commenting.
- (6) The applicant company alleged that its freedom of expression had been violated, in breach of Article 10 of the Convention, by the fact that it had been held liable for the third-party comments posted on its Internet news portal.
- (7) The data subject's fundamental rights, as a general rule, overrode the interest of Internet users, but that balance might, however, depend on the nature of the information in question and its sensitivity for the data subject's private life and on the interest of the public in having that information
- (8) the Internet could, on the one hand, significantly enhance the exercise of certain human rights and fundamental freedoms while, on the other, it could adversely affect these and other such rights.
- (9) The operator played such a role when it provided assistance which entailed, in particular, optimising the presentation of the offers for sale in question or promoting them.

### Exercise VI

- (1) true; (2) false; (3) false; (4) true; (5) true; (6) false; (7) false.

### Exercise VII

- (1) exercise, monopoly; (2) just-in-time; (3) arbitrary, excessive; (4) online, offline; (5) censor; (6) rule of law, due process; (7) freedom of assembly.

## Unit 5

### READING COMPREHENSION

#### Exercise I

(open answer)

#### Exercise III

- (1) true; (2) true; (3) true; (4) false; (5) false; (6) true; (7) false; (8) false; (9) true; (10) true.

**Exercise IV**

(1) The Court's decision; (2) The presumption can be opposed by evidence or argument/The presumption can be invalidated; (3) The Court prevented all removals to that country; (4) Judges expressing separate/dissenting/different opinions; (5) Mentioned/referred to as a precedent.

**Exercise V**

(1) underlines; (2) challenged; (3) current; (4) violation; (5) prior; (6) granted; (7) ascertaining; (8) shortcomings; (9) underprivileged; (10) assess.

**Exercise VI**

(1) suspension; (2) nationals; (3) assurances; (4) guardianship; (5) arrivals; (6) unprecedented; (7) revolutionary; (8) removal; (9) reception.

**Exercise VII**

(1) unfounded; (2) insalubrious; unsuccessful; (3) insufficient, unsafe; (4) incompatible; (5) inhuman; (6) distrust.

**Exercise VIII**

inadequate, inapplicable, unavailable, ineffective, impossibility, irregular, insignificant

**Exercise IX**

(1) with, in; (2) for, in, in, to; (3) around; (4) upon, under; (5) with; (6) about, of, for; (7) to, at, of, to; (8) on, to.

**Exercise X**

(1) would expose; (2) had been considered; (3) were/are; (4) required; (5) would not be separated.

**Exercise XI**

- (1) The ECtHR judgment will be carefully assessed by the Commission.
- (2) A ECtHR judgment was issued in the case of *Tarakhel v. Switzerland*.
- (3) The Swiss authorities had to obtain assurances that the applicants would be taken care of in an adequate manner.
- (4) Asylum seekers were granted protection in many EU Member States.
- (5) They entered the Dublin system at the Italian border in 2011, where they were registered and placed in a reception facility

**FURTHER LANGUAGE PRACTICE****Exercise I**

(1) Non-refoulement; (2) refugee; (3) third-country national; (4) applicant; (5) Dublin Regulation; (6) Eurodac; (7) Frontex; (8) asylum; (9) displaced person; (10) blue card; (11) Committee on Migration and Asylum; (12) expulsion; (13) irregular migrant; (14) overstayer; (15) Geneva Convention of 1951 and Protocol of 1967; (16) migrant smuggling; (17) temporary protection; (18) risk of absconding; (19) burden of proof; (20) prima facie refugee.

**Exercise II**

(1) progressively, establishing, liberty, seek; (2) apprehended, unlawful, borders; (3) granted; (4) key, cross-border, supporting; (5) adversely; (6) allowed; combatting, conduct; (7) prohibited; (8) evaluate; (9) restrict

**Exercise III**

(1) exclude, forbidden, specific, preventing, serious; (2) allowed; (3) private, prohibited, disclosed; (4) dissuasive; (5) often, jeopardise, violation.

**Exercise IV**

(1) European Convention on Human Rights; (2) European Court of Human Rights; (3) Office of the United Nations High Commissioner for Refugees (UN Refugee Agency); (4) Visa Information System; (5) Schengen Information System; (6) European Criminal Records Information System; (7) Common European Asylum System; (8) European Asylum Support Office; (9) European Council on Refugees and Exiles; (10) European Dactyloscopy (European fingerprint database for identifying asylum seekers and irregular border-crossers).

**Exercise V**

(1) conditions; (2) comparison; (3) data; (4) detecting; (5) safeguards; (6) respect; (7) strictness; (8) database; (9) committed.

**Exercise VI**

(1) b; (2) a; (3) b; (4) c; (5) b; (6) c; (7) a; (8) b; (9) a; (10) c; (11) c; (12) a; (13) c; (14) c; (15) b; (16) b; (17) c; (18) c; (19) a; (20) b; (21) b; (22) a.

**Exercise VII**

(1) unlawful; (2) illegally; (3) irregular; (4) impossible, insufficient, unfit, unable; (5) indirect; (6) unmark, unblock; (7) unauthorized; (8) inaccurate; (9) unambiguously; (10) unaccompanied.

**Exercise VIII**

(1) in, in, to, throughout; (2) to, within, under, of; (3) as, of, of, as, between; (4) for, to; (5) with, under, by, with, in, at; (6) to, for, of, with, to for; (7) for, in, within; (8) at, of, against; (9) at, to, in, to; (10) for, with.

**Exercise IX**

(1) beneficiaries, persons; (2) criteria, grounds; (3) data; (4) evidence; (5) responsibilities; (6) authorities, analyses; (7) minors, information, minors; (8) crises; (9) advice, knowledge, data.

**Exercise X**

(1) transmission, comparison, computerized, recognition; (2) nationals, stateless, citizenship, storage; (3) supervisory, lawfulness, personal; (4) efficiency, cooperation, authorities, information, unaccompanied, dependent; (5) adaptations, evolution, applicable, arrangements; (6) circumstantial, application; (7) communication, cessation, postponement; (8) acceptance, decision, suspensive.

# GLOSSARY

Here is a list of some of the most important terms in the field of human rights law. Some of the terms already dealt with in the exercises for each unit have been excluded from this list so as not to duplicate entries.

For each term, pronunciation, definition and an example of usage is provided, as well as, where applicable, the sources of such definitions and examples.

**accession** (æk'sɛʃən)

Acceptance of a treaty by a state that did not participate in its negotiation or drafting. (<http://academic3.american.edu/~mertus/hr%20glossary.htm>)

Example: *Accession would make the ECHR like every other international instrument binding on the EU institutions.* (<http://ukhumanrightsblog.com/2014/12/22/eu-judges-oppose-accession-of-eu-to-echr/>)

**affirmative action** (ə'fɜ:mətɪv 'ækʃən)

Action taken by a government or private institution to make up for past discrimination in education, work, or promotion on the basis of gender, race, ethnic origin, religion, or disability (called positive action in the UK). ([http://www1.umn.edu/humanrts/edumat/hreduseries/hereandnow/Part-5/6\\_glossary.htm](http://www1.umn.edu/humanrts/edumat/hreduseries/hereandnow/Part-5/6_glossary.htm))

Example: *Section 14 provides that preferences or restrictions made pursuant to an affirmative action programme aimed at remedying a traditional situation of disadvantage are not discriminatory.* (<http://www.gnb.ca/hrc-cdp/18-e.asp>)

**alien** ('eɪliən)

A person who is not a citizen of the country. (<http://dictionary.law.com/Default.aspx?typed=alien&type=1>)

Example: *Subject to the provisions referred to in paragraph 2, aliens lawfully in the territory of a State shall enjoy the right to liberty of movement and freedom to choose their residence within the borders of the State.* (<http://www.un.org/documents/ga/res/40/a40r144.htm>)

**applicant** ('æplɪkənt)

Third-country national or stateless person who has made an application for international protection in respect of which a final decision has not yet been taken. (REGULATION (EU) No 604/2013) (<http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32013R0604&from=en>)

Example: *As part of the process applicants and dependent children are required to have photographs taken.* (<http://www.asylumineurope.org/reports/country/republic-ireland/dublin>)

**application** (æplɪkeɪʃən)

An official request for something.

Example: *The case originated in an application (no. 14939/03) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms.* (<http://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-80962%22%7D>)

**asylum** (ə'saɪləm)

Protection given by a state to a person who has left their country as a political refugee. (<http://www.unhcr.org/pages/49c3646c137.html>)

Example: *Asylum is granted to people fleeing persecution or serious harm in their own country and therefore in need of international protection.* ([http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/index\\_en.htm](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/index_en.htm))

**asylum seeker** (ə'saɪləm 'sɪkə(r))

Someone who says he or she is a refugee, but whose claim has not yet been definitively evaluated. (<http://www.unhcr.org/pages/49c3646c137.html>)

Example: *Although some asylum seekers might enter the UK illegally, once they have applied for asylum they are no longer 'illegal'.* (<http://www.asylumaid.org.uk/the-asylum-process-made-simple/>)

**civil and political rights** (sɪvɪl ən pə'lɪtɪkəl 'raɪts)

The rights of citizens to liberty and equality; sometimes referred to as first generation rights. Civil rights include freedom to worship, to think and express oneself, to vote, to take part in political life, and to have access to information. ([http://www1.umn.edu/humanrts/edumat/hreduseries/hereandnow/Part-5/6\\_glossary.htm](http://www1.umn.edu/humanrts/edumat/hreduseries/hereandnow/Part-5/6_glossary.htm))

Example: *The market economies of the West tended to put greater emphasis on civil and political rights, while the centrally planned economies of the Eastern bloc highlighted the importance of economic, social and cultural rights.* (<http://www.ohchr.org/EN/Issues/ESCR/Pages/AreESCRfundamentallydifferentfromcivilandpoliticalrights.aspx>)

**claim** (kleɪm)

Allegation by an individual or state that it is entitled to a remedy for an injury caused (usually by a the state). (<http://academic3.american.edu/~mertus/hr%20glossary.htm>)

Example: *One may also bring a claim on behalf of another person on condition that his/her written consent is obtained (without requirement as to its specific form).* (<http://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/IndividualCommunications.aspx>)

**codify** (kəʊdɪfaɪ)

Arrange (laws or rules) into a systematic code. (<http://www.oxforddictionaries.com/es/definicion/ingles/codify>)

Example: *Human rights become enforceable when they are codified as Conventions, Covenants, or Treaties, or as they become recognized as Customary International Law.* ([https://www1.umn.edu/humanrts/edumat/hreduseries/hereandnow/Part-5/6\\_glossary.htm](https://www1.umn.edu/humanrts/edumat/hreduseries/hereandnow/Part-5/6_glossary.htm))

**collective rights** (kəˈlektɪv ˈraɪts)

The rights of groups to protect their interests and identities. ([http://www1.umn.edu/humanrts/edumat/hreduseries/hereandnow/Part-5/6\\_glossary.htm](http://www1.umn.edu/humanrts/edumat/hreduseries/hereandnow/Part-5/6_glossary.htm))

Example: *The UK and U.S. government representatives conceded that the term “peoples” applies to some Articles of the draft U.N. Declaration that contain collective rights.* (<http://www.gcc.ca/pdf/INT000000003.pdf>)

**complaint** (kəmˈpleɪnt)

The initial document that begins an action; a complaint sets forth a brief summary of what happened and argues why relief should be granted. (<http://academic3.american.edu/~mertus/hr%20glossary.htm>)

Example: *If you believe that you have been discriminated against and wish to file a complaint with the Human Rights Commission, you must contact the Commission within twelve months of the date that the alleged discrimination occurred.* (<http://www.justice.gov.nl.ca/hrc/complaints/index.html>)

**conscientious objector** (kənʃiːɪnʃəs əbɪdʒektə(r))

One who on the basis of religious or moral principles refuses to bear arms or participate in military service. (<http://www.thefreedictionary.com/conscientious+objection>)

Example: *In Feb. 1864, the Act was amended to recognize only those conscientious objectors who were members of religious denominations whose rules and articles of faith prohibited armed service.* (<http://www.swarthmore.edu/library/peace/conscientiousobjection/co%20website/pages/HistoryNew.htm>)

**convention** (kənˈvɛnʃən)

Binding agreement between states; used synonymously with Treaty and Covenant. Conventions are stronger than Declarations because they are legally binding for governments that have signed them. ([http://www1.umn.edu/humanrts/edumat/hreduseries/hereandnow/Part-5/6\\_glossary.htm](http://www1.umn.edu/humanrts/edumat/hreduseries/hereandnow/Part-5/6_glossary.htm))

Example: *Rape and other sexual assaults [...], constituted “torture or inhuman treatment” and acts that “wilfully caus[ed] great suffering or serious injury to body or health” and were thus punishable as grave breaches under the Conventions.* (<https://www.icrc.org/eng/resources/documents/misc/57jpg4.htm>)

**covenant** (ˈkʌvɪnənt)

Binding agreement between states; used synonymously with Convention and Treaty. ([http://www1.umn.edu/humanrts/edumat/hreduseries/hereandnow/Part-5/6\\_glossary.htm](http://www1.umn.edu/humanrts/edumat/hreduseries/hereandnow/Part-5/6_glossary.htm))

Example: *As of December 2013, 167 countries have ratified the Covenant.* (<http://www.ushr-network.org/our-work/project/icpr-international-covenant-civil-political-rights>)

**declaration** (dɛkləˈreɪʃən)

Document stating agreed upon standards but which is not legally binding. ([http://www1.umn.edu/humanrts/edumat/hreduseries/hereandnow/Part-5/6\\_glossary.htm](http://www1.umn.edu/humanrts/edumat/hreduseries/hereandnow/Part-5/6_glossary.htm))

Example: *In its preamble, the Universal Declaration of Human Rights (hereafter UDHR) recognizes the “inherent dignity and equal and inalienable rights of all members of the human family” and is a common standard of achievement “for all peoples and all nations.”* (<http://blogs.lse.ac.uk/mec/2012/12/10/1569>)

**degrading** (dɪˈɡreɪdɪŋ)

Grossly humiliating and undignified (<http://www.scottishhumanrights.com/careabout-rights/section1-page08>)

Example: *“No one shall be subjected to torture or to inhuman or degrading treatment or punish-*



ment.” (European Convention on Human Rights, Art. 3).

**derogation** (dɛrəˈdʒeɪʃən)

Exemption from or relaxation of a rule or law (<https://en.oxforddictionaries.com/definition/derogation>).

Example: *The Belgian authorities were under no obligation to apply the derogation clause provided for in Article 3 § 2 of the Regulation* (<http://www.asylumlawdatabase.eu/en/content/ecthr-mss-v-belgium-and-greece-gc-application-no-3069609>)

**discrimination** (dɪskrɪmɪˈneɪʃən)

Unfair or unequal treatment of an individual (or group) based on certain characteristics, including age, disability, ethnicity, gender, marital status, national origin, religion or sexual orientation. (<http://civilrights.findlaw.com/civil-rights-overview/what-is-discrimination.html>)

Example: *Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation. (International Convention on the Elimination of All Forms of Racial Discrimination, Art. 9).* (<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx>)

**displaced person** (dɪsˈpleɪst ˈpɜːs(ə)n)

A person who flees his or her homeland due to political persecution or war, but does not cross state borders. (<http://academic3.american.edu/~mertus/hr%20glossary.htm>)

Example: *The Guiding Principles on Internal Displacement set by of Office for the United Nations High Commissioner for Refugees (UNHCR) holds internally displaced persons to be “persons or groups of persons who have been forced to flee, or leave, their homes or places of habitual residence as a result of armed conflict, internal strife, and habitual violations of human rights, as well as natural or man-made disasters involving one or more of these elements, and who have not crossed an internationally recognised state border”.* (<http://www.unesco.org/new/en/social-and-human-sciences/themes/international-migration/glossary/displaced-person-displacement/>)

**domestic violence** (dəˈmɛstɪk ˈvaɪələns)

Violence among members of a family or household. (<http://academic3.american.edu/~mertus/hr%20glossary.htm>)

Example: *When states fail to take the basic steps needed to protect women from domestic vio-*

*lence or allow these crimes to be committed with impunity, states are failing in their obligation to protect women from torture.* (<http://www.amnestyusa.org/our-work/issues/women-s-rights/violence-against-women/violence-against-women-information>)

**economic, social, cultural rights** (ɛkəˈnɒmɪk ˈsəʊʃəl ən ˈkʌltʃərəl ˈraɪts)

Rights that concern the production, development, and management of material for the necessities of life. The right to preserve and develop one’s cultural identity. Rights that give people social and economic security, sometimes referred to as security-oriented or second generation rights. Examples are the right to food, shelter, and health care. ([http://www1.umn.edu/humanrts/edumat/hreduseries/here-andnow/Part-5/6\\_glossary.htm](http://www1.umn.edu/humanrts/edumat/hreduseries/here-andnow/Part-5/6_glossary.htm))

Example: *The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant. (International Covenant on Economic, Social and Cultural Rights, Art. 3).* (<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CE-SCR.aspx>)

**effective remedy** (ɪˈfektɪv ˈremɪdi)

Legal solution to a problem which is accessible, capable of providing redress in respect of the applicant’s complaints and offers reasonable prospects of success. ([http://www.echr.coe.int/Documents/Handbook\\_access\\_justice\\_ENG.pdf](http://www.echr.coe.int/Documents/Handbook_access_justice_ENG.pdf))

Example: *Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity. (Article 13, ECHR).* ([http://www.hrcr.org/docs/Eur\\_Convention/euroconv4.html](http://www.hrcr.org/docs/Eur_Convention/euroconv4.html))

**equality of arms** (ɪˈkwɒlɪtɪ əv ˈɑːmz)

A principle inherent in the broader concept of a fair trial, which implies that each party must be afforded a reasonable opportunity to present his case – including his evidence – under conditions that do not place him at a substantial disadvantage vis-à-vis the other party. (Adapted from [http://www.echr.coe.int/Documents/Guide\\_Art\\_6\\_ENG.pdf](http://www.echr.coe.int/Documents/Guide_Art_6_ENG.pdf))

Example: *The principle of equality of arms is a jurisprudential principle issued by the European Court of Human Rights and is a part of the right to a fair trial written in the (European) Convention for human rights and fundamental freedoms.*



(<http://www.internationallawreview.eu/article/the-principle-of-equality-of-arms-part-of-the-right-to-a-fair-trial>)

**enforcement mechanisms** (ɛnfɔːsmənt  
'mekənɪzmz)

Procedures at the national, regional or international level that place obligations on states. (<http://academic3.american.edu/~mertus/hr%20glossary.htm>)

Example: *Positive enforcement mechanisms encourage compliance with an agreement by providing rewards or "incentives". Negative enforcement mechanisms encourage compliance by threatening (and using) punishments or "disincentives."* (<http://www.beyondintractability.org/essay/enforcement-mechanisms>)

**exhaustion requirement** (ɛgzɔːstʃən  
rɪkwəɪmənt)

Requirement that a person, group or state bringing a human rights claim first try to bring the case at the domestic level. (<http://academic3.american.edu/~mertus/hr%20glossary.htm>)

Example: *A regime of impunity for torture would trigger an exception to the exhaustion requirement.* (Viljoen & Odinkalu, *The Prohibition of Torture and Ill-treatment in the African Human Rights System*, p. 73). ([http://www.omct.org/files/2014/11/22956/v3\\_web\\_african\\_en\\_omc14.pdf](http://www.omct.org/files/2014/11/22956/v3_web_african_en_omc14.pdf))

**equality** (ɪkwɔːlɪti)

The notion that all human beings are entitled to the same human rights without distinction. (<http://academic3.american.edu/~mertus/hr%20glossary.htm>)

Example: *Marriage equality is an issue of fundamental human rights and there is no legal justification for denying equality to same-sex couples, the Law Society of Ireland has said.* (<http://www.irishtimes.com/news/crime-and-law/courts/district-court/marriage-equality-is-a-human-right-says-law-society-1.2202668>)

**fair trial** ('fɛə 'traɪəl)

Fair and public hearing by an independent and impartial court within a reasonable time (Adapted from Art. 6 ECHR). ([http://www.hrcr.org/docs/Eur\\_Convention/euroconv4.html](http://www.hrcr.org/docs/Eur_Convention/euroconv4.html))

Example: *Despite the fact that the European Court of Human Rights has already set out fair trial standards in its case law, protection for accused people is still too often not good enough in practice: 11 EU Member States [...] have been declared in violation of the presumption of inno-*

*cence by the European Court of Human Rights between 2007 and 2012.* ([http://europa.eu/rapid/press-release\\_MEMO-13-1046\\_es.htm](http://europa.eu/rapid/press-release_MEMO-13-1046_es.htm))

**gender** (dʒendə(r))

The ways in which roles, attitudes, values and relationships regarding women and men are constructed by all societies all over the world. While sex is determined by nature, gender is socially constructed. (<http://academic3.american.edu/~mertus/hr%20glossary.htm>)

Example: *Far too often, ordinary human beings throughout the globe are denied basic rights, freedom, opportunity, and dignity because of their sex, sexuality, gender identity or expression.* (<http://center.hks.harvard.edu/sexuality-gender-and-human-rights-program>)

**genocide** (dʒenəsəɪd)

The systematic elimination of all or a significant part of a racial, ethnic, religious, cultural or national group. (<https://en.wikipedia.org/wiki/Genocide>)

Example: *Preventing genocide, the other major obligation of the convention, remains a challenge that nations and individuals continue to face.* (<http://www.ushmm.org/confront-genocide/defining-genocide>)

**habeas corpus** (heɪbiəs kɔːpəs)

A court order that commands an individual or a government official who has restrained another to produce the prisoner at a designated time and place so that the court can determine the legality of custody and decide whether to order the prisoner's release. (<http://legal-dictionary.thefreedictionary.com/habeas+corpus>)

Example: *The WG takes a very strong position regarding the right of habeas corpus in wartime, which it sees as non-derogable in common to a number of other human rights bodies, finding for example that in international armed conflict even prisoners of war have the right of access to a judicial mechanism that would establish the lawfulness of their status-based preventive detention.* (<http://www.ejiltalk.org/un-working-group-on-arbitrary-detention-adopts-principles-and-guidelines-on-habeas-corpus/>)

**humanitarian law** (hjuːmənɪtɛəriən 'lɔː)

The international rules that establish the rights of combatants and noncombatants in war. (<http://academic3.american.edu/~mertus/hr%20glossary.htm>)

Example: *The protection of civilians during armed conflict is therefore a cornerstone of international humanitarian law.* (<https://www.icrc.org/eng/war-and-law/protected-persons/civilians/overview-civilians-protected.htm>)

**human trafficking** (also “trafficking in persons” or “in human beings”) (hju:mən 'træfɪkɪŋ)

Recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs. (<https://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>)

Example: *Human trafficking has claimed an estimated 20 million-plus victims worldwide - with more than 800000 victims enslaved each year.* (<http://www.humanrightsfirst.org/topics/human-trafficking>)

**inalienable** (ɪn'eɪlɪənəbəl)

Rights that cannot be surrendered, sold or transferred to someone else. <http://definitions.uslegal.com/i/inalienable-right/>

Example: *All men are created equal and are born with certain inalienable rights. These include “life, liberty, and the pursuit of happiness, and no government is allowed to take them away.* ([http://gatzertes.seattleschools.org/UserFiles/Server/Server\\_2251/File/Student%20Activities/InalienableRights.pdf?sessionId=58b22fd4bb-84daf75deadb6e9a3e13fd](http://gatzertes.seattleschools.org/UserFiles/Server/Server_2251/File/Student%20Activities/InalienableRights.pdf?sessionId=58b22fd4bb-84daf75deadb6e9a3e13fd))

**indivisibility** (ɪndɪvɪzɪbɪlɪtɪ)

Notion that there is no hierarchy of rights; civil and political rights are equally as important as social, economic and cultural rights. (<http://academic3.american.edu/~mertus/hr%20glossary.htm>)

Example: *The notion of the indivisibility of human rights has come under attack in recent years by some Asian governments which have claimed that the contemporary canon of human rights represents “Western values” which are in many respects inconsistent with “Asian values.”* (<https://www.bu.edu/wcp/Papers/Huma/HumaWins.htm>)

**hate crime** (heit 'kraɪm)

A usually violent, prejudice-motivated crime that occurs when a perpetrator targets a victim because of his or her perceived membership in a certain social group. ([https://en.wikipedia.org/wiki/Hate\\_crime](https://en.wikipedia.org/wiki/Hate_crime))

Example: *When something is classed as a hate crime, the judge can impose a tougher sentence on the offender. Incidents which are based on other personal characteristics, such as age or appearance, are not considered to be hate crimes under the law.* (<http://www.liverpoolcommunityhealth.nhs.uk/who-we-are/equality-diversity/challenging-hate-crime.htm>)

**impartial tribunal** (ɪm'pɑːʃəl traɪ'bju:nəl)

A forum in which justice is administered that does support one party more than any other parties (=is not biased towards or prejudiced against one particular party) (<https://www.translegal.com/legal-english-dictionary/impartial-tribunal>)

Example: *In Pullar v. the United Kingdom, the applicant complained that the presence in the jury of an employee of one of the two key prosecution witnesses meant that his case was not heard by an independent and impartial tribunal.* ([http://www.concourt.am/armenian/con\\_right/2.12-2001/wildhaber-eng.htm](http://www.concourt.am/armenian/con_right/2.12-2001/wildhaber-eng.htm))

**independent tribunal** (ɪndɪpɛndənt traɪ'bju:nəl)

A court of law which is independent vis-à-vis the other powers (the executive and the Parliament), as well as vis-à-vis the parties.

Example: The Department for Work and Pensions (DWP) The DWP must reconsider the decision and give you a response before you can appeal to an independent tribunal. (<https://www.citizen-sadvice.org.uk/benefits/benefits-introduction/problems-with-benefits-and-tax-credits/challenging-a-benefit-decision/challenging-a-dwp-benefit-decision-on-or-after-28-october-2013/appealing-against-a-benefit-decision/appealing-against-a-dwp-benefit-decision/>)

**jus sanguinis** (dʒʌs 'sæŋgwɪnɪz)

The principle that a person's nationality at birth is the same as that of his natural parents. (<http://www.thefreedictionary.com/jus+sanguinis>)

Example: *The nationality laws of many countries [...] do not apply jus sanguinis (nationality by citizenship of a parent) to children born out of wedlock.* ([http://ndtvinfo.gq/Jus\\_sanguinis](http://ndtvinfo.gq/Jus_sanguinis))

**jus soli** (dʒʌs 'sɒləɪ)

The principle that a person's nationality at birth is determined by the territory within which he was born. (<http://www.thefreedictionary.com/jus+soli>)

Example: *In contrast, in countries like Austria that do not apply jus soli, many immigrant parents have an incentive to naturalize in order to ensure that their children grow up with citizenship of the country of residence.* (<https://www.imiscoe.org/journal-cms-2/2013-1/16-cms1-1-naturalization-dynamics-in-immigrant-families/file>)

**legal aid** ('liɡəl 'eɪd)

A system of providing free advice about the law and practical help with legal matters for people who cannot afford to pay for it. (Adapted from <http://dictionary.cambridge.org/dictionary/english/legal-aid>)

Example: *The right to legal aid allows those who do not have sufficient financial resources to meet the costs of a court case or legal representation.* ([https://e-justice.europa.eu/content\\_legal\\_aid-55-en.do](https://e-justice.europa.eu/content_legal_aid-55-en.do))

**legal remedy** ('liɡəl 'remɪdi)

A way of solving a problem or ordering someone to make a payment for harm or damage they have caused, using a decision made in a law court. (<http://dictionary.cambridge.org/dictionary/english/remedy>)

Example: *Threats to mechanisms that afford legal remedy to victims of corporate related human rights abuses have increased alarmingly.* (<http://www.corporatejustice.org/Launch-of-the-project-Access-to.html?lang=es>)

**migrant** (maɪɡrənt)

Person who moves from one place to another, especially to find work. (<http://www.merriam-webster.com/dictionary/migrant>)

Example: *New guidelines for member states on the treatment of migrants have been published today by the Council of Europe.* (<http://www.humanrightseurope.org/2015/09/new-guidelines-on-treatment-of-migrants/>)

**minority** (mɪ'nɔːrɪti)

Groups with (1) fewer members, i.e. not the majority of a population, or (2) less power in society. (<http://academic3.american.edu/~mertus/hr%20glossary.htm>)

Example: *The EU supports anti-discrimination movements defending the rights of minorities in many countries.* ([https://ec.europa.eu/europeaid/sectors/human-rights-and-governance/democracy-and-human-rights/anti-discrimination-movements-2\\_en](https://ec.europa.eu/europeaid/sectors/human-rights-and-governance/democracy-and-human-rights/anti-discrimination-movements-2_en))

**political rights** (pə'lɪtɪkəl 'raɪts)

The right of people to participate in the political life of their communities and society. ([http://www1.umn.edu/humanrts/edumat/hreduse-ries/hereandnow/Part-5/6\\_glossary.htm](http://www1.umn.edu/humanrts/edumat/hreduse-ries/hereandnow/Part-5/6_glossary.htm))

Example: *In France, certain crimes are identified which carry automatic forfeiture of political rights and Germany's ban extends only to prisoners whose crimes target the integrity of the state or the democratic order, such as terrorists.* (<http://researchbriefings.files.parliament.uk/documents/SN01764/SN01764.pdf>)

**protocol** (prə'tɒtəʊkəl)

Agreements less formal than those entitled "treaty" or "convention". It may cover: (a) A Protocol of Signature; an instrument subsidiary to a treaty, drawn up by the same parties; (b) an Optional Protocol to a Treaty, an instrument that establishes additional rights and obligations to a treaty; (c) a Protocol based on a Framework Treaty, an instrument with specific substantive obligations that implements the general objectives of a previous framework or umbrella convention; (d) A Protocol to amend, an instrument that contains provisions that amend one or various former treaties; (e) A Protocol as a supplementary treaty, an instrument which contains supplementary provisions to a previous treaty. ([https://treaties.un.org/Pages/overview.aspx?path=overview/definition/page1\\_en.xml](https://treaties.un.org/Pages/overview.aspx?path=overview/definition/page1_en.xml))

Example: *In June 1998 the Organization of African Unity's Heads of State signed the Protocol to establish the African Court on Human and Peoples' Rights.* (<http://www.humanrights.ch/en/standards/other-regions-instruments/african-human-rights-system/>)

**ratification** (ræ'tɪfɪkeɪʃən)

Process whereby the legislative body of a state confirms a government's signature of a treaty. (<http://www.merriam-webster.com/dictionary/rapporteur>)

Example: *The Court shall be assisted by rapporteurs who shall function under the authority of the President of the Court (ECHR Convention, Art. 24.2).* ([http://www.hrcr.org/docs/Eur\\_Convention/euroconv4.html](http://www.hrcr.org/docs/Eur_Convention/euroconv4.html))

**rapporteur** (rapɔːtɜː)

A person whose job is to do research and present official reports on a particular subject. (<http://www.merriam-webster.com/dictionary/rapporteur>)

Example: *With regard to areas under the control of the de facto Bosnian Serb authorities, the Spe-*

*cial Rapporteur drew attention to the ongoing practice of "ethnic cleansing" and the widespread violation of the human rights of peoples living in these areas, including Bosnian Serbs who were perceived as disloyal by the de facto authorities.* (<http://www1.umn.edu/humanrts/commission/country51/62.htm>)

### **refugee** (rɛfjʊdʒi)

A person who has fled from the country of origin to escape persecution or fear of persecution based on race, religion, nationality, membership of a particular social group or political opinion. (<http://academic3.american.edu/~mertus/hr%20glossary.htm>)

Example: *Our human rights and refugee practice focuses on helping individuals fleeing persecution, immigrant women suffering from domestic violence or other abuses and victims of human rights abuses seeking justice in U.S. courts.* (<https://www.akingump.com/en/experience/practices/pro-bono/human-rights-and-refugees-1.html>)

### **remedy** (rɛmɪdɪ)

The means by which a right is enforced or the violation of a right is prevented, redressed or compensated. (<http://academic3.american.edu/~mertus/hr%20glossary.htm>)

Example: *Both the UN Human Rights Committee and the Committee on the Elimination of Racial Discrimination have stated that the right to an effective remedy encompasses an obligation to bring to justice perpetrators of human rights abuses, including discrimination, and also to provide appropriate reparation to victims.* (<https://www.ag.gov.au/RightsAndProtections/Human-Rights/PublicSectorGuidanceSheets/Pages/Righttoaneffectiveremedy.aspx>)

### **right to a court** ('raɪt tʊ ə 'kɔ:t)

Everyone's right to have any claim relating to civil claims and obligations brought before a court or tribunal. ([http://www.echr.coe.int/Documents/Guide\\_Art\\_6\\_ENG.pdf](http://www.echr.coe.int/Documents/Guide_Art_6_ENG.pdf))

Example: *This "right to a court" [...] may be relied on by anyone who considers on arguable grounds that an interference with the exercise of his (civil) rights is unlawful and complains that he has not had the possibility of submitting that claim to a tribunal meeting the requirements of Article 6 para. 1.* (<https://civilitigationbrief.wordpress.com/2013/09/01/does-the-civil-litigant-have-human-rights-cpr-3-9-article-6-and-the-right-to-a-fair-trial/>)

### **sexual assault** (sɛksjuəl ə'sɔ:lt)

Rape and other forms of physical attack of a sexual nature. (<http://academic3.american.edu/~mertus/hr%20glossary.htm>)

Example: *The report details what the federal government has already admitted is a high level of retaliation against those who report being sexually assaulted by fellow service members.* (<http://www.theguardian.com/us-news/2015/may/17/sexual-assault-us-military-human-rights-watch>)

### **stateless** (stɛtlɪs)

A person who is not considered as a national by any State under the operation of its law (1954 Convention relating to the Status of Stateless Persons, Art. 1). (<http://www.unhcr.org/protection/statelessness/3bbb25729/convention-relating-status-stateless-persons.html>)

Example: *Some people are born stateless, while others become stateless over the course of their lives.* (<http://www.unhcr.org/pages/49c3646c158.html>)

### **states party** (stɛɪts 'pɑ:tɪ)

Those countries that have ratified a Covenant or a Convention and are thereby bound to conform to its provisions. ([http://www1.umn.edu/humanrts/edumat/hreduseries/hereandnow/Part-5/6\\_glossary.htm](http://www1.umn.edu/humanrts/edumat/hreduseries/hereandnow/Part-5/6_glossary.htm))

Example: *As we all know, the European Convention provides in its Article 1 that all States party to it have the obligation to secure to everyone within their jurisdiction all the rights and freedoms provided for by its text.* ([http://www.ejtn.eu/Documents/About%20EJTN/Independent%20Seminars/Human%20Rights%20and%20Access%20to%20Justice%20Seminar/Krakow\\_Tulkens\\_final.pdf](http://www.ejtn.eu/Documents/About%20EJTN/Independent%20Seminars/Human%20Rights%20and%20Access%20to%20Justice%20Seminar/Krakow_Tulkens_final.pdf))

### **tribunal** (traɪbjʊnəl)

A court of law, characterised in the substantive sense of the term by its judicial function, that is to say determining matters within its competence on the basis of rules of law and after proceedings conducted in a prescribed manner ([http://www.echr.coe.int/Documents/Guide\\_Art\\_6\\_ENG.pdf](http://www.echr.coe.int/Documents/Guide_Art_6_ENG.pdf))

Example: *The appeal also challenges the Tribunal's finding that it is lawful for UK's Intelligence Services to access data gathered in bulk under the mass electronic surveillance programmes PRISM and Upstream operated by the US' National Security Agency (NSA).* (<https://www.liberty-human-rights.org.uk/news/press-releases/liberty-takes-fight-against-mass-surveillance-european-court>)

**torture** ('tɔ:tʃə(r))

Act of deliberately inflicting severe physical or psychological pain and possibly injury to an organism, usually to one who is physically restrained or otherwise under the torturer's control or custody and unable to defend against what is being done to him or her. (<https://en.wikipedia.org/wiki/Torture>)

Example: *The application arose after new evidence in an RTÉ Investigations Unit documentary broadcast in June revealed British National Archive documents showing a political decision had been taken at cabinet level to use torture methods during internment operations in 1971.* (<http://www.rte.ie/news/2014/1204/664723-government-lodges-torture-application-with-echr/>)

**treaty** (tri:ti)

An agreement under international law entered into by actors in international law, namely sovereign states and international organizations. (<https://en.wikipedia.org/wiki/Treaty>)

Example: *The European Convention on Human Rights (ECHR) is an international treaty to protect human rights and fundamental freedoms in Europe.* (<http://www.ihrec.ie/your-rights/what-are-human-rights/echr.html>)

**waive** (weiv)

Relinquish, give up, set aside.

Example: *In the voluntary context the European Court of Human Rights has found that parties can waive their right to a fair trial and opt for a privatised method of dispute resolution so long as the waiver is supported by minimum procedural guarantees.* ([https://www2.warwick.ac.uk/fac/soc/law/elj/jilt/2004\\_1/schiavetta/](https://www2.warwick.ac.uk/fac/soc/law/elj/jilt/2004_1/schiavetta/))



## BIBLIOGRAPHY

- Alcaraz, E. & B. Hughes (2002.), *Legal Translation Explained*. Manchester, St. Jerome..
- Balteiro, I. and Campos, M.A. (2010), "A comparative study of Latinisms in court opinions in the United States and Spain". *International Journal of Speech, Language and the Law*, 17, 1: 95-118.
- Bajčić, M. (2017), *New Insights into the Semantics of Legal Concepts and the Legal Dictionary*. Amsterdam: John Benjamins.
- Bhatia, V.K. (1983a), *An Applied Discourse Analysis of English Legislative Writing*. Birmingham: The University of Aston Language Study Unit.
- (1987), *Language of the Law*. *Language Teaching* 20, 227-234.
- Bhatia, V.K. et al. (2008, eds.), *Legal Discourse across Cultures and Systems*. Hong Kong University Press.
- Brody, S.L. et al. (2003), *Legal Drafting*. Boston: Little, Brown & Co.
- Campos, M.A. (2011), "False Anglicisms in Legal and Business English as a Lingua Franca (ELF): A Process of Back-borrowing", in I. Balteiro, (ed.) *New Approaches to English Lexicology and Lexicography*. Newcastle: Cambridge Scholars Publishing, 83-96. Also available at [http://rua.ua.es/dspace/bitstream/10045/43975/1/Campos \(2011\) - False Anglicisms in Legal and Business ELF.pdf](http://rua.ua.es/dspace/bitstream/10045/43975/1/Campos%20(2011)%20-%20False%20Anglicisms%20in%20Legal%20and%20Business%20ELF.pdf).
- Campos, M.A. (2011), "El lenguaje de los derechos humanos en inglés: aspectos generales y contrastivos", in I. Alonso, J. Baigorri & H.J.L. Campbell, *Lenguaje, Derecho y Traducción*. Granada: Comares, 99-116.
- Campos, M.A. (2017), "'Liaison magistrates' and 'contact points' as a 'remedy' against 'high levels of mistrust': Metaphorical imagery in scholarly papers on EU judicial cooperation". *Iberica*, 34: 231-256. Available at [http://www.aelfe.org/documents/34\\_10\\_IBERICA.pdf](http://www.aelfe.org/documents/34_10_IBERICA.pdf).
- Crystal, D and D. Davy (1969), *Investigating English Style*. Indiana University Press.
- Danet, B. (1980), "Language in the Legal Process". *Law and Society Review*, 14, 3, 445-564.
- European Commission Directorate-General for Translation (2017). *English Style Guide. A handbook for authors and translators in the European Commission*. Eighth edition. Site: [http://ec.europa.eu/info/sites/info/files/styleguide\\_english\\_dgt\\_en.pdf](http://ec.europa.eu/info/sites/info/files/styleguide_english_dgt_en.pdf)
- Garner, B. (2001), *Legal Writing in Plain English*. University of Chicago Press.
- Garre, M. (1999), *Human Rights in Translation: Legal Concepts in Different Languages*. Copenhagen: Copenhagen Business Press.
- Gibbons, J. (1990, ed.), *Language and the Law*, London: Longman.
- (2002), *Forensic Linguistics: An Introduction to Language in the Justice System*. Massachusetts: Blackwell Publishers.
- Gubby, H. (2004), *English Legal Terminology*. Den Haag.
- Gustafsson, M. (1975), *Some Syntactic Properties of English Law Language*. Publication 4, Turku: University of Turku.

- Haigh, R. (2004/2009), *Legal English*. Routledge.
- Krois-Lindner, A. (2006), *International Legal English*. Cambridge University Press.
- Maher, C. (1996), *Language on Trial: The Plain English Guide to Legal Writing*. Robson Books.
- Mattila, H.E.S. (2006), *Comparative Legal Linguistics*. Translated by Christopher Goddard. Hampshire: Ashgate.
- Mazzi, D. (2007), *The Linguistic Study of Judicial Argumentation: Theoretical Perspectives, Analytical Insights*. Modena: Edizioni Il Fiorino.
- Lee McGowan, L. and D. Phinnemore (2004), *A Dictionary of the European Union*. Europa Publications: London and New York.
- McKay, W.R. and H.E. Charlton, (2005), *Legal English. How to Understand and Master the Language of the Law*. Pearson Education.
- Mellinkoff, D. (1963) *The Language of the Law*. Boston, MA: Little, Brown.
- Riley, A. (2005), *English for Law*. Longman Pearson Education.
- Robertson, D. (2004), *A Dictionary of Human Rights*. London: Routledge.
- Rossini, C. (1998), *English as a Legal Language*. Kluwer Law International.
- Russell, F. and C. Locke (1995), *English Law and Language. An Introduction for Students of English*. Hemel Hempstead: Phoenix ELT.
- Solan, L. M. (1993), *The Language of Judges*. Chicago: The University of Chicago Press.
- Solan, L. M. and P.M. Tiersma (2005), *Speaking of Crime: The Language of Criminal Justice*. Chicago: University of Chicago Press.
- Tiersma, P. (1999), *Legal Language*. University of Chicago Press.
- Trebits, A. & M. Fischer (2010), *EU English. Using English in EU Contexts*. Kleitortlett.
- Wagner, A. and S. Cacciaguidi-Fahy (2006, eds.), *Legal Language and the Search for Clarity*. Peter Lang.
- Wojcik, M.E. (2001/2009), *Introduction to Legal English: An Introduction to Legal Terminology, Reasoning and Writing in Plain English*. BNI Publications (Book Network International).