UiO : Faculty of Law
University of Oslo

Obscure Wording of the European Convention on Human Rights: Does the Interpretation of Inadmissibility Criterion “Manifestly Ill-Founded” by the European Court of Human Rights Violate the Rule of Law?

Candidate number: 8021
Number of words: 18 301
Submission deadline: 15.08.2022.

Table of contents

List of Abbreviations

ECtHR	European Court of Human Rights
HRC	Human Rights Committee
UN	United Nations
ICJ	International Court of Justice

1 Introduction

1.1 Background

Any application submitted before the European Court of Human Rights (ECtHR) should pass the admissibility criteria before applications are decided on merits.[1] One of the inadmissibility criteria is a manifestly ill-founded application. What does the manifestly ill-founded application mean? Neither the European Convention on Human Rights (the Convention) nor the Rules of Court contain any additional information on what does make an application manifestly ill-founded. Besides, ill-foundedness is not always manifest.[2] "An enigma",[3] "an empty black box"[4] – scholars have used these metaphors when seeking to describe the meaning of manifestly ill-founded application.

Detailed considerations on the reasoning of manifestly ill-founded applications can be found in the ECtHR's case law. However, a vast majority of inadmissibility decisions,[5] including those based on the manifestly ill-founded criterion, are not available to the general public because they are examined by a single-judge formation.[6] Only those admissibility decisions considered by the Committee, or the Chamber[7] are published in the ECtHR database.[8] The availability of inadmissibility decisions made by a single judge, nevertheless, would not reveal much in terms of the reasons why applications are declared manifestly ill-founded. The ECtHR informs the applicants of the inadmissibility decision by a standard letter which does not include a specific justification[9] but a general reference that "(..) the application failed to fulfil the admissibility criteria set under articles 34 and 35."[10] or, for instance, that "(..) the Court found that they did not disclose any appearance of a violation (..)"[11] without any slightly detailed information therein.

[1] *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocol Nos. 11, 14, and 15,* Article 35.

[2] Granata, "Manifest Ill-Foundedness and Absence of a Significant Disadvantage", 113.

[3] Gerards, "Inadmissibility Decisions", 10.

[4] Keller, Fischer, and Kühne, "Debating the Future", 1046.

[5] E.g. ECtHR, *Analysis of Statistics 2020*, 4.

[6] *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocol Nos. 11, 14, and 15,* Article 27.

[7] Ibid., Articles 28 and 29.

[8] ECtHR, *HUDOC database*.

[9] Björgvinsson, "The Role of Judges", 343.

[10] Floroiu, "Is the Strasbourg Court Really Accountable" 500.

[11] Granata, "Manifest Ill-Foundedness and Absence of a Significant Disadvantage", 114.

The Practical Guide on Admissibility Criteria (the Guide) divides manifestly ill-founded complaints into four categories by reference to its case law.[12] By virtue of unpublished inadmissibility decisions and the lack of specific reasoning within them, the Guide is useless with respect to single-judge decisions. Moreover, in some instances "the reasons given for the inadmissibility decision (..) will be identical or similar to those which the Court would adopt in a judgment on the merits concluding that there had been no violation"[13], which by no means facilitate the obscure meaning of the term "manifestly ill-founded." Even the Human Rights Committee (HRC) has expressed concerns about the lack of appropriate standards in deciding whether an application is to be declared manifestly ill-founded.[14]

Such obscurity of the meaning of the inadmissibility criterion "manifestly ill-founded" may contravene the rule of law – an overarching principle of governance, which is also a fundamental value of the Council of Europe (the Council),[15] underlies the Convention[16] and has been invoked by the Council's subsidiary body the ECtHR in numerous cases.[17] Therefore, there might be sound reasons to assert that international organizations that emphasize the significance of the rule of law do not follow the rule of law themselves.[18] However, one should be aware that the rule of law as a concept that has been promoted in States by international organizations and as a concept applicable to international organizations themselves not always equates.[19] At the same time, the essential components of the rule of law should be regarded as applicable to both situations since the opposite would challenge the existence of the concept of rule of law as such.

The rule of law is a "multidimensional and complex [concept]"[20] the notion and elements of which vary from the sphere and context one prefers to use – from philosophy to jurisprudence and politics. A central element of the rule of law, though, is legality[21] as it forms the very basis of the rule of law idea.[22] The main elements of legality, depending on one or another scholar's view, are generality, promulgation, non-retroactivity, clarity, stability of law and congruence

[12] ECtHR, *Practical Guide on Admissibility Criteria*, 72-77.

[13] Ibid., 75.

[14] Human Rights Committee, *Communication No. 1945/2010*, CCPR/C/107/D/1945/2010., 7.3.

[15] Council of the Europe, *The Statute of the Council of Europe*, Preamble, Article 3.

[16] *Broniowksi v. Poland*, ECtHR, no. 31443/96, 22 June 2004, 184.

[17] E.g. the recent case *Reczskowich v. Poland*, ECtHR, no. 43447/19, 22 July 2021, 260.

[18] Lautenbach, *The Concept of the Rule of Law*, 1-4.

[19] For a further discussion see Chapter 2.

[20] Møller, "The Advantages of a Thin View", 22.

[21] Lautenbach, *The Concept of the Rule of Law*, 20 (note 11).

[22] Thompson, *Whigs and Hunters: The Origins of the Black Act*, 264.

between official acts and declared rules.[23] However, as Raz aptly points out, the core idea of all attributes of legality is that "the law should be capable of providing effective guidance,"[24] which is also seen as a separate element of legality – predictability.[25] His position is laudable because one of the values of the rule of law is to ensure an individual's autonomy.[26] By guiding one's life, it is ensured that the individual's autonomy is respected. Therefore, predictability of law, by no surprise, should be seen as the principal element of the rule of law.[27]

A general requirement for laws to be foreseeable[28] is to be written in an intelligible way[29] meaning that they are sufficiently and clearly formulated so the individuals can regulate their actions accordingly.[30] The Convention itself does not define the meaning of manifestly ill-founded applications. Taking into account a wide variety of possible content of applications, a lack of a further explanation of the inadmissibility criterion may create controversies in the understanding of the criterion. Interpretation of the notion of "manifestly ill-founded" solely depends on the interpretation of the ECtHR. That could shed a light on the meaning of the criterion if there would not exist a claim that the ECtHR does not consistently apply the admissibility criteria.[31] If laws are applied in an inconsistent way, an individual's ability to plan his/her life may be affected.[32] Thus, the predictability of law may be affected accordingly. If there is no clear meaning of the "manifestly ill-founded" criterion within the Convention and the way how the ECtHR applies the criterion is far from consistent, the predictability of the admissibility provision set forth in Article 35, paragraph 3 (a) of the Convention is hindered, which, in turn, violates the rule of law.

1.2 Objective and Research Question

Although the lack of precise standards for the inadmissibility criterion "the manifestly ill-founded" could be criticized from a perspective of legitimacy, procedural fairness, internal and external control, and protection from the reasonable standards for a fair trial,[33] little research

[23] Fuller, *The Morality of Law*, 38-91; Finnis, *Natural Law and Natural Rights*; Raz, "The Rule of Law and its Virtue," 213-219; Lautenbach, *The Concept of the Rule of Law*, 40.

[24] Raz, "The Rule of Law and its Virtue," 218.

[25] E.g. Kramer, *Objectivity and the Rule of Law*, 123-124.

[26] Waldron, "The Rule of Law in Contemporary Liberal Theory", 84-85.

[27] May, "The Centrality of Predictability", 99-102.

[28] Depending of the source referred, foreseeability, predictability and perspicuity in this research are used as synonyms because the meaning of them eventually is to guide individual's behavior.

[29] Venice Commission, *Rule of Law Checklist*, para.58.

[30] *Sunday Times v. the United Kingdom* (No. 1), ECtHR, no. 6538/74, 26 April 1979, para.49.

[31] Glas, Gerards, "Access to Justice", 25.

[32] Venice Commission, *Rule of Law Checklist*, para. 60.

[33] Gerards, "Inadmissibility Decisions", 10.

has been done particularly on the compatibility of the obscure meaning of the manifestly ill-founded criterion with the rule of law. A review of the literature shows that the issue of manifestly ill-founded inadmissibility criterion has been discussed in a relation to the way how decisions are made – by a single-judge formation – and on the lack of an appropriate appealing mechanism.

Several authors debate the issue of admissibility decisions by the ECtHR in general and refer to the manifestly ill-founded criterion as an example to ground their arguments.[34] Granata pays particular attention to the manifestly ill-founded criterion as such, however, she discusses it from the perspective of reasoned decisions and argues that applications falling under the manifestly ill-founded criterion require reasoned decisions.[35]

A couple of authors have highlighted the necessity of clarifying the inadmissibility criterion as "manifestly ill-founded." Gerards argues that clarifying the phrase "manifestly ill-founded" could improve its understanding, particularly articulating in what situations this criterion applies, so it is easier to predict its use.[36] Gerard's suggestion emphasizes an important aspect of the rule of law – certainty and predictability, however, a further assessment of the admissibility criterion has not been done. A more elaborated idea comes from Keller, Fischer and Kühne. They suggest that a non-exhaustive list of criteria, which define the category of manifestly ill-founded cases, could be included in the Rules of Court.[37] In this regard, they propose a Draft Article on Manifestly Ill-Founded Applications consisting of five criteria for a case to be constituted manifestly ill-founded.[38] Although these authors highlight the necessity to contribute to the comprehensibility of the "manifestly ill-founded" criterion, none of them takes into consideration the rule of law standard. Moreover, the legitimacy issue has not been discussed from the rule of law perspective.

The ECtHR receives thousands of applications alleging violations of human rights each year, but more than half of new applications usually do not pass the admissibility criteria decided by a single-judge formation.[39] The "Manifestly ill-founded" criterion[40] has been the most common ground for applications to be considered inadmissible[41] and it constitutes approximately 90

[34] Graham, "Strategic Admissibility Decisions"; Glas, Gerards, "Access to Justice"; Vogiatzis, "The Admissibility Criterion"; Björgvinsson, "The Role of Judges".

[35] Granata, "Manifest Ill-Foundedness and Absence of a Significant Disadvantage", 123.

[36] Gerards, "Inadmissibility Decisions", 47.

[37] Keller, Fischer, and Kühne, "Debating the Future", 1047.

[38] Ibid., 1047.

[39] ECtHR, *Analysis of Statistics 2020*, 4.

[40] *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocol Nos. 11, 14, and 15*, Article 35, 3 (a).

[41] ECtHR, *Practical Guide on Admissibility Criteria*, 71.

percent of the ECtHR workload.[42] Principally the manifestly ill-founded applications account for the case overload at the ECtHR.[43] The proportion of the applications that are declared inadmissible due to the manifestly ill-founded criterion urges a detailed examination of the meaning of the manifestly ill-founded criterion. Taking into account that the meaning of manifestly ill-founded criterion solely depends on the interpretation of the ECtHR, which is argued to be "far from consistent"[44] research on the criterion's conformity with the principle of rule of law is of great importance.

Referring to the considerations emphasized in the literature review, the research aims to fill the research gap on the compatibility of the obscure meaning of the "manifestly ill-founded" criterion, stipulated under the admissibility article of the Convention, with the rule of law principle that is a central part of the Convention itself. Covering the research gap, the research can provide clarity on the application of the criterion "manifestly ill-founded" by the ECtHR and shed a light on the ECtHR's compliance with rule of law standards.

Consequently, the research aims to clarify the applicability of the concept of the rule of law to the ECtHR by asking a research question about whether and to what extent the inadmissibility criterion is "manifestly ill-founded", outlined in Article 35, paragraph 2 (a) of the Convention, imperils the rule of law.

To answer the research question, it is necessary to answer these sub-questions:

1. What is the rule of law standard for international organizations?
2. Why the ECtHR has to comply with the rule of law?
3. What is the justification for the application of the inadmissibility criterion "manifestly ill-founded"?
4. Is the inadmissibility criterion "manifestly ill-founded" set forth in Article 35, paragraph 3 (a) of the Convention clear and predictable?
5. Has the ECtHR applied the criterion "manifestly ill-founded" in a consistent manner?

Is the research hypothesis that the inadmissibility criterion "manifestly ill-founded" set forth in Article 35, paragraph 2 (a) of the Convention, neither certain nor predictable? That, in turn, does not conform to the legality requirement of the rule of law.

[42] Vogiatzis, "The Admissibility Criterion", 201.

[43] Keller, Fischer, and Kühne, "Debating the Future", 1028.

[44] Glas, Gerards, "Access to Justice", 25.

1.3 Methodology

Since "interdisciplinarity" is an inevitable feature of human rights as such, research on human rights requires an interdisciplinary approach.[45] Justifications for interdisciplinary research do not just lie in the nature of the subject. Interdisciplinary research can strengthen the plausibility of the answers found.[46]

First, philosophy is applied during the research for the clarification of the concept.[47] The concept of the rule of law emerges from philosophical considerations.[48] In order to ascertain the compatibility of the inadmissibility criterion "manifestly ill-founded" with the rule of law, the concept of the rule of law is clarified in the first place.

Secondly, the legal research needs to be applied simultaneously since the research question depends on the interpretation of the inadmissibility criterion "manifestly ill-founded" set forth in the Convention and concerns the findings of the binding nature of the rule of law to international organizations. Primary sources of international law utilized for the research are the Convention and the Statute of the Council of Europe, and the secondary sources of law studied in the paper comprehend mainly cases of the ECtHR, the *Travaux préparatoires* of the Convention, resolutions of the United Nations (UN) and the Council, scholarly writings, and dictionaries. The Vienna Convention on the Law of Treaties (Vienna Convention) is used for interpretation of the inadmissibility criterion "manifestly ill-founded." Particular attention is paid to "a living instrument" interpretation method used by the ECtHR and its relevance in the interpretation of the procedural provisions including the inadmissibility criterion "manifestly ill-founded."

Thirdly, case analysis is employed to test the hypothesis.[49] By analyzing cases, the research aims to analyze the consistency of the interpretation inadmissibility criterion "manifestly ill-founded." The research analyzes cases of the ECtHR regarding the applications declared inadmissible due to the criterion "manifestly ill-founded". To ensure the validity of the conclusion, the criteria for the selection of the cases[50] have been chosen carefully. First, an equal number of cases, where it has been objectively possible, has been selected from the four categories of applications divided by the ECtHR itself – "fourth-instance" applications, applications where there has clearly or apparently been no violation, unsubstantiated

[45] Smith, "Human Rights Based Approaches to Research", 22.

[46] Langford, "Interdisciplinarity and Multimethod Research", 169.

[47] Ibid., 164.

[48] See e.g. Fuller, *The Morality of Law*; Raz, "The Rule of Law and its Virtue."

[49] Andreassen, "Comparative Analyses of Human Rights Performance", 243 (see note 75).

[50] Brems, "Methods in Legal Human Rights Research", 15.

applications and confused or far-fetched applications.[51] Secondly, several cases from each category have been selected based on the "most-similar" case[52] selection technique. In this regard, the selected cases are cases that are similar in provision claimed to be violated, namely, Article 6 of the Convention with an exception of unsubstantiated applications that concerns Article 9 of the Convention. In addition, documents of the Council, UN, and HRC are analyzed and used in the combination of the case analysis means mean of triangulation, therefore reducing the risk of potential biases.[53]

The research is conducted as the desk-research because the data can be collected from existing resources, and, as is seen from the discussion above, the research question can be answered by a qualitative research method. As noted above, a vast majority of inadmissibility decisions,[54] including those based on the manifestly ill-founded criterion, are not available to the general public because they are examined by a single judge[55] formation and not published in the ECtHR database. Therefore, the research is limited to the cases considered by the Committee, or the Chamber published in the ECtHR database.[56]

In accordance with Ulrich's categories of ethical issues, a potential ethical challenge for this research relates to compliance with standards of good scientific conduct.[57] It is out of the scope of the research paper to analyze all cases on the application of the inadmissibility criterion manifestly ill-founded". Hence, the analysis is reduced to several cases from the ECtHR databases. Although the cases are selected applying the most similar cases technique,[58] the case selection method still might be considered *sample biased*.[59] Such risk is mitigated by combining case-study evidence with cross-case evidence[60] such as literature review and document analysis (see the paragraph on document analysis in the section above).

1.4 Structure

Chapter 1 provides introductory considerations of the research. Chapter 2 analyses the applicability of the rule of law at the international level. It aims to ascertain whether the

[51] ECtHR, *Practical Guide on Admissibility Criteria*, 72.

[52] Gerring, "Case Selection for Case-Study Analysis", 669-671.

[53] Bowen, "Document Analysis as a Qualitative Research Method", 28.

[54] E.g. ECtHR, *Analysis of Statistics 2020*, 4.

[55] *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocol Nos. 11, 14, and 15*, Article 27.

[56] ECtHR, *HUDOC database*.

[57] Ulrich, "Research Ethics for Human Rights Researchers", 213.

[58] Gerring, "Case Selection for Case-Study Analysis", 669-671.

[59] Ibid., 677.

[60] Ibid.

international organizations are bound by the rule of law and what it consists of. It allows determining the ECtHR's role in the applicability of the rule of law. Chapter 3 addresses the reasons why the inadmissibility criterion "manifestly ill-founded" has been enacted into the Convention and its relationship with the new inadmissibility criterion a "significant disadvantage" among other things emphasizing their discretionary nature. It helps to ascertain whether the ECtHR is in a position to deliberately misapply the inadmissibility criterion "manifestly ill-founded". Chapter 4 inspects the meaning of the inadmissibility criterion "manifestly ill-founded" specifically focusing on cases from each category of manifestly ill-founded applications distinguished by the ECtHR. It aims to answer the question of whether the application of the criterion by the ECtHR contributes to the predictability of the criterion and whether the ECtHR applies the criterion in a consistent manner and, consequently, allowing to find out the ECtHR's compliance with the rule of law. Chapter 5 examines the extensively reasoned inadmissibility decisions based on the absence of a violation of the Convention. It seeks to detect the effect such decisions cause on the compatibility of the rule of law when the ECtHR employs the "living instrument" interpretation method and applies it in cases constituting novel matters and complex issues. In addition, different aspects and effects behind such decisions compared to judgements may expose the ECtHR's choice to deal with applications at the admissibility stage rather than deciding them on merits exposing its compatibility with the rule of law. The final chapter gives an overview of the research emphasizing the important findings and showing possible routes for the conduct of the ECtHR for better compliance with the rule of law.

2 Applicability of the Rule of Law at the International Level

2.1 Theoretical Framework

2.1.1 Relationship of the Rule of Law at the National Level and International Level

The rule of law historically has evolved to protect individuals from the arbitrary power of those in a legally dominant status. It is commonly understood as a matter that regulates the relationship between individuals and national governments.[61] The emergence of treaties and the growth of international organizations, however, has contributed to the promotion of the rule of law at the international level[62] bringing it into a familiar language at the international level.[63] The rule of law within the international plane is still mostly interpreted as an international standard for the improvement of national legal systems[64] and not as a separate matter for the

[61] Kanetake, "The Interfaces Between the National and International Rule of Law", 15.

[62] Chesterman, "An International Rule of Law", 343.

[63] Kanetake, "The Interfaces Between the National and International Rule of Law", 15.

[64] Lautenbach, *The Concept of the Rule of Law*, 6.

international organizations themselves. However, due to a nearly universal recognition of the rule of law applicability at the international level,[65] international organizations are not exempt from adherence to it.[66] Some even argue that international organizations, which praise the rule of law, do not adhere to it themselves.[67] At the same time, it should be kept in mind that the rule of law at the international level is quite a different matter that requires modification due to the nature of the international legal order.[68] Despite the comprehension of the rule of law concept seems convincing and obvious at national levels, its meaning and applicability on the international plane are less clear.

A simple transfer of the national model of the rule of law to the international realm without thoughtful considerations is acknowledged as improper due to different models of legal framework nationally and internationally[69] especially taking into account that the international legal system as such is still considered underdeveloped.[70] For this reason, fundamental aspects of the rule of law should be discussed from the international organizations' perspective.

2.1.2 Preconditions for the Applicability of the Rule of Law to International Organizations

The International Court of Justice (ICJ) has explicitly stated that "international organizations are subjects of international law and, as such, are bound by any obligations incumbent upon them under general rules of international law."[71] The rule of law, yet, is not explicitly recognized as a binding principle of international law.[72] Moreover, international organizations reluctantly regard themselves as bound by general international law as such.[73] Hence, requirements for international organizations to be bound by the rule of law are not found in international law.

In general, a legal basis for the binding character of the rule of law is constitutional law[74] that establishes national legal orders. International organizations operate with the consent of States.

---

[65] UN General Assembly, *Resolution A/RES/60/1*, para. 134; UN General Assembly, *Resolution A/RES/67/1*, para. 2; UN General Assembly, *Resolution A/72/46*3, para. 6.

[66] Kanetake, "The Interfaces Between the National and International Rule of Law", 20.

[67] Lautenbach, *The Concept of the Rule of Law*, 6.

[68] Waldron, "Are Sovereigns Entitled to the Benefit", 315.

[69] Feinäugle, "The Rule of Law and its Application to the United Nations", 213.

[70] McCorquodale, "The Rule of Law Internationally", 141.

[71] Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt, Advisory opinion, ICJ Rep. 1980, at 90. See also the separate opinion by Judge El-Erian, at 168-169.

[72] Arajärvi, "The Core Requirements", 180.

[73] Schermers, Blokker, *International Institutional Law*, 997, para.1574.

[74] Feinäugle, "The Rule of Law and its Application to the United Nations", 206.

This, however, does not render constitutions of the Member States of a certain international organization equal to the institutional law of the international organization itself. Yet, the international legal order has certain fundamental rules that mirror the fundamental rules of national constitutions.[75] The foundational treaties of international organization are widely regarded as the constitution of that respective organization[76] since they not only are treaties of a certain type within the meaning of the Vienna Convention but also include rules for the establishment of a new institution.[77] There are also international organizations founded by multilateral agreements such as the UN. Such organizations have their own rules that ensure their functionality. Bordin argues that the rules of international organizations form partial [international] legal orders."[78] That, in turn, enables such rule to operate as a "constitution that guarantees the autonomy of an international organization and that of its internal legal order."[79] In any event, treaties and rules of international organizations set up a legal framework for the operation of international organizations.[80] That consequently forms a legal basis for the applicability of the rule of law to international organizations.

The very purpose of the rule of law is to ensure "the control of public power through law and is aimed at the protection of the individual."[81] Namely, these two preconditions – protection of the individual and control of power – should be met to argue for the existence of the rule of law.

At the national level, individuals who fall under the jurisdiction of the States are entitled to be protected from the arbitrary power of these States. At the international level, States are the main subjects of the international legal order[82] having international legal personality.[83] Individuals, in turn, possess only limited international legal personality[84] primarily in terms of rights.[85] Peters, referring to the European Court of Justice view,[86] even furthers debate by arguing that individuals are the parties of all international organizations.[87] Notwithstanding the source of arbitrary power, it causes individuals' lives to be fearful, denies them respect and dignity, and

[75] Schermers, Blokker, *International Institutional Law*, 11, para.13D.

[76] Peters, "Compensatory Constitutionalism", 593-594.

[77] Bordin, "General International Law", 661 (note 41), 662 (note 44).

[78] Ibid., 662.

[79] Ahlborn, "The Rules of International Organizations", 413.

[80] Schermers, Blokker, *International Institutional Law*, 12, para.13F.

[81] Lautenbach, *The Concept of the Rule of Law*, 1.

[82] Shaw, *International Law*, 232.

[83] Nijman, *The Concept of International Legal Personality*, 458.

[84] Shaw, *International Law*, 232.

[85] Crawford, *Brownlie's Principles of Public International Law*, 111.

[86] *Van Gend & Loos*, ECJ, no. 26/62, 5 February 1963, 3 under II.B.

[87] Peters, "Constitutional Theories", para. 53.

moral equality[88] ultimately diminishes their freedom to lead their lives.[89] Thus, a value behind the rule of law, be it discussed on a national or international plane, merely concerns individuals as natural persons.

Regarding public power, States are those that exe public authority at the ircisenternational plane since they are primary subjects of the international legal order.[90] At the same time, public authority emerges also through international organizations.[91] The rule of law at the international level, consequently, operates through the national constitutional concept by placing standards for the national rule of law[92] and through powerful entities acting in the name of international law.[93] The power of international organizations stems from the pursuance of their specific objectives despite the organizations do not have sovereign power [94] compared to that of the States. Such powerful entities are primarily human rights courts, international criminal courts, and tribunals in restricted cases, as well as political organs in limited circumstances, for instance, the UN Security Council.[95] These international organizations are in a position to impact individuals directly due to their specific mandate. Consequently, international organizations should be bound by the rule of law whenever they get in a position that allows them to directly affect individuals.

2.1.3 Elements of the Rule of Law Applicable to International Organizations

The next step after finding that the rule of law applies to international organizations is to ascertain what forms of the rule of law are applicable to international organizations. "Thick" or a substantive concept of the rule of law may seem more valuable compared to a "thin" or formal concept of the rule of law. While the latter relates to the formal characteristics of laws,[96] including procedural principles,[97] and describes certain attributes that laws, the substantive concept of the rule of law comprehends also substantive aspects of the law[98] and focuses on a

[88] Krygier, Winchester, "Arbitrary Power", 76.

[89] Ibid.

[90] Shaw, *International Law*, 232.

[91] Feinäugle, "The Rule of Law and its Application to the United Nations", 207.

[92] Lautenbach, *The Concept of the Rule of Law*, 3.

[93] Waldron, "Are Sovereigns Entitled to the Benefit", 323.

[94] Schermers, Blokker, *International Institutional Law*, 158, para.209.

[95] Kanetake, "The Interfaces Between the National and International Rule of Law", 17-18.

[96] Møller, "The Advantages of a Thin View", 23.

[97] Lautenbach, *The Concept of the Rule of Law*, 21.

[98] Møller, "The Advantages of a Thin View", 22.

just content of laws, and may include features such as democracy, human rights, equality,[99] separation of powers, and justice.[100]

One of the prominent organizations that promote the rule of law at the international level and recognizes its applicability "to all States equally, and to international organizations, including the United Nations and its principal organs [..]"[101] is the UN. The UN defines the rule of law as follows,

> "a principle of governance in which all persons, institutions, and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced, and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency."[102]

The UN definition of the rule of law relates to a substantive concept of the rule of law since it comprehends aspects such as human rights, democracy, equality, and separation of powers. Kanetake, on the contrary, argues that the rule of law for international organizations primarily relates to formal elements of the rule of law.[103] Her position has sound reasons. For instance, equality is respected by international courts but does not reflect in the voting procedures of the Security Council or the operation of the boards of the World Bank or the International Monetary Fund.[104] While some organizations are explicitly bound by international human rights,[105] others only refer to them but disregard being bound by them.[106] The decision-making process in European Union represents democratic values,[107] but UN Security Council lacks standards of democracy.[108] There exist no coherence in the substantive concept of the rule of law applicable

[99] Ginsburg, "Difficulties with Measuring the Rule of Law", 51.

[100] Lautenbach, *The Concept of the Rule of Law*, 19.

[101] UN General Assembly, *Declaration A/RES/67/1*, para.2.

[102] UN General Assembly, *Report of the Secretary-General, A/66/749*, para. 2.; UN Security Council, *Report of the Secretary-General, S/2004/616**, para.6.

[103] Kanetake, "The Interfaces Between the National and International Rule of Law", 20, 22.

[104] Alvarez, "International Organizations and the Rule of Law", 8.

[105] E.g. European Court of Human Rights (*European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocol Nos. 11, 14, and 15*, Article 19.), Human Rights Council (UN General Assembly, *Resolution 60/251*.)

[106] Van Genugten, *The World Bank Group*, 3-8.

[107] Cheneval, Lavenex, Schimmelfennig, "Demoi-cracy in the European Union", 15

[108] Ku, Jacobson, *Democratic Accountability*, 358.

to all international organizations equally. Namely, a substantive element of the rule of law which is applicable to one organization does not apply to another. Therefore, if the rule of law applicable to international organizations is regarded as a substantive concept, it becomes a specifically-tailored rule of law for a particular international organization. That, in turn, contravenes the idea of the rule of law as "[an overarching] principle of governance."[109]

ICJ has stated that any relevant exercise of power under international law requires a sufficiently legitimate basis in order to be justified.[110] A legitimate basis, however, should not be equated simply with the rule *by* law which applies to all international organizations since they are governed by a constituent instrument.[111] What the ICJ has stated rather relates to any conduct of international organizations that amounts to the exercise of power over individuals. Namely, such conduct should stem from the requirements of legality. Legality, as already discussed in Subchapter 1.3, is a central element of the rule of law.[112] There exist no rule of law without legality. It limits the exercise of power significantly,[113] which is one of the aims the rule of law serves. Namely, certain quality criteria set up for the law, covering aspects generally, public, prospective, certain, and consistently applied law,[114] ensure that public power is controlled.[115] Therefore, legality is a fundamental element of the rule of law applicable to all international organizations. Considering that generality, promulgation, non-retroactivity, clarity, stability, and congruence between official acts and declared rules are central legality requirements,[116] international organizations should be bound by the rule of law consisting of these elements that, in turn, constitute a very core of the formal definition of the rule of law.[117]

In accordance with the considerations depicted above, the UN definition of the rule of law applies to international organizations only to the extent concerning formal definition. Other aspects mostly reflect the rule of law elements at the national level. Such aspects due to the fragmented nature of international organizations cannot apply to international organizations.

[109] UN General Assembly, *Report of the Secretary-General, A/66/749*, para. 2.
[110] *Elettronica Sicula S.p.A. (ELSI) (United States of America v. Italy)*, ICJ, Reports 1989, 76, para. 128.
[111] Kanetake, "The Interfaces Between the National and International Rule of Law", 20.
[112] Lautenbach, *The Concept of the Rule of Law*, 20 (note 11).
[113] Møller, "The Advantages of a Thin View", 30.
[114] Ibid., 29.
[115] Lautenbach, *The Concept of the Rule of Law*, 20 (note 11).
[116] Ibid., 40; see also Raz, "The Rule of Law and Its Virtue", 211; Fuller, *The Morality of Law*, 39; Finnis, *Natural Law and Natural Rights*, 170–171.
[117] Møller, "The Advantages of a Thin View", 28-29, 30.

2.2 Context of the European Convention of Human Rights

At the European level, the Convention is regarded as a European Bill of Rights[118] – a constitutional instrument of European public order[119] that has been adopted by the Council – an international organization consisting of countries of Europe.[120] The ECtHR, as a subsidiary judicial body of the Council,[121] functions as a regional court at the European level. Due to its ability to review over national legislation and national judgments,[122] some even regard the ECtHR as a European constitutional court.[123] It functions as a regulatory mechanism of an international authority[124] to protect individuals against arbitrary public power.[125]

The effect of decisions of the international organizations, in general, depends solely on the national legal order.[126] In this respect, Lautenbach stresses that the constitutional role of the ECtHR does not put it into a position of power[127] due to its dependence on national authorities to execute the judgments and the primary responsibility to interpret and apply national law.[128] At the same time, the Member States to the Council are obliged to comply with the judgments of the ECtHR,[129] and there are certain procedures to challenge the conduct of States if they do not comply with the judgements of the ECtHR.[130] In addition, the ECtHR when executing the procedural actions of the case has a capacity to affect individuals directly and is dependent on the States' conduct. Procedural actions require the ECtHR to interpret the Convention not, national law. Decisions on admissibility are one such example also including the applicability of the inadmissibility criterion "manifestly ill-founded." Consequently, the assertion of the lack of power of the ECtHR is only partly true.

The position of the ECtHR on the applicability of the rule of law to it as an international organ is clear. It has been confirmed in various cases that it is bound by the rule of law standards[131] emphasizing the necessity not to depart from precedents in previous cases, except for good

---

[118] Bates, *The Evolution of the European Convention on Human Rights*, 24-25.

[119] *Loizidou v. Turkey*, ECtHR, no. 15318/89, 23 March 1995, para. 75.

[120] *Statute of the Council of Europe*, Preamble.

[121] *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocol Nos. 11, 14, and 15*, Article 19.

[122] Lautenbach, *The Concept of the Rule of Law*, 187.

[123] Bates, *The Evolution of the European Convention on Human Rights*, 153-155.

[124] Kanetake, "The Interfaces Between the National and International Rule of Law", 17.

[125] Lautenbach, *The Concept of the Rule of Law*, 14.

[126] Schermers, Blokker, *International Institutional Law*, 725, para. 1144.

[127] Lautenbach, *The Concept of the Rule of Law*, 14.

[128] Ibid., 216.

[129] *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocol Nos. 11, 14, and 15*, Article 46, paragraph 1.

[130] Ibid., Article 46, paragraphs 4, 5.

[131] Peters, "The Rule of Law Dimensions", 218.

reasons, due to the interests of legal certainty, foreseeability, and equality.[132] These features, based on legal philosophy[133] imply the very core of the rule of law idea. The ECtHR's position on to what extent it should be bound by the rule of law partly corresponds to its position on the meaning of the rule of law applicable to States. The rule of law that the ECtHR promotes in States comprehends aspects of formal and substantial concepts of the rule of law including legality or foreseeability of law, legal certainty, equality of individuals before the law, control of the executive whenever public freedom is at stake, remedies before a court and the right to a fair trial.[134] The majority of the ECtHR's decisions regarding the rule of law applicability to States yet relate to legality, a formal concept of the rule of law, and primarily concern the quality of laws.[135] The formal concept of the rule of law, as already described above, applies to all international organizations alike. Therefore, the theoretical considerations on the rule of law applicability to international organizations conform also with the ECtHR's position on the rule of law applicability to it. In addition, the ECtHR has developed the quality standard for national laws based on the rule of law[136] stressing that national law should conform to a quality standard of Convention.[137] Hence, the Convention itself implies a necessity for legality that, in turn, stems from the rule of law.

The Convention consists of two types of provisions: substantive provisions and procedural provisions. While substantive provisions concern both individuals as right holders and States as duty bearers, procedural provisions relate primarily to individuals and the ECtHR since they arise from the individual application procedure before the ECtHR.[138] In cases of substantive provision, individuals may claim non-arbitrariness from States, because States have to adjust their national laws and conduct to be in conformity with the substantial rights of the Convention. Regarding procedural provisions, States are not in a position to adjust their laws or conduct to affect the content and outcome of procedural provisions. When the ECtHR decides on the admissibility of applications and applies the inadmissibility criterion "manifestly ill-founded," States have nothing to do with such a procedural action. It depends solely on the conduct of the ECtHR.

---

[132] *Herrman v. Germany*, ECtHR, no. 9300/07, para. 78; *Bayatyan v. Armenia*, ECtHR, no.23459/03, para. 98, *Chapman v. the United Kingdom*, ECtHR, no.27238/95, para.70; *Cossey v. the United Kingdom*, ECtHR, no.184, para. 35.

[133] See e.g Fuller, *The Morality of Law*, 38-91; Raz, "The Rule of Law and its Virtue", 213-219.

[134] Speech by Robert Spano, President of the European Court of Human Rights, Strasbourg, 15 April 2021, 1-2, para.6.

[135] Lautenbach, *The Concept of the Rule of Law*, 70, 175-176.

[136] Ibid.,76.

[137] *Malone v. United Kingdom*, ECtHR (Pl), no. 8691/79, para. 67.

[138] *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocol Nos. 11, 14, and 15.*

An indispensable component of legality is the predictability of law[139] that, in turn, depends on clear laws.[140] However, absolute clarity of law for any given situation would be impossible, and ambiguity of laws to some extent is unavoidable.[141] If the law is not clear enough, which is the case with the inadmissibility criterion "manifestly ill-founded" set forth in the Convention, the predictability of law can be ensured through the interpretation of the law by courts.[142] However, the requirement of predictability of law is not met if the interpretation by courts within their case law is inconsistent.[143] Accordingly, the ECtHR's role with respect to the rule of law relates to the consistent interpretation of the law as it functions as an organ that not only interprets national law but the Convention itself.

3 Necessity for Substantive Admissibility Criteria

3.1 Introductory Considerations

Jurisdiction of the ECtHR concerns all 47[144] Member States of the Council of Europe, and more than 800 million individuals fall under the jurisdiction of the ECtHR.[145] The latest data shows that 70,150 applications pended before the ECtHR in 2021 but only half as many were actually decided.[146] Therefore, a process of filtering cases is not only a reasonable idea but also an absolute necessity to ensure the functioning of the ECtHR. Moreover, it has legal implications meaning that all applicants have a legitimate expectation to have their case decided by the ECtHR within a reasonable time.[147]

[139] May, "The Centrality of Predictability", 97; 99-102.

[140] Venice Commission, *Rule of Law Checklist*, para.58.

[141] Kramer, *Objectivity and the Rule of Law*, 122-124.

[142] Lautenbach, *The Concept of the Rule of Law*, 115.

[143] Ibid., 221.

[144] On 16 March 2022, The Council ceased membership of the Russian Federation to the Council of Europe. (See Council of Europe, *Resolution CM/Res(2022)2 on the cessation of the membership of the Russian Federation to the Council of Europe*, 16 March 2022). The Russian Federation, however, is still a party to the Convention until 16 September 2022 meaning that the ECtHR is competent to deal with applications alleging violations occurred until 16 September 2022 (Council of Europe, *Resolution CM/Res(2022)3 on legal and financial consequences of the cessation of membership of the Russian Federation in the Council of Europe*, para. 7).

[145] Council of Europe, *The Court in Brief*.

[146] ECtHR, *Annual Report 2021*, 179.

[147] Council of Europe, *Steering Committee for Human Rights (CDDH) Final Report*, CDDH(2012) R74 Addendum I, 47, para 26.

There are three grounds for the admissibility of applications within the Convention: jurisdictional, procedural, and substantial.[148] While the jurisdictional grounds and procedural grounds, such as exhaustion of domestic remedies,[149] four-month time limit,[150] or prohibition of anonymous applications[151] in general should not create major controversies when they are applied due to their formal nature,[152] the substantive grounds may imply a higher risk of a potential disagreement in the case of their application. The substantive grounds are considered to be less objective due to their dependence on aspects that "require a *prima facie* assessment to be made of the merits of the case".[153] However, there are certain reasons why the substantive admissibility criteria are adopted and enacted in the Convention.

3.2 Background of the Inadmissibility Criterion "Manifestly Ill-Founded"

In 1950, the drafters of the Convention were farsighted and anticipated that the majority of applications would not deserve adjudication on merits,[154] although in the beginning, those were only 12 States that constituted the Council of Europe.[155] When the International Council of the European Movement proposed the draft Convention, it was aware that, first, the Court will be "inundated with frivolous or mischievous litigations" and, secondly, "its facilities will be exploited by subversive elements for political ends."[156] Accordingly, the Consultative Assembly of the Council of Europe debated the necessity for a screening system of applications retaining only "serious petitions".[157] Among the proposed ideas were procedural filtering criteria such as exhaustion of domestic remedies, six-month time limit, and substantive ones. [158] The Legal Committee proposed a draft recommendation that "the Commission shall reject petitions which are irregular or manifestly ill-founded."[159] The purpose for including the substantive inadmissibility criterion "manifestly ill-founded" within the Convention was a concern of a non-functionality of the ECtHR caused by complaints of every sort and the right

[148] *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocol Nos. 11, 14, and 15,* Articles 32 and 35.

[149] Ibid., Article 35, paragraph 1.

[150] Ibid.

[151] Ibid., Article 35, paragraph 2 (a).

[152] The paper does not claim an absolute clarity of their application. The comparison is use to emphasize their difference form the substantive admissibility criteria.

[153] Gerards, "Inadmissibility Decisions", 155.

[154] *Travaux Prepatories to European Convention for the Protection of Human Rights and Fundamental Freedoms*, 24, 27.

[155] Council of Europe, *Chart of Signatures and Ratifications of Treaty 005*.

[156] *Travaux Prepatories to European Convention for the Protection of Human Rights and Fundamental Freedoms*, 4.

[157] Ibid., 4-6.

[158] Ibid. 5-37.

[159] Ibid., 9.

to have recourse to it abused.[160] By virtue of logical considerations and similarly to the position of the ECtHR,[161] the drafters stressed the importance of evidence as an integral for applications to be declared well-founded.[162] Furthermore, the drafters particularly focused on the content of potential applications. A position of drafters was that if the content of applications amounts to frivolousness,[163] they should be regarded manifestly ill-founded.[164] What the drafters considered to be frivolous applications in 1950, now are regarded as far-fetched or confused applications.[165] Despite the wording employed, the aim is the same – to exclude senseless applications from the workload of the ECtHR.

The inadmissibility criterion "manifestly ill-founded" differs from the formal inadmissibility criteria by its legal character. In accordance with Article 35, paragraphs 1 and 2 of the Convention, admissibility criteria such as a requirement for the exhaustion of domestic remedies, a submission period of four months,[166] a prohibition of anonymous applications, and a requirement for the application to concern new matter or not to be examined by another international procedure[167] are compulsory for the ECtHR. The compulsory nature of these provisions arises from the explicit language included in Article 35, paragraphs 1 and 2 of the Convention that respectively states the ECtHR "may only deal"[168] and "shall not deal" [169] with such applications. Namely, the ECtHR is obliged not to deal with applications if it establishes at least one of these factors, and the requirement to declare applications inadmissible is binding to the ECtHR as soon as such factors come to the knowledge of the ECtHR. The inadmissibility criterion "manifestly ill-founded", in turn, is discretionary for the ECtHR. When the application is allocated to a judicial formation, the respective judicial formation is free to decide whether it will declare the application manifestly ill-founded or will proceed with the examination on merits. The Convention does not impose an obligation upon the ECtHR to declare applications manifestly ill-founded for any reason whatsoever. Namely, even if facts constituting manifest ill-foundedness of the application are noticed by or brought to the attention of the ECtHR, in accordance with the wording of Article 35, paragraph 3 (a) that explicitly states "[..] if it

[160] *Travaux Prepatories to European Convention for the Protection of Human Rights and Fundamental Freedoms*, 18.

[161] ECtHR, *Practical Guide on Admissibility Criteria*, 76-77, para. 310.

[162] *Travaux Prepatories to European Convention for the Protection of Human Rights and Fundamental Freedoms*, 14.

[163] Ibid., 21.

[164] Ibid., 22, 23, 27.

[165] ECtHR, *Practical Guide on Admissibility Criteria*, 77, paras. 306-309.

[166] *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocol Nos. 11, 14, and 15,* Article 35, paragraph 1.

[167] Ibid., Article 35, paragraph 2.

[168] Ibid., Article 35, paragraph 1.

[169] Ibid., Article 35, paragraph 2.

considers that,"[170] the ECtHR does not have any obligations to consider their relevance unless it decides so. However, if the ECtHR decides to declare the application manifestly ill-founded, the inadmissibility procedure becomes compulsory for the ECtHR since the phraseology of the aforementioned article emphasizes that such applications have to be declared inadmissible.

Hence, a major concern that accompanies the inadmissibility criterion "manifestly ill-founded" is that it has been regarded as "inescapably discretionary" due to the exercise of judgment and the interpretation of conduct, facts, and norms in order to decide whether applications are manifestly ill-founded.[171] At the same time, the considerations discussed above stress an obvious necessity for the substantive inadmissibility criterion. Senseless applications and applications of having no evidence cannot be dealt with admissibility criteria of a procedural character. If there are no other grounds for applications to be declared inadmissible, they must be accepted and decided on merits. Knowing that the examination of such applications cannot result in any violation of the Convention by virtue of the content of applications means utilizing the ECtHR's resources for a senseless process having no meaningful result. Perhaps, the utility of the substantive inadmissibility criteria could be doubted if the number of applications submitted at the ECtHR was so insignificant that the ECtHR could adjudicate all cases in a reasonable time. While this is not the case and presumably 90 % of inadmissible applications submitted to the ECtHR are manifestly ill-founded,[172] the necessity for the substantive inadmissibility criteria is straightforward.

3.3 Manifestly Ill-Founded vs Significant Disadvantage

Despite the inclusion of the "manifestly ill-founded" criterion in the Convent from its very beginning, the number of individual applications grew by over 500% since 1993[173] reaching around 39 000 new applications annually in the first years of 2000.[174] The number of new applications increased to over 60 000 applications by the end of the next decade.[175] One of the hurdles that hindered the ECtHR's workload since then was the "immense number of meaningless applications."[176] Due to the enlargement of the Council of Europe,[177] it cannot be said that the utility of the criterion "manifestly ill-founded" failed. Rather, the ECtHR needed other solutions to manage its increasing workload.

---

[170] *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocol Nos. 11, 14, and 15*, Article 35, paragraph 3 (a).

[171] Greer, "What's Wrong with the European Convention on Human Rights", 686.

[172] Keller, Fischer, and Kühne, "Debating the Future", 1029.

[173] The Council of Europe, *Report of the Evaluation Group to the Committee of Ministers*, EG Court(2001)1, 6.

[174] The Council of Europe, *Explanatory Report to Protocol No. 14*, para.7.

[175] ECtHR, *Analysis of Statistics 2009*, 4, section A.

[176] Keller, Fischer, and Kühne, "Debating the Future", 1026.

[177] The Council of Europe, *Explanatory Report to Protocol No. 14*, para.5.

By entry into force of Protocol No. 14 of the Convention on 1 June 2010, a new inadmissibility criterion has been added to Article 35 of the Convention.[178] Pursuant to Article 35, paragraph 3 (b) of the Convention, an individual application should be declared inadmissible if the applicant has not suffered a significant disadvantage.[179] The new inadmissibility criterion - "a significant disadvantage" – confers the ECtHR an as additional tool to focus on meritorious cases.[180] The new criteria allow the ECtHR to exclude cases that do not merit legal protection because they are too technical or insignificant[181] except if the application deserves an examination on the merits due to respect for human rights.[182] In order to acknowledge the existence of a lack of a significant disadvantage, the applicant should have suffered "a minimum level of severity"[183] which may imply the financial impact of the matter in dispute or non-financial aspects that are of importance for the applicant.[184] The severity of a violation, in turn, depends on both the applicant's subjective perception and objective aspects of the case[185] that should be assessed based on all circumstances of the case.[186] The new inadmissibility criterion inheres to the discretionary nature in the same way and due to the same reasons as the inadmissibility criterion "manifestly ill-founded." However, the safeguard clause partly limits the discretionary power of the ECtHR by disallowing it to regard applications as insignificant if the question requires an examination on merits in terms of human rights.

The main goal for the inclusion of the new criterion into the Convention was to ensure that the processing of unmeritorious cases is more effective[187] empowering the ECtHR to decline to examine in detail applications which raise no substantial issue under the Convention.[188] Vogiatzis aptly stresses that "the term "unmeritorious", [..] does not imply that there had been no violation",[189] which is a fact in the case of manifest ill-foundedness. The new criterion, subsequently, is in addition to and not a replacement of other admissibility criteria.[190] Both

[178] *Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms Amending the Control System of the Convention*, Articles 12 and 20.

[179] Ibid., Article 35, paragraph 3 (b).

[180] The Council of Europe, *Explanatory Report to Protocol No. 14,* para. 39.

[181] Glas, Gerards, "Access to Justice", 19.

[182] *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocol Nos. 11, 14, and 15,* Article 35, paragraph 3 (b).

[183] *Ladygin v. Russia,* ECtHR, no. 35365/05.

[184] *Adrian Mihai Ionescu v. Romania,* ECtHR, no. 36659/04.

[185] *Korolev v. Russia,* ECtHR, no. 25551/05.

[186] *Gagliano Giorgi v. Italy*, ECtHR, no. 23563/07.

[187] The Council of Europe, *Explanatory Report to Protocol No. 14*, paras. 39, 79.

[188] The Council of Europe, *Report of the Evaluation Group to the Committee of Ministers*, EG Court(2001)1, 53, para.93; 58, para.20.

[189] Vogiatzis, "The Admissibility Criterion", 199.

[190] *Dudek v. Germany*, ECtHR, no. 12977/09 and others.

inadmissibility criteria "manifestly ill-founded" and "a significant disadvantage" are substantive ones because they concern the assessment of the merits of the case at the preliminary phase.[191] However, the new criterion differs from the manifest ill-foundedness by the potential outcome if the application was decided on merits. In the case of applicability of the criterion "significant disadvantage", the application might have resulted in finding a violation of the Convention. In the case of a manifestly ill-founded application, the ultimate result of the application simply speaking is a lack of violation due to one or another reason.[192] Consequently, these two criteria are antithetic[193] which means they cannot be applied alternatively.

Taking into account that approximately 76-94% of the ECtHR's workload are inadmissible applications[194] 90 % of which are manifestly ill-founded,[195] the criterion "significant disadvantage" relates only to applications fitting under the rest 10-24% of inadmissible applications. By virtue of the nature of the criterion "significant disadvantage," it cannot be applicable to those applications that do not constitute a violation of the Convention. Therefore, the new criterion still cannot tackle the majority of inadmissible applications which account for the caseload of the ECtHR rendering it "certainly miscalculated "managerial" initiative."[196] Walther, however, claims that the new admissibility criterion could reduce the scope of the "manifestly ill-founded" inadmissibility criterion and improve legal certainty because the "manifestly ill-founded" criterion has been misapplied in cases being inadmissible for various different reasons and has been used as "*a critère fourre-tout*".[197] Accordingly, the true value for the inclusion of the new inadmissibility criterion may stem from the fact that the ECtHR has acted contrary to the requirements of legality in cases decided by a single judge's formation because such decisions lack sufficient reasoning behind them.[198] Therefore, the meaning of manifestly ill-founded applications becomes even more unclear and obscure.

[191] Tulkens, "The Link between Manifest Ill-Foundedness", 169.

[192] ECtHR, *Practical Guide on Admissibility Criteria*.

[193] Granata, "Manifest Ill-Foundedness and Absence of a Significant Disadvantage", 111.

[194] Explicit data on the proportion on inadmissible applications are available only for the last 3 years. (see ECtHR, *Analysis of Statistics 2021*, 11, Chart 9; *Analysis of Statistics 2020*, 11, Chart 90, *Analysis of Statistics 2019*, 11, Chart 9). Data from previous years comprehend inadmissible and struck out applications as one unit. (See e.g. ECtHR, *Analysis of Statistics 2018*, 4, para C (2); 6, Table 1 (4); 9, Chart 6; ECtHR, *Analysis of Statistics 2010*, 4, para C (2); 6, Table 1 (4); 9 Chart 5; The Council of Europe, *Report of the Evaluation Group to the Committee of Ministers*, EG Court(2001)1, 23, para 28).

[195] Keller, Fischer, and Kühne, "Debating the Future", 1029.

[196] Vogiatzis, "The Admissibility Criterion", 187.

[197] Walther, "Procedural Deference at Strasbourg."

[198] Gerards, "Inadmissibility Decisions", 148.

4 Finding the Meaning of Inadmissibility Criterion "Manifestly Ill-founded"

4.1 Ordinary Meaning

Article 35, paragraph 3 (b) states "the Court shall declare inadmissible any individual application submitted under Article 34 if it considers that: the application is incompatible with the provisions of the Convention or the Protocols thereto, manifestly ill-founded, or an abuse of the right of individual application."[199] This provision sets forth three grounds why applications can be declared inadmissible. One of such grounds emerges when applications are declared manifestly ill-founded. Although the meaning of manifestly ill-founded applications at the first glance seems clear, it becomes obscure when one is asked to explain the aspects it entails. The Convention does not explain or include additional information on what the notion manifestly ill-founded exactly means or under which circumstances applications should be regarded as manifestly ill-founded. That, in turn, raises a question of the clarity and predictability of this provision.

Laws are considered not to be clear when they are ambiguous, vague, obscure or imprecise.[200] Yet, to meet the requirements of predictability, the law must be sufficiently precise and worded generally at the same time.[201] In this regard, Lord Bingham aptly points out "that the law must be [..] so far as possible intelligible, clear and predictable."[202] It is a matter of interpretation where the borderline for laws to be so far as possible intelligible, clear and predictable lies.

Clarity of laws does necessarily require an absolute degree of precision, which excludes any necessity for the interpretation. On the contrary, in the case of vague terms of law, guidance can be ensured by the interpretation and application that, consequently, may solve an issue of predictability. [203] The Convention is an international treaty the interpretation of which largely depends on methods set forth in the Vienna Convention. Pursuant to Article 31, paragraph 1 of the Vienna Convention, a starting point for the interpretation of any provision in its ordinary meaning in the light of the object and purpose of a treaty.[204] To ascertain the meaning of manifestly ill-founded applications, the notion of "manifestly ill-founded" should be unfolded. It consists of two terms "manifestly" and "ill-founded" that have to be discussed one by one.

---

[199] *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocol Nos. 11, 14, and 15.*

[200] Raz, "The Rule of Law and its Virtue", 214.

[201] Lautenbach, *The Concept of the Rule of Law*, 88.

[202] Bingham, *Rule of Law*, 37.

[203] *Vgt Verein Gegen Tierfabriken v Switzerland*, ECtHR, para. 55. Seen in Lautenbach, *The Concept of the Rule of Law*, 94.

[204] *Vienna Convention on the Law of Treaties.*

Cambridge dictionary defines the term "manifestly" as "very obviously", and uses "clearly" as one of the synonyms.[205] Oxford dictionary describes the adverb "manifestly" as "in a way that everyone can easily understand" and refers to "clearly" as a synonym as well.[206] The term "manifestly" is derived form of the adjective "manifest", which, in turn, means "easily noticed or perceived", "readily perceived by the eye or the understanding; evident; obvious; apparent; plain."[207] The term "manifestly" is employed when a manner, cause or degree of something is very apparent and unquestionable. Namely, when the term "manifestly" is used, there should not be any additional questions as to the matter it illustrates.

The term "ill-founded", in turn, is defined as "not based on fact or truth."[208] Something that is ill-founded is not based on any proper proof or evidence.[209] The term "ill-founded" is also described as "not founded on true or reliable premises; unsubstantiated", "not supported by facts or sound reasons."[210] Based on one or another definition, two aspects arise from the term "ill-founded". First, it refers to something that lacks substantiation. Secondly, a lack of substantiation arises from the lack of facts, truth, proof, evidence, sound reasons, and true and reliable premises.

Putting the explanation of these two notions into the context of the aforementioned article, it should be obvious from applications that they are not based on facts, truth, evidence etc. Namely, it should be a considerably easy task for the ECtHR to decide whether applications are manifestly ill-founded. In addition, by virtue of the nature of the term "manifestly", there should not be difficulties not only for legal experts but also for ordinary people to infer that applications are not based on facts, truth, and evidence and that, consequently, they do not pass the admissibility threshold.

The ordinary meaning by itself, however, is not a sufficient interpretation method, and the object and the purpose of a treaty have to be taken in into account while finding the meaning of the wording.[211] This method is regarded as the most suitable for ascertaining the content of human rights treaties[212] and has also been appreciated by the ECtHR.[213] The object and purpose

[205] Definition of "manifestly" from the Cambridge Advanced Learner's Dictionary & Thesaurus.

[206] Definition of "manifestly" adverb from the Oxford Advanced Learner's Dictionary.

[207] Definition of "manifest" from the Collins English Dictionary.

[208] Definition of "ill-founded" adjective from the Oxford Advanced Learner's Dictionary.

[209] Definition of "ill-founded" from the Collins English Dictionary.

[210] Definition of "ill-founded" from the Collins English Dictionary.

[211] *Vienna Convention on the Law of Treaties*, Article 31, paragraph 1.

[212] Orakhelashvili, "Restrictive Interpretation of Human Rights Treaties", 353

[213] See e.g., *Golder v. United Kingdom*, ECtHR, no. 4451/70, para 36; *Magyar Helsinki Bizottság v. Hungary*, ECtHR, no. 18030/11, para. 119.

of the Convention are to protect human beings[214] and their rights respectively,[215] to promote the rule of law,[216] and to maintain and promote democracy in Europe.[217]

The ECtHR is overcrowded by applications substantiated by a wide variety of reasons and grounds. Consequently, the content of applications and aspects arising from them can vary significantly. Having the object and purpose of the Convention in mind, a declaration on ill-foundeness requires more detailed considerations than a superficial view of applications. Therefore, there is value to the ECtHR's position that the expression "manifestly" is to be construed more broadly than within its literal understanding.[218] The ECtHR has emphasized that the ordinary meaning of the wording should be ascertained also in the light of the purpose and object of *a particular provision*.[219] A caseload of the ECtHR causes hurdles for applicants considering that the lengthy process of the ECtHR's procedure can directly affect the enjoyment of human rights they are entitled to. Therefore, the purpose of the admissibility provision is to further the protection of human rights by excluding those applications that do not merit the protection of the Convention. This is especially important considering that the protection of human rights should be practical and effective rather than theoretical and illusory,[220] which, in turn, is one of the fundamental principles of the interpretation of treaties.[221] Consequently, the term "manifestly" may be constructed even to the extent that any application that does not constitute a violation of the Convention is ill-founded.

4.2 Approach of the European Court of Human Rights

4.2.1 Usefulness of the Practical Guide on Admissibility Criteria

In order to render the meaning of the inadmissibility criterion "manifestly ill-founded" comprehensible, the ECtHR has issued the Guide.[222] The ECtHR divides manifestly ill-founded complaints[223] into four categories: "fourth-instance" complaints, complaints where there has

[214] *Soering v. United Kingdom*, ECtHR, no. 14038/88, para. 87; *Allen v. United Kingdom*, ECtHR, no. 25424/09, para. 92.

[215] Preamble of the *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocol Nos. 11, 14, and 15.*

[216] *Golder v. United Kingdom*, ECtHR, no. 4451/70, para 32.

[217] *Kjeldsen, Busk Madsen and Pedersen*, ECtHR, no. 5095/71, para. 53.

[218] ECtHR, *Practical Guide on Admissibility Criteria*, para. 281.

[219] *Magyar Helsinki Bizottság v. Hungary*, ECtHR, no. 18030/11, para 119.

[220] *Demir and Baykara v. Turkey*, ECtHR, no. 34503/97, para. 53; *Klass et al. v. Germany*, ECtHR, no. 5029/71, para. 34.

[221] Gardiner, *Treaty Interpretation*, 179-180.

[222] ECtHR, *Practical Guide on Admissibility Criteria*.

[223] Due to the possibility that applications may be regarded inadmissible only in part while the remainder is declared admissible, the ECtHR's employs a term "complaint" instead of "application". In the following sections of this chapter these two terms will be used interchangeably.

clearly or apparently been no violation, unsubstantiated complaints and, finally, confused or far-fetched complaints.[224] The Guide provides a deeper insight into each category referring also to its case law.[225] However, the Guide has several limits. First, as already mentioned in Chapter 1, it is useless with respect to single-judge decisions because such decisions are not published and they lack specific reasoning within them. Secondly, the Guide has not been seen as satisfactory enough for the clarification of the inadmissibility criterion in the cases that are of great importance.[226] Thirdly, the case law the Guide refers to does not represent the actual application of manifestly ill-founded criteria based on each category. For instance, regarding the fourth-instance complaints, several cases included in the Guide only depict the fourth-instance doctrine as such without any relevance to "the manifestly ill-founded" criterion.[227] In addition, as to confused or far-fetched complaints, the Guide does not refer to any case where this group of manifestly ill-founded criteria has been applied.[228] These limitations make questioning the utility of the Guide in helping to reveal the meaning of the manifestly ill-founded applications for certain instances and, consequently, whether the ECtHR's interpretation of the criterion is consistent and conforms to the rule of law principle.

The Guide is helpful in explaining four possible ways of what the inadmissibility criterion "manifestly ill-founded" may mean. However, that does not automatically render its actual application consistent. If the way how the ECtHR applies the inadmissibility criterion "manifestly ill-founded" based on one or another category of manifestly ill-founded applications is inconsistent, the application of the criterion amounts to the lack of predictability which, consequently, violates the rule of law principle binding to the ECtHR. This division of four categories of manifestly ill-founded applications created by the ECtHR is used as a framework for the case analyses in the paper by, first, explaining what the category means and, secondly, analyzing if the interpretation of the manifestly ill-founded applications has been consistent within each category and among other categories.

4.2.2 "Fourth-instance" Complaints

One of the ways how the ECtHR interprets the meaning of manifestly ill-founded applications is through so-called "fourth-instance" complaints. In practice, that means the ECtHR does not act as a court of appeals[229] and does not deal with errors committed by national courts.[230]

---

[224] ECtHR, *Practical Guide on Admissibility Criteria*, 72.

[225] Ibid., 72-77.

[226] Gerards, "Inadmissibility Decisions", 9.

[227] ECtHR, *Practical Guide on Admissibility Criteria*, 73, para. 292, e.g. case *Mushegh Saghatelyan v. Armenia*, ECtHR, no. 23086/08, 20 September 2018.

[228] ECtHR, *Practical Guide on Admissibility Criteria*, 77, para. 310.

[229] Ibid., paras. 287-289.

[230] Ibid., 72, para. 289.

Pursuant to the Guide, the contestation of the establishment of the facts of the case, the interpretation and application of domestic law, the admissibility and assessment of evidence at the trial, the substantive fairness of the outcome of a civil dispute, and the guilt or innocence of the accused in criminal proceedings[231] amount to ill-foundeness of the application.

In practice, the way how the ECtHR employs the fourth-instance doctrine in deciding on the admissibility of applications is less clear. In the case *Kerimov v. Azerbaijan*, the applicant argued that the domestic courts had misapplied the domestic law, and, therefore, the domestic proceedings had been unfair.[232] The ECtHR emphasized that "it is not competent to deal with an application alleging that errors of law or fact have been committed by domestic courts."[233] The ECtHR, however, furthered stating that, "the applicant has not, however, adduced any specific evidence concerning the unfairness of the cassation proceedings or arbitrariness of their outcome."[234] Consequently, the outcome of the decision might have been different if such evidence was adduced. The ECtHR did not specify which particular fact (or both) it regarded as the basis for the application to be declared inadmissible. In the absence of such clarity, the justification for the ill-foundedness may stem from two grounds: the "fourth-instance" doctrine and the lack of evidence (an unsubstantiated complaint), which is another independent ground for applications to be declared manifestly ill-founded pursuant to the ECtHR's case law. [235] Having no certain answer which factor exactly lead the ECtHR to the conclusion on manifest ill-foundedness, the consistent application of the criterion is weakened if not contravened.

In the case *Dukmedjian v. France*, the applicant challenged the way in which national courts interpreted and applied the relevant domestic law and complained of a breach of the principle of equality of arms. Regarding the first part of the complaint, the ECtHR noted that it is not in a position to deal with cases alleging errors of domestic courts. Moreover, the ECtHR considered that it does not appear that domestic courts exceeded the limits of a reasonable interpretation of the legal provisions applicable to the present case. As to the second part of the complaint, the ECtHR did not find any infringement on the principle of equality of arms. In the conclusion, the ECtHR considered the proceeding *on the whole* as fair and therefore declared complaints manifestly ill-founded.[236] Despite the ECtHR itself divided the complaint into two parts usingused different reasoning for each part, the conclusion on the ill-foundedness was mainly based on the absence of a violation of the Convention that relates only to the second part of the complaint. Therefore, the utility of the "forth-instance" doctrine as a ground for

[231] ECtHR, *Practical Guide on Admissibility Criteria*, 72-73, para 290.

[232] *Kerimov v Azerbajan*, ECtHR, no. 151/03, section on Complaints, para. 2.

[233] *Kerimov v Azerbajan*, ECtHR, no. 151/03, section on the Law, para. 2.

[234] Ibid.

[235] See below Subchapter 4.2.3.

[236] *Dukmedjian v. France*, ECtHR, no. 60495/00, paras. 68-78.

manifest ill-foundedness, in this case, is questionable. Perhaps, the ECtHR regards an absence of a violation of the Convention as a stronger ground for manifest ill-foundedness, and, consequently, it does not consider it necessary to directly mention other grounds (in the present case – the "fourth-instance" doctrine) as reasons for manifest ill-foundedness. Such a construction does not matter from a procedural perspective because the outcome of a decision is the same – the application is declared manifestly ill-founded. It is, however, of importance for the consistency of the case law, which, in turn, ensures the predictability of the law. If such a legal construction is indeed accepted, there should have been a reference to a certain order of the applicability of one or another category of manifestly ill-founded applications, at least within the case law. Otherwise, it is just a deliberate choice without due reasoning or inaccuracy made by the ECtHR that contravenes a consistent application of the criterion. What is interesting, this case has been included in the Guide as an example of the "fourth-instance" doctrine.[237] Hence, the Guide makes the meaning of the criterion even more obscure.

As follows from the considerations above, the fact that the ECtHR invokes the "forth-instance" doctrine does not automatically mean the decision on inadmissibility is based on this doctrine. Therefore, a reference to the fourth-instance doctrine regarding the manifestly ill-founded applications in some instances is uncertain. That, consequently, contravenes the requirement of a consistent interpretation of the inadmissibility criterion "manifestly ill-founded" to regard the conduct of the ECtHR as compatible with the rule of law, which the ECtHR itself has required from States.[238] Unsurprisingly, the ECtHR's conduct has been criticized for its incompatibility with the standards of legality[239] which implies also a consistent application of law if the law is not clear enough.

4.2.3 Unsubstantiated Complaints

Another way how the ECtHR defines manifestly ill-founded applications is unsubstantiated complaints. In accordance with Rule 47 of the Rules of Court,[240] the ECtHR may declare an application inadmissible when it is unsubstantiated.[241] This is the case when applications lack an explanation on the actual breach of a provision of the Convention or lack documentary evidence in supporting allegations.[242]

[237] ECtHR, *Practical Guide on Admissibility Criteria*, 73, para. 292.

[238] Lautenbach, *The Concept of the Rule of Law*, 92.

[239] Viljanen, "The European Court of Human Rights", 174-178.

[240] ECtHR, *Rules of Court*.

[241] ECtHR, *Practical Guide on Admissibility Criteria*, 76, paras. 306-308.

[242] Ibid., para. 309.

By virtue of the nature of unsubstantiated complaints, they should not constitute difficulties in understanding the reasons for manifest ill-foundedness. However, a claim that the ECtHR does not have a consistent approach to evidence handling which leads to inconsistent decision-making,[243] may adversely affect the result of inadmissibility decisions. Grunn aptly exposes two cases where the ECtHR has interpreted the requirement of evidence in an opposite manner. Namely, in the case *Dahlab v. Switzerland*[244] the ECtHR "decided against the applicant based upon its speculation that the wearing of a headscarf might have an effect on impressionable children," in the case *Lautsi and Others v. Italy*,[245] "where the religious symbolism of the crucifix was obvious, the absence of such evidence allowed the [ECtHR] to presume exactly the opposite social-scientific assumption."[246] If such an approach guides the ECtHR when deciding on inadmissibility, that may violate the consistent applicability of the inadmissibility criterion "manifestly ill-founded." A lack of consistent application of law[247] in turn compromises the clarity of law[248] that violates the rule of law.[249]

4.2.4 Confused or Far-Fetched Complaints

The ECtHR interprets manifestly ill-founded applications also as confused or far-fetched applications. First, this means that if it is impossible to make a sense of the facts of the case or other grievances applicants express, the ECtHR will declare them manifestly ill-founded.[250] Secondly, the ECtHR will declare applications manifestly ill-founded when they concern facts that are objectively impossible, have clearly been invented, or are contrary to common sense.[251]

In the case *Lazu v. the Republic of Moldova*, the ECtHR found a violation of Article 6, paragraph 1 of the Convention due to the applicant's conviction without the re-examination of any witnesses, after he had been acquitted by the first-instance court. The applicant complained that because of his unlawful conviction, he had been obliged to pay an administrative fine and compensation to the victim.[252] The ECtHR, however, declared the application in this part manifestly ill-founded stating that it "cannot speculate on the outcome of the proceedings had the applicant's case been examined in full compliance with the requirements of Article 6 of the

[243] Gunn, "Limitations Clauses, Evidence, and the Burden of Proof", 193.
[244] *Dahlab v. Switzerland*, ECtHR, no. 42393/98.
[245] *Lautsi and Others v. Italy*, ECtHR, no. 30814/06.
[246] Gunn, "Limitations Clauses, Evidence, and the Burden of Proof", 193.
[247] Lautenbach, *The Concept of the Rule of Law*, 221.
[248] Venice Commission, *Rule of Law Checklist*, para. 58.
[249] Raz, "The Rule of Law and its Virtue", 222.
[250] ECtHR, *Practical Guide on Admissibility Criteria*, 77, para. 310.
[251] Ibid., para. 310.
[252] *Lazu v. the Republic of Moldova*, ECtHR, no. 46182/08, paras. 31-44.

Convention."[253] The ECtHR did not mention that the complaint in this part is far-fetched or confused. Nor did it refer to any other category of manifestly ill-founded applications. Due to the necessity to make a supposition of what would happen if something becomes a fact, the complaint more likely falls under the meaning of far-fetched complaints. Although the ECtHR regards this interpretation as obvious to the average observer, even one without any legal training,[254] a present case demonstrates that the obviousness may be less evident depending on the circumstances of a case.

A general reference to the manifest ill-foundedness of the application in such instances does not satisfy the requirement of the predictability of law to regard the ECtHR's conduct as compatible with rule of law. In addition, there are no inadmissibility decisions in the ECtHR's database based on manifestly ill-founded criterion (HUDOC key words - Manifestly ill-founded (35-3-a)) complemented with texts "far-fetched", "confused", "objectively impossible", "invented", or "common sense". It is unlikely that such cases simply do not exist. They are either decided by a single judge formation or, as already depicted in this paragraph, are decided by employing other expressions. Due to the reference in the Guide to the obviousness of manifest ill-foundeness[255] as well as the lack of examples of decisions on confused or far-fetched complaints within the Guide, there is a high probability that confused or far-fetched complaints are decided at the level of single-judge formation. Those decisions are not published.[256] In any event, the considerations above emphasize a necessity for at least a reference to a particular category of manifestly ill-founded criteria when confused or far-fetched complaints are reasons for applications to be manifestly ill-founded. The opposite may result in the violation of the rule of law.[257]

4.2.5 Clear or Apparent Absence of a Violation

An application will also be declared manifestly ill-founded if despite fulfilling all the formal conditions of admissibility, being compatible with the Convention and not constituting a fourth-instance complaint, it does not disclose any appearance of a violation of the rights guaranteed by the Convention.[258] This category of manifestly ill-founded complaints the ECtHR divides into three sub-categories: no appearance of arbitrariness or unfairness, no appearance of a lack of proportionality between the aims and the means, and other relatively straightforward

[253] *Lazu v. the Republic of Moldova*, ECtHR, no. 46182/08, para. 45.

[254] ECtHR, *Practical Guide on Admissibility Criteria*, 77, para 310.

[255] Ibid., para. 310.

[256] *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocol Nos. 11, 14, and 15*.

[257] More detailed discussion in the Subchapter 4.2.6.

[258] ECtHR, *Practical Guide on Admissibility Criteria*, 73-74, para. 295.

substantive issues.[259] In any event, the ECtHR will examine the merits of the complaint, concluding that there is no appearance of a violation and declaring the complaint inadmissible without having to proceed further.[260]

In the case *Mushegh Saghatelyan v. Armenia,* the applicant claimed violations of several Articles of the Convention such as Articles 3, 5, paragraph 1, 2 and 3, Article 6, and 10. They were declared admissible and adjudicated accordingly.[261] At the same time, the applicant raised a number of other complaints under Articles 5 § 3, 6 and 13 of the Convention. In this regard, the ECtHR found that "they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention" and declared the application in this part manifestly ill-founded[262] without any further reasoning.

It is not always possible to infer reasons for manifest ill-foundedness even if the wording used by the ECtHR is slightly detailed. For instance, it is unclear which one of the four categories of the manifestly ill-founded applications the ECtHR referred to declaring the application manifestly ill-founded in the case *Knežević v. Montenegro*.[263] The ECtHR simply stated, "as regards the complaint concerning the alleged unfairness of the criminal proceedings against the applicant, the [ECtHR] considers, in the light of all the material in its possession, and in so far as the matter complained of is within its competence, that it is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention".[264] From logical considerations, the ill-foundeness could arise from an absence of a violation of the Convention. Facts that the applicant was found guilty and his conviction was not set aside at the High Court,[265] however, may also imply that the ECtHR regarded the application in this part as manifestly ill-founded due to the "fourth-instance" doctrine. A lack of evidence may likewise be a reason since the ECtHR referred to the materials in its possession.

Similarly to far-fetched or confusing applications, such an indeterminacy compromises the predictability of law since there is no way how to find out the meaning of an already obscure notion "manifestly ill-founded" applied in a particular situation. Although Keller, Fischer and Kühne emphasizes that the Committee avoids specifying reasons for inadmissibility decisions,[266] these two cases show that such a practice is common also to the Chamber. In any

[259] ECtHR, *Practical Guide on Admissibility Criteria*, 73-76.

[260] Ibid., 75, para. 303.

[261] *Mushegh Saghatelyan v. Armenia,* ECtHR, no. 23086/08.

[262] Ibid., para 257.

[263] *Knežević v. Montenegro,* ECtHR, no. 54228/18.

[264] Ibid., para. 91.

[265] Ibid., paras. 26-28.

[266] Keller, Fischer, and Kühne, "Debating the Future", 1046.

event, leaving the reasons unrevealed, the ECtHR's conduct becomes incompatible with the rule of law because the predictability of law is an inevitable component of it.[267]

4.2.6 A Level of Reasoning in Decisions

The cases discussed in Subchapters 4.2.2-4.2.5 shows that there are at least three ways how the ECtHR reasons its decisions when declaring applications manifestly ill-founded. First, there are decisions which, apart from the declaration of manifest ill-foundedness, do not include any reasoning. Secondly, the ECtHR reasons its decisions simply by "two sentences" from which is not possible to infer which category of manifestly ill-founded applications it regarded as a ground for the declaration on inadmissibility. Thirdly, even if the ECtHR uses slightly detailed reasoning, it is still not possible to determine which one of four categories of manifestly ill-founded applications exactly meant. The reasoning is fairly limited in each case. Such an approach to the application of the inadmissibility criterion suggests simply trusting the ECtHR assuming that it has not made any mistake. The authoritative role of the ECtHR indeed encourages relying on its decisions. However, mistakes made by the ECtHR should serve as a caveat. For instance, in the *Achbala* case the HRC found an application well-founded despite that several years earlier the ECtHR declared the application inadmissible due to a lack of any appearance of a violation of the rights and freedoms guaranteed by the Convention and its Protocols.[268] The most concerning is the fact that the HRC found a violation of the right to the prohibition of torture and of cruel, inhuman, and degrading treatment.[269]

One of the ways how to render the applicability of the inadmissibility criterion "manifestly ill-founded" in such cases clearer and more consistent is the idea proposed by Keller, Fischer, and Kühne. They suggest including in the Rules a non-exhaustive list of criteria which define the category of manifestly ill-founded cases.[270] Gerards, similarly, recommends specifying in what types of situations the criterion applies.[271] In any event, the ECtHR would be required to refer to the relevant criteria[272] to understand why certain cases have been dismissed.[273] Notwithstanding the extensiveness of the reasoning, such a referral would increase the predictability of "if and why the criterion [is] used."[274] That would ultimately ameliorate legal

[267] May, "The Centrality of Predictability", 99.

[268] Human Rights Committee, *Maria Cruz Achabal Puertas v. Spain*, Communication no. 1945/2010, para 2.14.

[269] Ibid., para 9.

[270] Keller, Fischer, and Kühne, "Debating the Future", 1047.

[271] Gerards, "Inadmissibility Decisions", 10.

[272] Keller, Fischer, and Kühne, "Debating the Future", 1047.

[273] Gerards, "Inadmissibility Decisions", 10.

[274] Ibid.

certainly which ECtHR promotes in States[275] and which is an inevitable part of rule of law applicable to the ECtHR.[276]

It is unclear what guides the ECtHR to decide how broadly to reason, if at all, its decisions on admissibility. Decisions discussed above almost do not no differ from decisions made by a single judge formation.[277] In accordance with Rule 56 of the Rules of the Court, decisions of the Chamber shall be reasoned.[278] The level of reasoning, however, is not clarified. Paragraph 1 of Rule 52A which set forth a procedure before a single judge, requires decisions made by single judges to be summarily reasoned.[279] Rule on the procedure before a Committee states that decisions can be summarily reasoned only in cases "when they have been adopted following referral by a single judge pursuant to Rule 52A paragraph 2."[280] If this is not the case, they should have included considerable reasoning hereinto. Similarly, the Rule of procedure before a Chamber permits decisions to be summarily reasoned only in cases where the President of the Section exercise its competence.[281] Hence, Rule 56 of the rules of the Court read in conjunction with paragraph 3 of Rule 54 implies that the level of reasoning of the Chamber's decisions on admissibility should be made at a higher degree than simply summarily reasoned.

If the ECtHR departs from its own Rules, its choice to prefer one or another route for the level of substantiation is even more unpredictable. It is not possible without undue speculation to infer what guides the Court to choose one or another way on the substantiation of decisions. That, consequently, affects a consistent interpretation of manifestly ill-founded applications threatening the ECtHR's compliance with the rule of law since in other cases the ECtHR substantiates its decisions.

[275] Speech by Robert Spano, President of the European Court of Human Rights, Strasbourg, 15 April 2021, 1-2, para.6.

[276] UN General Assembly, *Report of the Secretary-General*, A/66/749, para. 2.

[277] See Chapter 1.

[278] ECtHR, *Rules of Court*, Rule 56.

[279] Ibid., paragraph 1 of Rule 52A.

[280] Ibid., paragraph 4 of Rule 53.

[281] Ibid., paragraph 3 of Rule 54.

5 Extensively Reasoned Decisions Applying "Manifestly Ill-Founded" Inadmissibility Criterion due to Clear or Apparent Absence of a Violation

5.1 Where Lies the Problem?

A lack of a decent substantiation, however, should not be regarded as the only practice of the ECtHR in all cases. When the ECtHR interprets manifestly ill-founded applications in the event of an absence of a violation of the Convention, a discussion on inadmissibility in numerous cases has been extensive and relatively equal to that of non-violation judgements. The extensively reasoned decisions constitute a separate controversy on the applicability of the "manifestly ill-founded" criterion compared to that of the level of reasoning discussed in the previous chapter. Namely, they are not an issue due to the level of reasoning. They raise a question on the compatibility with the rule of law principle if the reasoning has a certain characteristic. The controversy, first, emerges when the ECtHR applies the "a living instrument" interpretation method at the admissibility stage declaring applications manifestly ill-founded due to an absence of a violation of the Convention. Secondly, it stems from the approach of the ECtHR to employ the inadmissibility criterion "manifestly ill-founded" in cases that constitute a novel question previously not decided by the ECtHR or a complex issue. In addition, a relationship between decisions and judgements may serve to understand the true reasons behind the preference to deal with applications at the admissibility stage or to decide cases on merits, thus allowing to ascertain the ECtHR's compliance with the rule of law.

5.2 "A Living Instrument" Interpretation Method

Considerations in the previous chapter show that the meaning of manifestly ill-founded applications depends on the interpretation of the notion "manifestly ill-founded." While the ECtHR sometimes refers to the Vienna Convention, it has developed certain principles to guide the interpretation.[282] The most important interpretive principle for ECtHR is the principle of effective interpretation.[283] It ensures that the Convention must be interpreted in the light of present-day conditions[284] implying that the Convention is seen as "a living instrument"[285] the meaning of which may vary due to changing standards and opinions in society.[286] A dynamic reading of the Convention ensures that its rights are rendered practical and effective.[287] The

[282] O'Connell, Law, *Democracy and the European Court of Human Rights*, 66.

[283] Ibid.

[284] *Demir and Baykara v. Turkey*, ECtHR, no. 34503/97, para. 68.

[285] O'Connell, *Law, Democracy and the European Court of Human Rights*, 66.

[286] Dzehtsiarou, O'Mahony, "Evolutive Interpretation", 311-312.

[287] Letsas, *A Theory of Interpretation*, 79.

concept of "a living instrument"[288] usually is regarded as an evolutive interpretation[289] or a dynamic interpretation.[290] Although the evolutive interpretation is often attributed to human rights treaties, it is yet a common characteristic of other international treaties.[291] Accordingly, the evolutive interpretation is not a phenomenon for human rights interpretation. The legal basis for it stems from international law in general.

The ECtHR in numerous cases has preferred the evolutive interpretation.[292] The advantage of it lies in its ability to respond to contemporary challenges caused by changed circumstances and conditions in society. Hence, the Convention can survive without any need for amendments.[293] The ECtHR, in the majority of cases, justifies the necessity for evolutive interpretation referring to a European consensus[294] due to changes in societal and/or delicate issues.[295]

Despite the advantages the evolutive interpretation possesses, two issues stem from a living instrument interpretation approach. First, the very nature of it contravenes the idea of consistent case law. Namely, when the ECtHR prefers this interpretation method, it inevitably must depart from its case law. That consequently threatens the predictability of law if the law is not certain enough.[296] The ECtHR has stated that "while the Court is not formally bound to follow its previous judgments, it is in the interests of legal certainty, foreseeability and equality before the law that it should not depart, without good reason, from precedents laid down in previous cases."[297] A reference to good reasons as a departure from the case law relates to either the restrictive interpretation[298] or the evolutive interpretation of the Convention. In any event, a departure from the case law should not be realized within the admissibility stage.[299]

Secondly, there are three grounds that justify the application of evolutive interpretation. First, it is most evident in cases involving scientific progress[300] and new technologies[301] such as the

[288] *Tyrer v. United Kingdom,* ECtHR, no. 5856/72.

[289] Bureš, "Human Dignity", 20; Dzehtsiarou, O'Mahony, "Evolutive Interpretation", 311, 314.

[290] Fitzmaurice, "Dynamic (Evolutive) Interpretation".

[291] Andenas, Bjorge, "National Implementation of ECHR rights," 191.

[292] Letsas, *A Theory of Interpretation,* 75-79.

[293] Separate opinion of Judge Sicilianos in *Magyar Helsinki Bizottság v. Hungary* ECtHr, no. 18030/11.

[294] Ulfstein, 'Interpretation of the ECHR", 920.

[295] Bureš, "Human Dignity", 22.

[296] May, "The Centrality of Predictability", 101.

[297] E.g. *Christine Goodwin v. the United Kingdom,* ECtHR, no. 28957/95, para.74.

[298] Orakhelashvili, "Restrictive Interpretation of Human Rights Treaties".

[299] See Subchapter 5.3.

[300] Jean-Paul Costa, [Ex]-President of the European Court of Human Rights, "Dialogue Between Judges, European Court of Human Rights, Council of Europe, 2011", 5.

[301] O'Connell, *Law, Democracy and the European Court of Human Rights*, 67; Bureš, "Human Dignity", 20.

importance of the Internet.[302] Secondly, it is applied due to changes in morals[303], for instance, in the case of inclusion of same-sex couples in the notion of "family,"[304] which would be regarded as unacceptable a couple of decades ago. Thirdly, the evolutive interpretation is utilized for the extension of the protection of rights,[305] for example, in the case of physical abuse which had previously been considered as inhuman and degrading treatment now amounts to torture,[306] or in the case of evolving understanding of conscientious objection to military service.[307] The evolutive interpretation in general can provide "a better understanding of the Convention rights."[308] Consequently, a justification for the evolutive interpretation lies within the nature of substantive provisions. It is unclear in what ways could the progress of technologies affect the interpretation of procedural provisions. The same is true with respect to changes in moral beliefs. The extension of the protection of rights, undoubtedly, excludes the procedural provisions from the scope of evolutive interpretation.

As already depicted above, manifestly ill-founded applications can be equal to the non-violation of the Convention. A procedural provision is an absolute dependence on a substantive provision. If the evolutive interpretation can be justified only in cases of the interpretation of the Convention rights, then, decisions on inadmissibility due to an absence of a violation, which has been based on evolutive interpretation, is questionable. Namely, the ECtHR employs the evolutive interpretation in a procedural provision that does not have any justifiable ground. That, in turn, makes questioning the meaning of the manifestly ill-founded applications since they lack any legal basis in such instances. If the meaning of the criterion "manifestly ill-founded" is not valid, that threatens the predictability of it violating the rule of law.[309]

The ECtHR should not apply the "a living instrument" approach when deciding on the admissibility of applications. The opposite would contravene the very basis of the admissibility of the evolutive interpretation. Namely, the evolutive interpretation is an antithesis of predictability. Whereas the inadmissibility criterion "manifestly ill-founded" is an obscure

[302] *K.U. v. Finland*, ECtHR, no. 2872/02, paras. 48-50.

[303] Jean-Paul Costa, [Ex]-President of the European Court of Human Rights, "Dialogue Between Judges, European Court of Human Rights, Council of Europe, 2011", 5.

[304] *Schalk and Kopf v Austria*, ECtHR, no. 30141/ 04, paras. 93-95.

[305] Jean-Paul Costa, [Ex]-President of the European Court of Human Rights, and The Baroness Hale of Richmond, "Dialogue Between Judges, European Court of Human Rights, Council of Europe, 2011", 5, 16-17 ; Donald, Gordon, Philip, "The UK and the European Court of Human Rights," 101.

[306] *Selmouni v. France*, ECtHR, no. 25803/94, 149, 152. For a comparison, see *Ireland v. United Kingdom*, ECtHR, no. 5310/71, paras. 66-67; 167-168, where the ECtHR held that certain abuses "due to lack of occasion suffering of the particular intensity and cruelty implied by the word torture" [..] "amounted to a practice of inhuman and degrading treatment [rather than a torture]."

[307] *Bayatyan v. Armenia*, ECtHR, no. 23459/03, para. 110.

[308] Letsas, *A Theory of Interpretation*, 79.

[309] May, "The Centrality of Predictability", 99.

notion the predictability of which solely depends on the interpretation of the ECtHR, the evolutive interpretation should not be employed declaring applications inadmissible due to the absence of a violation. The ECtHR itself has highlighted that a change in society that might call for the previous case law to be updated by means of an interpretation of the Convention in the light of present-day conditions is a matter of the Grand Chamber.[310] Namely, the evolutive interpretation due to changes in society can be applied only by deciding on merits. While the ECtHR departs from its case law declaring applications manifestly ill-founded based on the evolutive interpretation, the predictability of the criterion is compromised. That, in turn, may result in a violation of the rule of law since the inadmissibility criterion "manifestly ill-founded" is an obscure notion the meaning of which solely depends on the interpretation of the ECtHR.

5.3 Novelty of Question and Complexity of Issue

The Convention does not include any specific terms on a preference to one or another procedurally different way when the ultimate outcome of the application is an absence of a violation of the Convention. Nor does the Rules of Court explains it. However, keeping in mind the very nature of the admissibility procedure, the circumstances of the case and the question at stake should be clear enough to adjudicate it at the admissibility stage.

Such an approach is in line with the wording of Article 27, paragraph 1 and Article 28, paragraph 1 (a) of the Convention which states that decision on inadmissibility can be delivered "where such decision can be taken without further examination."[311] Although, the meaning of the phrase "without further examination" primarily relates to the competence of these two formations of judges (a single-judge and the Committee consisting of three judges), it to some extent emphasizes circumstances in which decisions on admissibility should be made – considerable clarity on the issue decided. The wording of Article 43 of the Convention on the referral to the Grand Chamber furthers such an observation. The referral request is permissible in exceptional cases raising a serious question affecting the interpretation or application of the Convention or the Protocols, or a serious issue of general importance.[312] The Grand Chamber is obliged to deliver a judgement in such cases.[313] In the light of the considerations above, applications to be declared manifestly ill-founded due to an absence of a violation should be considered clear in order to deal with them at the admissibility stage. This, however, is not always the case in the ECtHR's practice.

---

[310] ECtHR, *The Grand Chamber Registry, Practice Followed by the Panel of the Grand Chamber*, 8, para 24.

[311] *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocol Nos. 11, 14, and 15*, Article 27, paragraph 1; Article 28, paragraph 1(a).

[312] Ibid., Article 43, paragraphs 1and 2.

[313] Ibid., Article 43, paragraph 3.

The core issue lies within the fact that decisions on inadmissibility sometimes "resemble judgements in terms of novelty of the question [and] complexity of the issue [..]".[314] For instance, well know and widely debated decision of the ECtHR is *Tariq v United Kingdom*.[315] The applicant claimed the violation of Article 6 of the Convention due to the use of closed material procedures in civil proceedings because he was not allowed to know the "gist" of the case against him.[316] The ECtHR concluded that "the decision to use closed proceedings was fully understandable and there is nothing to suggest that the use of such proceedings was in any way arbitrary or manifestly unreasonable"[317] and declared the application manifestly ill-founded.[318] Despite the ECtHR seeing this question as straightforward, the questions raised at the application were controversial and, at the time of the delivery of the decision, the legal position regarding "gisting" was far from clear.[319] Accordingly, the ECtHR's choice to deal with this case at the admissibility stage is controversial.

Sometimes the ECtHR uses the admissibility procedure rather than the delivery of a judgement in cases of novel issues. The case *Bonnaud and Lecoq v. France*, for instance, concerned a joint exercise of parental responsibility made by two women living as a couple, each of whom had a child born as a result of medically assisted reproduction.[320] The applicants alleged that the refusal of their application to delegate parental responsibility to each other had been based on their sexual orientation and entailed an unjustified and disproportionate difference in treatment.[321] Despite the ECtHR did not find anything that could disclose a violation of the prohibition of discrimination read in conjunction with the right to respect for private and family life,[322] the applicants, however, brought up a novel issue on a joint exercise of parental responsibility exercised by two same-sex parents. The ECtHR did not engage in a discussion on the new issue although it should have emphasized a lack of any form of recognition of joint parenthood within a same-sex couple.[323] If the ECtHR had dealt with the application on merits, the outcome might have been different.

The ECtHR's practice of choosing the inadmissibility criterion "manifestly ill-founded" over the judgment in such cases makes the understanding of the criterion even more ambiguous. The permissibility of the whole procedure on admissibility raises a subsequent question on the

[314] Granata, "Manifest Ill-Foundedness and Absence of a Significant Disadvantage", 113.

[315] *Tariq v. United Kingdom*, ECtHR, nos. 46538/11 and 3960/12.

[316] Ibid., 32, 43, 56.

[317] Ibid., 93.

[318] Ibid., 98.

[319] Graham, "Strategic Admissibility Decisions", 88.

[320] *Bonnaud and Lecoq v. France*, ECtHR, no. 6190/11.

[321] Ibid., paras. 26-27.

[322] Ibid., paras 44-47.

[323] Cannoot, "Inadmissibility Decisions in Bonnad and Lecoq v. France".

permissibility of the "manifestly ill-founded" criterion. A consistent application of the criterion is compromised when the ECtHR wrongly applies it in cases actually deserving a judgement, especially taking into account the fact that there are no explicit guidance or rules governing such a choice of the ECtHR. If the ECtHR compromises a consistent application of the criterion, it violates the very nature of the rule of law since a consistent interpretation of laws is an inevitable requirement to make laws intelligible.[324] Considering the inadmissibility criterion "manifestly ill-founded" is an obscure notion,[325] a consistent application of the criterion is a prerequisite to regarding the ECtHR's conduct as compatible with the rule of law binding to it.[326]

A solution for the aforementioned issues might be Graham's position that the ECtHR should deal with applications in a full and thorough judgment in three cases: "where a novel issue arises, where the Strasbourg authorities are unclear, or where there is a disagreement between national and European Courts."[327] It is advisable to amend the Rules of the Court, so the suggestion becomes binding to the ECtHR. Otherwise, as the examples above show, the ECtHR in some instances tends to go beyond what is expected from it at the decision stage. That, in turn, violates the rule of law, because the ECtHR departs from a consistent interpretation of the inadmissibility criterion "manifestly ill-founded" by applying it in controversial cases.

5.4 Decisions Opposed to Judgments

As already mentioned in the previous Subchapter, the Convention enables the ECtHR to find non-violation of the Convention in two ways – deciding the case on merits by issuing a judgement and declaring the application manifestly ill-founded due to an absence of a violation by issuing a decision. While the outcome of the process with respect to the subject matter is the same – a lack of violation, these two approaches are different procedures with different aspects they imply and effects they create.

The process of declaring an absence of a violation within the admissibility stage is faster than if the application was decided on merits. That, however, means certain things have to be sacrificed for a more efficient process. If the declaration on a lack of violation is being made within the admissibility stage, the responded government does not have any voice in the proceedings. The respondent government has the right to submit written comments and to take part in hearings only when the case has been brought before the Chamber of the Grand Chamber

[324] Venice Commission, *Rule of Law Checklist*, Section B (4), para.60.

[325] Gerards, "Inadmissibility Decisions", 10.

[326] Detailed discussion in Chapter 3.

[327] Graham, "Strategic Admissibility Decisions", 86.

for adjudication on merits.[328] The same is true with respect to the third-party interventions such as any other State or person not a party to the proceedings[329] as well as the Council's Commissioner for Human Rights.[330] The faster process enables the ECtHR to manage its workload more efficiently which is one of the goals the ECtHR strives for.[331]

Judgements differ from decisions by the possibility to appeal them. Judgements delivered by the Chamber can be appealed.[332] In exceptional cases, applicants may challenge the findings of the Chamber if it has not found a violation of the Convention.[333] Applicants do not have such rights if the Chamber declares an application inadmissible due to an absence of a violation because inadmissibility decisions are final.[334] By rendering applications to be final within the admissibility stage, the ECtHR may save its resources not only with respect to a procedure when the case is decided on merits but also to a procedure following the judgement. A referral to the Grand Chamber includes two procedures. First, a panel of five judges of the Grand Chamber considers the acceptance of the referral request.[335] Secondly, if the panel of judges accepts the request, the Grand Chamber decides the case by means of a judgment.[336] In both instances, the ECtHR has to employ additional resources for rendering a decision or a judgment final. That hinders the process to be efficient and fast enough to deal with the immense number of applications.

Such a distinction between judgments and decisions has legitimate reasons and should not be regarded as unjust. However, the approach of the ECtHR under which procedure it decides to find no violation should trigger one's caution. Namely, several authors claim that the inadmissibility criterion "manifestly ill-founded" is used as "a powerful instrument"[337] for strategic goals.[338] An option to apply the criterion "manifestly ill-founded" in situations of an absence of a violation confers the ECtHR's almost unlimited discretionary power to decide at which stage the procedure is final. If the ECtHR employs the criterion "manifestly ill-founded"

---

[328] *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocol Nos. 11, 14, and 15,* Article 36, paragraph 1.

[329] *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocol Nos. 11, 14, and 15,* Article 36, paragraph 2.

[330] Ibid., paragraph 3.

[331] High Level Conferences on the Future of the European Court of Human Rights: *2010 Interlaken Declaration*, 2, para. 11; *2011 Izmir Declaration*, 1, para 2; *2012 Brighton Declaration*, 8, paras. 30-31.

[332] *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocol Nos. 11, 14, and 15,* Article 44, paragraph 2 (b).

[333] Ibid., Article 43, paragraph 1.

[334] Ibid., Article 27, paragraph 2, Article 28, paragraph 2.

[335] Ibid., Article 43, paragraph 2.

[336] Ibid., Article 43, paragraph 3.

[337] Granata, "Manifest Ill-Foundedness and Absence of a Significant Disadvantage", 113.

[338] Graham, "Strategic Admissibility Decisions", 86-87; Keller, Fischer, and Kühne, "Debating the Future", 1046.

to tackle its caseload, circumstances when it is applied cannot be foreseeable. That, in turn, hampers individuals' ability to direct their behavior to the requirements of law[339] impeding individuals to lead their lives[340] and, consequently, violating the rule of law.

Decisions delivered by Chamber differ from judgements also with respect to the disclosure of the representation of votes distribution. The Chamber, which is composed of seven judges, [341] makes decisions unanimously or by the majority.[342] The majority is reached if at least four of the seven judges vote for or against admissibility. However, decisions do not reveal how many judges voted for or against the declaration on admissibility. For instance, in the case, *Wanner v Germany*, the Chamber by majority declared the complaint under article 6 of the Convention inadmissible.[343] Those might have been three judges who were inclined towards finding a violation or just one judge who did not support the arguments of the majority. From logical considerations, an opposite view held by one judge should not imperil the validity of the majority's view. However, any difference in opinion may include worthwhile considerations. If those are three judges who do not accept the view of the majority, it raises a more serious question what exactly prompts several judges to oppose the view of the majority and is the majority's view accurate?

When the ECtHR finds no violation of the Convention during the judgement stage, judges who do not represent the opinion of the majority deliver a separate opinion.[344] Accordingly, the reasons for the position of the minority are publicly available and can be scrutinized and compared to the opinion of the majority. Judges do not give separate opinions if the non-violation is declared at the admissibility stage declaring the application manifestly ill-founded. Reasons for a different position than that of the majority stay undisclosed. For instance, Weichie argues that in *Kochieva and Others v. Sweden*[345] the reason for the position of the minority might have been that "the applicants' case appears to raise a new issue under the Convention."[346] If this is true, the application should not be declared inadmissible.[347] If the minority held a view that the applicant's rights have been violated, the argument whether the ill-foundedness of the application indeed manifests is questionable at least. That, in turn, raises

[339] Lautenbach, *The Concept of the Rule of Law*, 47.

[340] Tamanaha, *On the Rule of Law*, 97.

[341] *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocol Nos. 11, 14, and 15*, Article 26, paragraph 1.

[342] ECtHR, *Rules of Court*, Rule 56, paragraph 1.

[343] *Wanner v. Germany*, ECtHR, no. 26892/12.

[344] *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocol Nos. 11, 14, and 15*, Article 45, paragraph 2; ECtHR, *Rules of Court*, Rule 74, paragraph 2.

[345] *Kochieva and Others v. Sweden*, ECtHR, no. 75203/12.

[346] Weichie, "Manifestly Ill-Founded".

[347] See Subchapter 5.2.

a question of whether the meaning of manifest-ill foundedness can be equal to an absence of a violation in cases decided by the majority especially taking into account the nature of the admissibility procedure.[348] Deviations from the majority's position in such instances undermine the very meaning of the manifest ill-foundedness implying that such decisions cannot be declared inadmissible.

This issue may be solved by applying the inadmissibility criterion "manifestly ill-founded" exclusively in cases where decisions can be made by unanimous vote. It would exclude any discrepancy between the opinions of judges regarding the applicability of the inadmissibility criterion "manifestly ill-founded," and, consequently, would not compromise the meaning of the criterion which is already obscure. As already mentioned in the previous chapters, clarity of law that depends on consistent interpretation forms the rule of law standard applicable to the conduct of the ECtHR. While the ECtHR keeps applying the inadmissibility criterion "manifestly ill-founded" due to an absence of a violation in cases decided by the majority, not only the validity of such decisions is questionable, but also the ECtHR's compliance with the rule of law.

6 Conclusion

This paper aimed to ascertain the compatibility of the inadmissibility criterion "manifestly ill-founded" included in the Convention with the rule of law. Since the meaning of the inadmissibility criterion depends on the interpretation of the ECtHR, the research sought to clarify the rule of law applicability, particularly to the ECtHR.

By scrutinizing preconditions of the rule of law applicable at the national level and the international level, and their interrelation, it can be claimed that the rule of law is applicable to international organizations when they are in a position to exercise power over individuals. The rule of law applicable to international organizations reflect the formal concept of the rule of law because it can be attributed to all international organizations.

Ascertaining that the ECtHR is in a position to affect individuals directly and especially exercising its power through procedural actions, the paper argued that the ECtHR is bound by the rule of law to the extent applicable to all international organizations. The ECtHR's potential to violate the rule of law regarding the inadmissibility criterion "manifestly ill-founded" arises from the necessity to interpret the criterion. Despite the inadmissibility criterion "manifestly ill-founded" being of a substantive nature, a lack of such criterion would paralyze the functionality

[348] See Subchapter 5.2.

of the ECtHR since the manifestly ill-founded applications account for the workload of the ECtHR.

The research demonstrated that the obscure meaning of the inadmissibility criterion "manifestly ill-founded" compromises its predictability. While the ECtHR's division of manifestly ill-founded applications into four categories may shed a light on the meaning of the inadmissibility criterion "manifestly ill-founded", the analysis of the ECtHR's cases showed that the ECtHR does not render the criterion predictable. First, even if the ECtHR refers to a particular category of manifestly ill-founded applications, it does not base the decision on inadmissibility on that criterion. Secondly, the ECtHR approach of how extensively if at all to reason decisions on inadmissibility lacks any consistency. The ECtHR omits any reasoning why an application has been declared manifestly ill-founded or uses slightly detailed reasoning from which it is not possible to infer actual grounds for manifest ill-foundedness, or reasons the decisions on manifest ill-foundedness similarly to that of judgements. That, consequently, hinders a consistent interpretation of the inadmissibility criterion "manifestly ill-founded" violating the rule of law binding to the ECtHR. The predictability of the criterion could be increased by enacting in the Rules of Court a non-exhaustive list of criteria that define the category of manifestly ill-founded applications.[349] That would render the interpretation of the ECtHR more consistent since it would be obliged to refer to the certain ground of the manifest ill-foundedness.

Moreover, the research established that extensively reasoned decisions may possess another threat to the compatibility of the rule of law. The research demonstrated that the ECtHR's "living instrument" interpretation method should not be applied at the admissibility stage. Therefore, in each case when applications are declared manifestly ill-founded based on that interpretation method the validity of the inadmissibility criterion "manifestly ill-founded" is compromised accordingly compromising the very meaning of the criterion. In addition, the research showed that the ECtHR's approach to applying the inadmissibility criterion "manifestly ill-founded" in cases deserving judgements, namely, in cases constituting novel questions or complex issues, lacks any justification. That, consequently, renders the meaning of the criterion even more unintelligible. Hence, such a practice hinders the criterion to be predictable enough. The inclusion in the Rules of the Court a requirement to deal with applications exclusively on merits thorough judgments in cases "where a novel issue arises, where the [ECtHR] are unclear, or where there is a disagreement between national and European Courts"[350] would lessen the level of unpredictability of the criterion and ensure the ECtHR compliance with the rule of law.

[349] Keller, Fischer, and Kühne, "Debating the Future", 1047.

[350] Graham, "Strategic Admissibility Decisions", 86.

Taking into account considerations described above, the concussion is that the inadmissibility criterion “manifestly ill-founded” set forth in Article 35, paragraph 2 of the Convention is neither certain nor predictable. That, in turn, threatens the rule of law binding to the ECtHR.

Table of reference

Treaties

Vienna Convention on the Law of Treaties, opened for signature on 23 May 1969, UNTS, vol. 1155, p. 331.

European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocol Nos. 11, 14, and 15, 4 November 1950, ETS 005.

The Statute of the Council of Europe, 5 May 1949, ETS 001.

Explanatory Report to Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention, 13 May 2004, CETS 194.

Cases

Reczskowich v. Poland, European Court of Human Rights, no. 43447/19, 22 July 2021.

Knežević v. Montenegro (Decision), European Court of Human Rights, no. 54228/18, 2 February 2021.

Wanner v Germany (Decision), European Court of Human Rights, no. 26892/12, 23 October 2018.

Mushegh Saghatelyan v. Armenia, European Court of Human Rights, no. 23086/08, 20 September 2018.

Gulamhussein and Tariq v. United Kingdom (Decision), European Court of Human Rights, nos. 46538/11 and 3960/12, 3 April 2018.

Magyar Helsinki Bizottság v. Hungary, European Court of Human Rights, no. 18030/11, 8 November 2016.

Lazu v. the Republic of Moldova, European Court of Human Rights, no. 46182/08, 5 July 2016.

Allen v United Kingdom, European Court of Human Rights, no. 25424/09, 12 July 2013.

Kochieva and Others v. Sweden (Decision), European Court of Human Rights, no. 75203/12, 30 April 2013.

Herrman v. Germany, European Court of Human Rights, no. 9300/07, 26 June 2012.

Gagliano Giorgi v. Italy, European Court of Human Rights, no. 23563/07, 6 March 2012.

Ladygin v. Russia (Decision on admissibility), European Court of Human Rights, no. 35365/05, 30 August 2011.

Bayatyan v. Armenia, European Court of Human Rights, no. 23459/03, 7 July 2011.

Lautsi and Others v. Italy, European Court of Human Rights, no. 30814/06, 18 March 2011.

Bonnaud and Lecoq v. France (Decision), European Court of Human Rights, no. 6190/11, 8 January 2011.

Dudek v. Germany (Decision on admissibility), European Court of Human Rights, no. 12977/09 and others, 23 November 2010.

Korolev v. Russia (Decision on admissibility), European Court of Human Rights, no. 25551/05, 1 July 2010.

Adrian Mihai Ionescu v. Romania (Decision on admissibility), European Court of Human Rights, no. 36659/04, 28 June 2010.

Schalk and Kopf v Austria, European Court of Human Rights, no. 30141/04, 24 June 2010.

K.U. v. Finland, European Court of Human Rights, no. 2872/02, 2 December 2008.

Demir and Baykara v. Turkey, European Court of Human Rights, no. 34503/97, 12 November 2008.

Kerimov v Azerbajan (Decision on admissibility), European Court of Human Rights, no. 151/03, 28 September 2006.

Dukmedjian v. France, European Court of Human Rights, no. 60495/00, 31 January 2006.

Broniowksi v. Poland, European Court of Human Rights, no. 31443/96, 22 June 2004.

Christine Goodwin v. the United Kingdom, European Court of Human Rights, no. 28957/95, 11 July 2002.

Dahlab v. Switzerland (Decision on admissibility), European Court of Human Rights, no. 42393/98, 15 February 2001.

Chapman v. the United Kingdom, European Court of Human Rights, no. 27238/95, 18 January 2001.

Selmouni v. France, European Court of Human Rights, no. 25803/94, 28 July 1999.

Loizidou v. Turkey, European Court of Human Rights, no. 15318/89, 23 March 1995.

Cossey v. the United Kingdom, European Court of Human Rights (Plenary), no. 10843/84, 27 September 1990.

Soering v. United Kingdom, European Court of Human Rights (Plenary), no. 14038/88, 7 July 1989.

Malone v United Kingdom, European Court of Human Rights (Plenary), no. 8691/79, 2 August 2 1984.

Sunday Times v. the United Kingdom (No. 1), European Court of Human Rights, no 6538/74, 26 April 1979.

Klass et al. v. Germany, European Court of Human Rights (Plenary), no. 5029/71, 6 September 1978.

Tyrer v United Kingdom, European Court of Human Rights (Chamber), no. 5856/72, 25 April 1978.

Ireland v. United Kingdom, European Court of Human Rights (Plenary), no. 5310/71, 18 January 1978.

Kjeldsen, Busk Madsen and Pedersen, European Court of Human Rights (Chamber), no. 5095/71, 7 December 1976.

Golder v United Kingdom, European Court of Human Rights (Plenary), no. 4451/70, 21 February 1975.

Van Gend & Loos, European Court of Justice, Case no. 26/62, 5 February 1963.

Elettronica Sicula S.p.A. (ELSI) (United States of America v. Italy), International Court of Justice, 20 July 1989, Reports 1989.

Documents of United Nations and its Organs

General Assembly, *Resolution 60/1. 2005 World Summit Outcome*, UN Doc. A/RES/60/1, 24 October 2005.

General Assembly, *Resolution 60/1. 2005 World Summit Outcome*, UN Doc. A/RES/67/1, 30 November 2012.

General Assembly, *The rule of law at the national and international levels*, UN Doc A/72/463, 10 November 2017.

General Assembly, *Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels*, UN Doc A/RES/67/1, 30 November 2012.

General Assembly, *Report of the Secretary-General. Delivering justice: programme of action to strengthen the rule of law at the national and international levels*, UN Doc A/66/749, 16 March 2012.

General Assembly, *Report of the Secretary-General, The rule of law and transitional justice in conflict and post-conflict societies*, UN Doc S/2004/616*, 23 August 2004.

General Assembly, *Resolution 60/251. Human Rights Council*, UN Doc A/RES/60/251, 3 April 2006.

Human Rights Committee, *Maria Cruz Achabal Puertas v. Spain*, Communications no. 1945/2010, UN Doc. CCPR/C/107/D/1945/2010, 18 June 2013.

International Court of Justice, *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt*, Advisory opinion, Reports 1980.

Documents of the Council of Europe and its Organs

Council of Europe, *Steering Committee for Humna Rights (CDDH) Final Report on measures requiring amendment of the European Convention on Human Rights CDDH (2012) R74 Addendum I*, 15 February 2012, https://rm.coe.int/090000168045fdc5

Council of Europe, *High-Level Conference on the Future of the European Court of Human Rights. Brighton Declaration,* 19 – 20 April 2012, https://www.echr.coe.int/Documents/2012_Brighton_FinalDeclaration_ENG.pdf

Council of Europe, *High-Level Conference on the Future of the European Court of Human Rights. Izmir Declaration,* 26 – 27 April 2011, https://www.echr.coe.int/documents/2011_izmir_finaldeclaration_eng.pdf

Council of Europe, *High-Level Conference on the Future of the European Court of Human Rights. Interlaken Declaration,* 19 February 2010, https://www.echr.coe.int/Documents/2010_Interlaken_FinalDeclaration_ENG.pdf

Council of Europe, *Report of the Evaluation Group to the Committee of Ministers on the European Court of Human Rights, EG Court (2001),* 27 September 2001, https://rm.coe.int/16804f3d0b

Council of Europe, *Resolution CM/Res(2022)3 on legal and financial consequences of the cessation of membership of the Russian Federation in the Council of Europe*, 23 March 2022, https://rm.coe.int/resolution-cm-res-2022-3-legal-and-financial-conss-cessation-membershi/1680a5ee99?msclkid=60a33447ab8d11ec9c8f9bc54d5831c1

Council of Europe, *Resolution CM/Res (2022)2 on the cessation of the membership of the Russian Federation to the Council of Europe*, 16 March 2022, https://rm.coe.int/0900001680a5da51.

Council of Europe, *The Court in brief*, https://www.echr.coe.int/Documents/Court_in_brief_ENG.pdf

Council of Europe, *TRAVAUX PREPARATOIRES Relating to Protocol No, 2 to the Convention for the Protection of Human Rights and Fundamental Freedoms, conferring upon the European Court of Human Rights competence to give advisory opinions*. https://www.echr.coe.int/LibraryDocs/travaux/echrtravaux-p2-en2907903.pdf

European Court of Human Rights, *Annual Report 2021*.
https://www.echr.coe.int/Documents/Annual_report_2021_ENG.pdf

European Court of Human Rights, *Analysis of Statistics 2020*.
https://www.echr.coe.int/Documents/Stats_analysis_2020_ENG.pdf

European Court of Human Rights, *Analysis of Statistics 2019*.
https://www.echr.coe.int/Documents/Stats_analysis_2019_ENG.pdf

European Court of Human Rights, *Analysis of Statistics 2018*.
https://www.echr.coe.int/Documents/Stats_analysis_2018_ENG.pdf

European Court of Human Rights, *Analysis of Statistics 2010*.
https://www.echr.coe.int/Documents/Stats_analysis_2010_ENG.pdf

European Court of Human Rights, *Analysis of statistics 2009*.
https://www.echr.coe.int/Documents/Stats_analysis_2009_ENG.pdf

European Court of Human Rights, *Practical Guide on Admissibility Criteria*.
https://www.echr.coe.int/documents/admissibility_guide_eng.pdf

European Court of Human Rights, *Rules of Court*, as amended by the Plenary Court on 7 February 2022. https://www.echr.coe.int/Documents/Rules_Court_ENG.pdf

European Court of Human Rights, *The Grand Chamber Registry, Practice Followed by the Panel of the Grand Chamber when Deciding on Request for Referral under Article 43 of the Convention*. https://www.echr.coe.int/documents/note_gc_eng.pdf

Speech by Robert Spano, President of the European Court of Human Rights, Strasbourg, 15 April 2021,
https://echr.coe.int/Documents/Speech_20210415_Spano_Seminar_Rule_of_Law_ENG.pdf

Speech by Jean-Paul Costa, [Ex]-President of the European Court of Human Rights in "*Dialogue between judges, European Court of Human Rights, Council of Europe, 2011*",
https://www.echr.coe.int/Documents/Dialogue_2011_ENG.pdf

Venice Commission, *Rule of law Checklist,* CDL-AD(2016)007rev, 18 March 2016
https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)007-e

Books

Bates, Ed. *The Evolution of the European Convention on Human Rights*: *From Its Inception to the Creation of a Permanent Court of Human Rights.* Oxford: Oxford University Press, 2010.

Bingham, Tom. *The Rule of Law*. London: Penguin Books, 2011.

Crawford, James. *Brownlie's Principles of Public International Law*. Oxford University Press, 2019.

Finnis, John. *Natural Law and Natural Rights*. 2nd ed. Clarendon Law Series. Oxford: Oxford University Press, 2011.

Fuller, Lon L. *The Morality of Law*. Rev. ed. Vol. 1963. Storrs Lectures on Jurisprudence. New Haven, Conn: Yale University Press, 1969.

Gardiner, Richard. *Treaty Interpretation.* The Oxford International Law Library. Oxford: Oxford University Press, Incorporated, 2015.

Kramer, Matthew. *Objectivity and the Rule of Law*. Vol. 9780521854160. Cambridge Introductions to Philosophy and Law. Cambridge: Cambridge University Press, 2007.

Ku, Charlotte, and Harold K. Jacobson. *Democratic Accountability and the Use of Force in International Law.* Cambridge: Cambridge University Press, 2003.

Lautenbach, Geranne. *The Concept of the Rule of Law and the European Court of Human Rights*. Oxford: Oxford University Press, 2013.

Letsas, George. *A Theory of Interpretation of the European Convention on Human Rights*. Oxford: Oxford University Press, 2007.

Nijman, Janne E. *The Concept of International Legal Personality. An Inquiry into the History and Theory of International Law*. Hague: T.M.C. Asser Press, 2004.

O'Connell, Rory. *Law, Democracy and the European Court of Human Rights*. Cambridge: Cambridge University Press, 2020.

Shaw, Malcolm N. *International Law*. Eighth ed. Cambridge: Cambridge University Press, 2017.

Schermers, Henry G., and Niels Blokker. *International Institutional Law: Unity within Diversity.* Sixth Revised ed. Leiden: Brill Nijhoff, 2018.

Tamanaha, Brian Z. *On the Rule of Law*. Cambridge: Cambridge University Press, 2004.

Thompson, Edward P. *Whigs and Hunters: The Origin of the Black Act*. Pantheon Books, 1975.

Van Genugten, Willem. *The World Bank Group, the IMF and Human Rights. A Contextualised Way Forward.* Cambridge and Antwerp: Intersentia, 2015.

Wohlwend, Denise. *The International Rule of Law*. Cheltenham, Gloucestershire: Edward Elgar Publishing Limited, 2021.

Chapters in Books

Andenas, Mads, and Eirik Bjorge. "National Implementation of ECHR Rights." In *Constituting Europe*, 181-262. Cambridge University Press, 2013.

Andreassen, Bård A. "Comparative Analyses of Human Rights Performance." In *Research Methods in Human Rights*, 222-52. Handbooks of Research Methods in Law Series. Edward Elgar Publishing, 2017.

Bedner, Adriaan. "The Promise of a Thick View." In *Handbook on the Rule of Law*, 34-47. Edward Elgar Publishing, 2018.

Björgvinsson, David T. "The Role of Judges of the European Court of Human Rights as Guardians of Fundamental Rights of the Individual." In *Judges as Guardians of Constitutionalism and Human Rights*, 329-51. Edward Elgar Publishing, 2016.

Brems, Eva. "Methods in Legal Human Rights Research." In *Methods of Human Rights Research,* ed. Fons Coomans et al. 77-89. Oxford: Intersentia 2009.

Feinäugle, Clemens A. "The Rule of Law and Its Application to the United Nations." In *Handbook on the Rule of Law*, 203-16. Edward Elgar Publishing, 2018.

Gerring, John. "Case Selection for Case-Study Analysis: Qualitative and Quantitative Techniques." In *The Oxford Handbook of Political Methodology*, The Oxford Handbook of Political Methodology, 645-684. 1st ed. Oxford Handbooks of Political Science. Oxford University Press, 2008.

Ginsburg, Tom. "Difficulties with Measuring the Rule of Law." In *Handbook on the Rule of Law*, 48-56. Edward Elgar Publishing, 2018.

Kanetake, Machiko. "The Interfaces Between the National and International Rule of Law: A Framework Paper." In *The Rule of Law at the National and International Levels*, 11-42. Hart Publishing, 2016.

Krygier, Martin, and Adam Winchester. "Arbitrary Power and the Ideal of the Rule of Law." In *Handbook on the Rule of Law*, 75-95. Edward Elgar Publishing, 2018.

Langford, Malcolm. "Interdisciplinarity and Multimethod Research." In *Research Methods in Human Rights*, 161-91. Handbooks of Research Methods in Law Series. Edward Elgar Publishing, 2017.

May, Christopher. "The Centrality of Predictability to the Rule of Law." In *Handbook on the Rule of Law*, 96-108. Edward Elgar Publishing, 2018.

McCorquodale, Robert. "The Rule of Law Internationally: Lord Bingham and the British Institute of International and Comparative Law." In *Tom Bingham and the Transformation of the Law*, 137-146. Oxford: Oxford University Press, 2009.

Møller, Jørgen. "The Advantages of a Thin View." *In Handbook on the Rule of Law*, 21-33. Edward Elgar Publishing, 2018.

Peters, Birgit. "The Rule of Law Dimensions of Dialogues Between National Courts and Strasbourg." In *The Rule of Law at the National and International Levels*, 201-26. Hart Publishing, 2016.

Raz, Joseph. "The Rule of Law and Its Virtue." In *The Authority of Law*, 211-228. Oxford: Oxford University Press, 1979.

Smith, Rhona. "Human Rights Based Approaches to Research." In *Research Methods in Human Rights*, 6-23. 1st ed. Routledge, 2018.

Ulrich, George. "Research Ethics for Human Rights Researchers." In *Research Methods in Human Rights*, 192-221. Handbooks of Research Methods in Law Series. Edward Elgar Publishing, 2017.

Articles

Arajärvi, Noora. "The Core Requirements of the International Rule of Law in the Practice of States." *Hague Journal on the Rule of Law*: HJRL 13, no. 1 (2021): 173-93.

Ahlborn, Christiane. "The Rules of International Organizations and the Law of International Responsibility." *International Organizations Law Review* 8, no. 2 (2011): 397-482.

Bordin, Fernando L. "General International Law in the Relations between International Organizations and Their Members." *Leiden Journal of International Law* 32, no. 4 (2019): 653-73.

Bowen, Glenn. "Document Analysis as a Qualitative Research Method." *Qualitative Research Journal*. 9, no. 2 (2009): 27-40.

Bureš, Pavel. "Human Dignity: An Illusory Limit for the Evolutive Interpretation of the ECHR?" *Amicus Curiae* 110, (2017): 20-28.

Chesterman, Simon. "An International Rule of Law?" *The American Journal of Comparative Law* 56, no. 2 (2008): 331-61.

Cheneval, Francis, Sandra Lavenex, and Frank Schimmelfennig. "Demoi-cracy in the European Union: Principles, Institutions, Policies." *Journal of European Public Policy* 22, no. 1 (2015): 1-18.

Dzehtsiarou, Kanstantsin, and Conor O'Mahony. "Evolutive Interpretation of Rights Provisions: A Comparison of the European Court of Human Rights and the U.S. Supreme Court." *Columbia Human Rights Law Review* 44, no. 2 (2013): 309.

Fitzmaurice, Malgosia. "Dynamic (evolutive) Interpretation of Treaties: Part II." *Hague Yearbook of International Law* 22 (2009): S. [3]-31.

Floroiu, Mihai. "Is the Strasbourg Court Really Accountable Towards Its Ends?" *Contemporary Readings in Law and Social Justice* 9, no. 2 (2017): 497-502.

Gerards, Janneke H. "Inadmissibility Decisions by the European Court of Human Rights. A Critique of the Lack of Reasoning." *Human Rights Law Review* 14, no. 1 (2014): 148-58.

Glas, Lize R., and Janneke H. Gerards. "Access to Justice in the European Convention on Human Rights System." *Netherlands Quarterly of Human Rights* 35, no. 1 (2017): 11-30.

Graham, Lewis. "Strategic Admissibility Decisions in the European Court of Human Rights." *The International and Comparative Law Quarterly* 69, no. 1 (2020): 79-102.

Granata, Simona. "Manifest Ill-Foundedness and Absence of a Significant Disadvantage as Criteria of Inadmissibility for the Individual Application to the Court." *The Italian Yearbook of International Law* 2010, no. 1 (2010): 111-23.

Greer, Steven. "What's Wrong with the European Convention on Human Rights*?" Human Rights Quarterly* 30, no. 3 (2008): 680-702.

Gunn, T. Jeremy. "Limitations Clauses, Evidence, and the Burden of Proof in the European Court of Human Rights." *Religion and Human Rights* 15, no. 1-2 (2020): 192-206.

Keller, Helen, Andreas Fischer, and Daniela Kühne. "Debating the Future of the European Court of Human Rights after the Interlaken Conference: Two Innovative Proposals." *European Journal of International Law* 21, no. 4 (2010): 1025-048.

Krygier, Martin. "The Rule of Law: Pasts, Presents, and Two Possible Futures." *Annual Review of Law and Social Science* 12, no. 1 (2016): 199-229.

Orakhelashvili, Alexander. "Restrictive Interpretation of Human Rights Treaties in the Recent Jurisprudence of the European Court of Human Rights." *European Journal of International Law* 14, no. 3 (2003): 529-68.

Peters, Anne. "Compensatory Constitutionalism: The Function and Potential of Fundamental International Norms and Structures." *Leiden Journal of International Law* 19, no. 3 (2006): 579-610.

Peters, Anne. "Constitutional Theories of International Organisations: Beyond the West." *Chinese Journal of International Law* 20, no. 4 (2021): 649-98.

Vogiatzis, Nikos. "The admissibility criterion under article 35(3)(b) ECHR: a “significant disadvantage” to human rights protection?" *The International and Comparative Law Quarterly* 65, no. 1 (2016): 185-211.

Viljanen, Jukka. "The European Court of Human Rights as a Developer of the General Doctrines of Human Rights Law. A Study of the Limitations Clauses of the European Convention on Human Rights." *European Journal of International Law* 16, no. 4 (2003): 799-800.

Tulkens, Françoise. "The Link Between Manifest Ill-Foundedness and Absence of a Significant Disadvantage as Admissibility Criteria for Individual Applications" *The Italian Yearbook of International Law* 2010, no. 1 (2010): 169-79.

Ulfstein, Geir. "Interpretation of the ECHR in Light of the Vienna Convention on the Law of Treaties." *The International Journal of Human Rights* 24, no. 7 (2020): 917-34.

Waldron, Jeremy. "Are Sovereigns Entitled to the Benefit of the International Rule of Law?" *European Journal of International Law* 22, no. 2 (2011): 315-43.

Waldron, Jeremy. "The Rule of Law in Contemporary Liberal Theory." *Ratio Juris 2*, no. 1 (1989): 79-96.

Other Publications

Alvarez, José E. "International Organizations and the Rule of Law." Working paper 2016/4. *IILJ Working Papers*, *Global Administrative Law Series*, New York University School of Law, New York.

Donald, Alice, Jane Gordon, and Philip Leach. "The UK and the European Court of Human Rights." Equality and Human Rights Commission Research report 83, *Equality and Human Rights Commission Research Report Series*, London Metropolitan University, 2012.

Internet Resources

Cambridge Advanced Learner's Dictionary & Thesaurus. Accessed on 16 April 2022. https://dictionary.cambridge.org/dictionary/english/

Collins English Dictionary. Accessed on 16 April 2022. https://www.collinsdictionary.com/dictionary/english

Council of Europe, *Chart of signatures and ratifications of Treaty 005*, https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatynum=005

European Court of Human Rights. *HUDOC database*. Accessed on 28 November 2021. https://www.echr.coe.int/Pages/home.aspx?p=caselaw/HUDOC&c=

Oxford Advanced Learner's Dictionary. Accessed on 16 April 2022. https://www.oxfordlearnersdictionaries.com/

Blogs

Cannoot, Pieter, "Inadmissibility Decisions in Bonnad and Lecoq v. France – should the Court have Recognized the Specificity of a Same-Sex Relationship?" *In Strasbourg Observers*. Published on 11 April 2018. https://strasbourgobservers.com/2018/04/11/inadmissibility-decision-in-bonnaud-and-lecoq-v-france-should-the-court-have-recognized-the-specificity-of-a-same-sex-relationship/

Walther, Reto, "Procedural Deference at Strasbourg: A Trend Calling for a New Admissibility Criterion?" *In EJIL: Talk! Blog of the European Journal of International Law*. Published on January 3, 2020, https://www.ejiltalk.org/procedural-deference-at-strasbourg-a-trend-calling-for-a-new-admissibility-criterion/

Weichie, "Manifestly Ill-Founded … By a Majority." *In Strasbourg Observers*. Published on June 17, 2013. https://strasbourgobservers.com/2013/06/17/manifestly-ill-founded-by-a-majority/