The ECHR and Germany

facts & figures

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

The ECHR and Germany

facts & figures

Council of Europe

Accession: 13 July 1950

European Convention on Human Rights

Signed: 4 November 1950
Ratified: 5 December 1952

ECHR judges

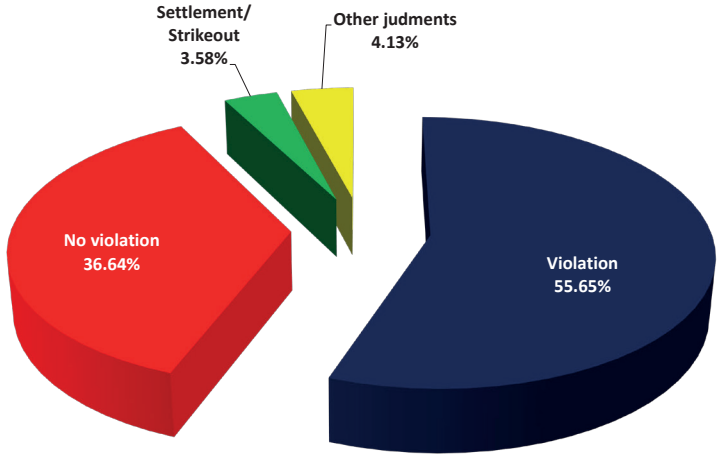
Anja Seibert-Fohr (since 2020)
Angelika Nußberger (2011-2019)
Renate Jaeger (2004-2010)
Georg Ress (1998-2004)
Rudolf Bernhardt (1981-1998)
Hermann Mosler (1959-1980)

ECHR and Germany at 1st January 2023

1st judgment: Wemhoff v. Germany (27 June 1968)
Total number of judgments: 363
Judgments finding a violation: 202
Judgments finding no violation: 133
Friendly settlements / striking out: 13
Other judgments: 15
Applications pending: 198
Completed applications: 32,335

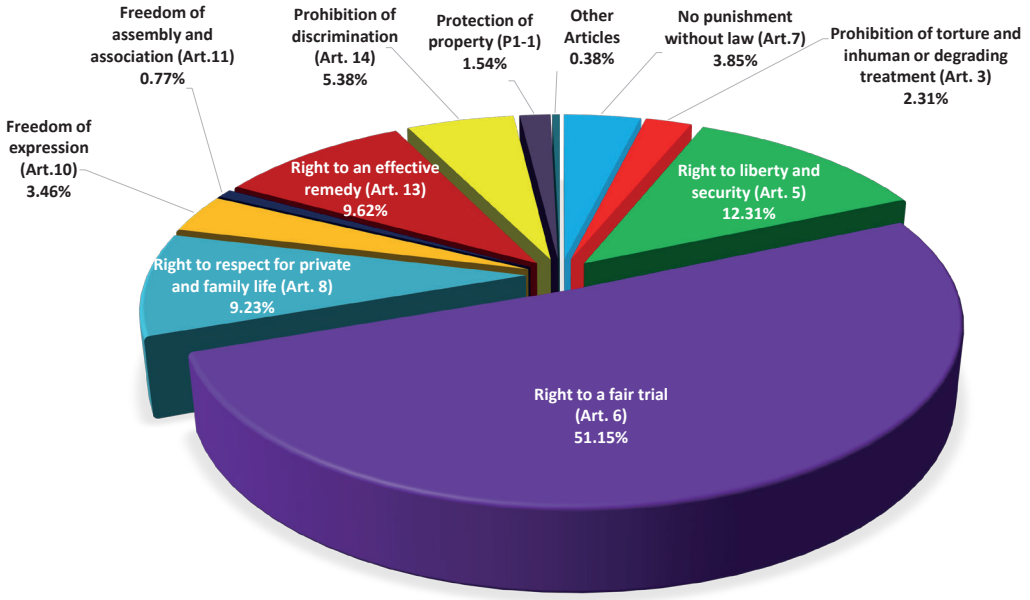
Types of judgments

Out of the total number of judgments concerning Germany, in over half of the cases the Court found at least one violation of the Convention and held the State responsible.



Subject-matter of judgments finding a violation

About one half of the findings of violations concerned Article 6 (right to a fair trial), mainly regarding questions of length of proceedings, accounting for some 40% of the violations found by the Court.



Impact of the Court's judgments

The Committee of Ministers, the Council of Europe's executive organ, supervises compliance with the Court's judgments and adoption of the remedial measures required in order to prevent similar violations of the Convention in the future.

The Court's judgments have led to various reforms and improvements in Germany, relating in particular to:

Reinforcement of protection for private and family life

Shared custody of children born out of wedlock must be granted at the request of one of the parents, if compatible with the best interests of the child.

Reinforcement of the legal position of biological fathers as regards the rights of access to and obtaining information on their children.

Introduction of a preventive remedy helping to expedite proceedings concerning specific questions relating to parental rights.

Improving the functioning of justice

Introduction of a remedy to complain about excessive length of proceedings, with possible award of compensation.

Where the applicant's lawyer is present and able to represent him or her, an appeal court cannot refuse to deal with the case on the sole grounds of the applicant's absence from the hearing.

Rights of persons in detention

Domestic law provides clearly for the defendant's and counsel's right of access to the information in the investigation file for the purposes of assessing the lawfulness of pre-trial detention.

Selected cases

Case of Vogt
(26 September 1995)

The applicant submitted that her exclusion from the civil service on account of her political activities in the DKP (the German Communist Party) had infringed her right to freedom of expression. The Court held, in particular, that the applicant's dismissal had been a disproportionate sanction.

Violation of Article 10 (freedom of expression)

Case of Streletz, Kessler and Krenz
(22 March 2001)

The applicants were former high-ranking officials of the German Democratic Republic (GDR). After German reunification they had been found guilty of the deaths of several persons who had attempted to flee the GDR by crossing the border between the two German States from 1971 to 1989. The applicants submitted that at the time the acts had been committed they had not constituted offences under GDR or international law. The Court held, in particular, that a State practice such as the GDR's border-policing policy, which flagrantly infringed fundamental rights, especially the right to life, the supreme value in the hierarchy of human rights at the international level, could not be covered by the protection of the Convention.

No violation of Article 7 (no punishment without law)

No violation of Article 14 (prohibition of discrimination)

Case of von Hannover
(24 June 2004)

Princess Caroline von Hannover had unsuccessfully applied several times to the German courts for a ban on any further publication of a series of photos which had been published in German magazines in the 1990s, on the grounds that the photographs infringed her right to protection of her private life and her image. The Court held that anyone, even a well-known public personality, should benefit from a "legitimate expectation" of protection of, and respect for, his or her private life.

Violation of Article 8 (right to respect for private and family life)

Case of Von Maltzan and Others
(2 March 2005)

The cases concerned one of the major issues which had arisen after German reunification: how to provide compensation for persons who suffered expropriation either after 1949 in the GDR or, as is the case of the overwhelming majority of them, between 1945 and 1949 in the former Soviet Occupied Zone in Germany. The Court held, in particular, that the applicants could not argue that they had had "possessions" within the meaning of Article 1 of Protocol No. 1, and declared the applications inadmissible.

Inadmissible

Case of Storck
(16 June 2005)

Waltraud Storck had spent almost twenty years of her life in various psychiatric institutions and other hospitals. Placed in psychiatric treatment at her father's request, it ultimately transpired that she was not suffering from schizophrenia, but rather her behaviour could be explained by her conflicts with her family. The Court noted, in particular, that no court had authorised the applicant's detention or medical treatment in a psychiatric hospital.

Violation of Article 5 § 1 (right to liberty and security)

Violation of Article 8 (right to respect for private and family life)

Case of Jahn and Others
(30 June 2005)

This case concerned the obligation on the applicants to surrender, without compensation, land which they had inherited from persons referred to at the time as the "new farmers", who had purchased the plots of land following the agrarian reform in the former Soviet Occupied Zone in Germany in 1945.

No violation of Article 14 (prohibition of discrimination)

No violation of Article 1 of Protocol No. 1 (protection of property)

Case of Jalloh
(11 July 2006)

In 1993 the police had administered an emetic to Abu Bakah Jalloh in order to force him to regurgitate a small bag of cocaine which he had swallowed at the time of his arrest. He had subsequently been convicted of drug-trafficking. The Court held, in particular, that the German authorities had gravely interfered with the applicant's physical and mental integrity by forcing him, against his will, to regurgitate in order to gather evidence which they could have obtained by less intrusive methods. Furthermore, the use of the evidence in question had rendered his trial as a whole unfair.

Violation of Article 3 (prohibition of inhuman or degrading treatment)

Violation of Article 6 (right to a fair trial)

Case of Zaunegger
(9 December 2009)

Horst Zaunegger's daughter was born out of wedlock in 1995. She grew up with both her parents until their separation in 1998. Before the ECHR he complained of the fact that German law assigned the mother sole custody of children born out of wedlock, and provided that joint custody by both parents was possible only with the mother's consent. The main point, for the Court, was that custody decisions had to be based on the child's best interests and be subject to judicial supervision even in the event of a conflict between the parents.

Violation of Article 14 (prohibition of discrimination) read in conjunction with Article 8 (right to respect for family life)

Case of Gäfgen
(1 June 2010)

In 2002 Magnus Gäfgen kidnapped an eleven-year-old boy from a well-known banking family from Frankfurt am Main, suffocated the child and then deposited a ransom demand at his home. The police arrested the applicant shortly after he had picked up the ransom, and in the belief that the child was still alive, threatened to inflict considerable suffering on him in order to force him to speak. Despite the reasons given for the police action, the Court pointed out that no recourse could ever be had to torture or inhuman or degrading treatment even where a person's life was in danger.

Violation of Article 3 (prohibition of inhuman or degrading treatment)

No violation of Article 6 (right to a fair trial)

Case of Siebenhaar
(3 February 2011)

Astrid Siebenhaar complained that she had been dismissed by the Protestant Church, which had employed her as a childcare assistant and then as director of a kindergarten, on the grounds of her active involvement in a different religious community. An anonymous source had informed the Protestant Church that the applicant was a member of the Universal Church/Brotherhood of Humanity and that she provided catechism classes for that community. The Court held that on signing her employment contract the applicant had been, or should have been, aware from the moment of signing her employment contract that her activities for the Universal Church were incompatible with her work for the Protestant Church.

No violation of Article 9 (freedom of thought, conscience and religion)

Case of Hellig
(7 July 2011)

Herbert Hellig complained that he had been placed naked in a high-security cell for seven days during his prison term in Butzbach. The Court considered that even though placement in the security cell as such might have been justified by the particular circumstances of the case, there had not been sufficient reasons which could justify such harsh treatment as depriving Mr Hellig of his clothes for the entirety of his stay in the security cell.

Violation of Article 3 (prohibition of inhuman or degrading treatment)

Case of Herrmann
(26 June 2012)

Günter Herrmann, a landowner, complained that he had been forced to tolerate hunting on his land under the Federal Hunting Law (Bundesjagdgesetz), even though he was opposed to hunting on moral grounds. The Court held that such an obligation on German landowners to accept hunting on their land imposed a disproportionate burden on landowners in Germany who were opposed to hunting for ethical reasons.

Violation of Article 1 of Protocol No. 1 (protection of property)

Case of Stübing
(12 April 2012)

The case concerned a prison sentence passed on Patrick Stübing on the grounds of his incestuous relationship with his younger sister. He had been adopted by a foster family, and been an adult when he first met his sister, with whom he had four children. In view of the sister's personality disorder and her heavy dependence on her brother, the German courts found that she was only partly responsible for her actions and refrained from imposing any sanction on her. The Court held that the German authorities had benefited from a wide margin of appreciation in dealing with the issue of incestuous relationships between adult siblings.

No violation of Article 8 (right to respect for private and family life)

Case of Koch
(19 July 2012)

Ulrich Koch's wife, who had been tetraplegic ever since falling down a flight of stairs, had unsuccessfully applied to the Federal Institute for Drugs and Medical Devices for authorisation to obtain a lethal substance enabling her to commit suicide at home, in Germany. In February 2005 the couple travelled to Switzerland, where the applicant's wife committed suicide with the assistance of an organisation. Appeals lodged by the applicant, now a widower, against the Federal Institute's decisions were dismissed. The Court held that the German courts ought to have considered the applicant's appeals.

Violation of Article 8 (right to respect for private and family life)

Case of I.S.
(5 June 2014)

Following an extramarital affair, the applicant, who already had children at the time, gave birth to twin daughters. Suffering from depression and anxiety, she gave her formal consent to the adoption of the children, who were then a few months old. She subsequently applied to have her consent to the adoption declared void. Before the ECHR, she complained that she had been unable to contact her children, who had been adopted by a couple, or to receive information about them. The Court found that in consenting to the adoption the applicant had knowingly waived all her rights *vis-à-vis* her children.

No violation of Article 8 (right to respect for private and family life)

Case of Sommer
(27 April 2017)

Ulrich Sommer, a criminal lawyer, complained that the public prosecutor's office had collected and stored information about his professional bank account in the framework of an investigation against several individuals, including one of his clients, suspected of having committed fraud on a commercial basis as members of a gang. The Court held, in particular, that the suspicions against the applicant had been rather vague, that the inspection of his accounts had not been ordered by a judicial authority and that no specific procedural safeguard had been applied in order to protect professional secrecy.

Violation of Article 8 (right to respect for private life)

Case of Tlapak and Others & Wetjen and Others
(22 March 2018)

The applicants, four families belonging to the Twelve Tribes (Zwölf Stämme) religious movement, complained about the partial withdrawal of parental authority and the taking into care of their children. Those measures had been adopted by the German courts on the grounds of the corporal punishment administered to their children by members of the religious movement.

The ECHR held that even though the measures adopted had amounted to a very serious infringement of the right to respect for family life, the German courts' decisions had been based on a risk of inhuman or degrading treatment, which is prohibited in absolute terms under the European Convention.

No violation of Article 8 (right to respect for private and family life)

Case of Nix
(13 March 2018)

Hans Burkhard Nix blogs on various economic, political and societal subjects. The case concerned his conviction for having, in 2014, posted on his blog a picture of the former leader of the SS, Heinrich Himmler, wearing an SS uniform with a swastika armband.

The Court could discern no reason for departing from the assessment of the German courts to the effect that the applicant had failed to express any clear and obvious opposition to Nazi ideology in his blog post.

Inadmissible

Case of M.L. and W.W.
(28 June 2018)

In this case the applicants, both of whom had been convicted in 1993 of the murder of a popular actor, complained of the German courts' refusal to prohibit the media from retaining reports concerning their convictions on their websites. They complained of an infringement of their right to respect for their private lives.

The Court agreed with the German Federal Court of Justice's conclusion that one of the media's tasks was to participate in creating democratic opinion, by making available to the public old news items that were preserved in their archives.

No violation of Article 8 (right to respect for private life)

Case of Saidani
(4 September 2018)

The case concerned the applicant's deportation from Germany to Tunisia because he was deemed to be a potential offender who posed a threat to national security, based on his activities for "Islamic State".

The Court noted that there was a real risk that the death penalty would be imposed on Mr Saidani in Tunisia, but that this penalty would de facto constitute a life sentence because of the moratorium in the country on carrying out executions, which had been respected since 1991.

Inadmissible

Case of Ilnseher
(4 December 2018)

The case concerned the lawfulness of the preventive detention of Daniel Ilnseher, who had been sentenced to ten years' imprisonment for strangling a woman out jogging in 1997. He had been nineteen years old at the time, and the crime had been sexually motivated. Once he had served his sentence, the applicant was placed in preventive detention, psychiatric examinations having pointed to a high risk of his committing similar serious sexual and violent crimes if he were released. The Court held that the applicant's preventive detention had been lawful and been imposed on account of the need to treat his mental disorder, having regard to his criminal record.

No violation of Article 5 (right to liberty and security)

No violation of Article 6 (right to a fair trial)

No violation of Article 7 (no punishment without law)

Case of Bild GmbH & CO. Kg and Axel Springer AG
(4 December 2018)

The case concerned a ban on the publishers of the daily newspaper Bild publishing or disseminating the photo of a famous Swiss journalist and TV presenter, who was at the time being held in pre-trial detention. The Court noted, in particular, that although the impugned photograph was not of a defamatory, pejorative or degrading nature in terms of the journalist's image, it nonetheless showed him in a situation in which he could not have expected to be photographed.

Inadmissible

Case of Wunderlich
(10 January 2019)

The applicants complained that the German authorities had partially withdrawn their parental authority and placed their children in a foster home for three weeks on account of their refusal to send them to school. The Court ruled that compulsory schooling for the purposes of integrating children into society was a pertinent reason for the partial withdrawal of parental authority.

No violation of Article 8 (right to respect for private and family life)

Case of Pastörs
(3 October 2019)

Udo Pastörs, who was then a member of the regional parliament of Mecklenburg-Western Pomerania, had complained of his criminal conviction for stating in a speech before parliament that the "the so-called Holocaust is being used for political and commercial purposes".

The Court found that the applicant had intentionally stated untruths to defame Jews.

In the Court's view such statements could not attract the protection for freedom of speech offered by the Convention as they ran counter to the values of the Convention itself. The complaint of a violation of freedom of speech was thus inadmissible.

Inadmissible concerning Article 10 (right to freedom of expression)

No violation of Article 6 (right to a fair hearing)

Case of Hanan
(16 February 2021)

The case concerned the investigations carried out following the death of the applicant's two sons in an airstrike near Kunduz, Afghanistan, ordered by a colonel of the German contingent of the International Security Assistance Force (ISAF) commanded by NATO.

No violation of Article 2 (right to life)

Selected measures to execute judgments

General measures

Case of Öztürk
(21 February 1984)

Obligation on the applicant to defray interpreter's fees in court proceedings concerning a road traffic accident.

Reform of legislation concerning the defrayal by an individual of interpreter's fees in proceedings concerning the Administrative Offences Act.

Case of von Hannover
(24 June 2004)

Lack of protection against publication of photographs taken by paparazzi.

Change in the case-law relating to the publication of photographs of public figures in order to ensure a better balance between public and private interests.

Case of Niedzwiecki
(25 October 2005)

Refusal to grant the applicant family allowances on the grounds that he did not hold a permanent residence permit.

Amendment to the Family Allowances Law to eliminate discrimination in the treatment of different categories of aliens.

Case of Herrmann
(26 March 2012)

Obligation on a landowner opposed to hunting to accept the latter on his land and to join a hunting association.

Amendment of the Federal law on hunting: those concerned can now withdraw from the hunting association on request, thus abolishing the obligation to tolerate hunting.

Individual measures

Case of Görgülü
(26 February 2004)

The applicant obtained exclusive custody of his child, who was born out of wedlock and had initially been placed in a foster family, following his abandonment by his biological mother.

Case of Anayo
(21 December 2010)

Refusal to allow a biological father to see his children, disregarding their best interests. The applicant's right of access to his children was reconsidered following the entry into force of new legislation.

Case of Koch
(19 July 2012)

Refusal by the German courts to examine the merits of an appeal lodged by a man whose wife had committed suicide in Switzerland, after having unsuccessfully attempted to obtain authorisation to purchase a lethal substance in Germany.

Further to the Court's judgment, the applicant's case was reopened and examined by the German courts.

Case of Kuppinger
(15 January 2015)

Lack of a remedy by which to have a father's visting rights enforced.

New judicial remedy available concerning contact rights and certain parental rights issues. The remedy allowed in particular for an application to speed up proceedings

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