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The European Court of Human Rights and Migration

*Frequently Asked Questions*¹

1. Does the European Convention on Human Rights (ECHR) protect the rights of migrants?

The ECHR protects the rights and freedoms of everyone within the jurisdiction of a Council of Europe member state, whether they are nationals of that country or not.

Some articles of the Convention are particularly relevant to migration.

For example, Article 3 means that states cannot remove someone to another country where they face a real risk of torture, inhuman or degrading treatment.

Article 8 of the Convention, covering the right to private and family life, means that close family members can only be separated if there are important reasons for doing so.

However, some rights protected by the Convention do not apply in an immigration context.

For example, states can detain non-nationals for the purpose of immigration control, despite Article 5 of the ECHR guaranteeing the right to liberty and security.

Furthermore, Article 6 (right to a fair trial) does not apply to disputes over the entry, residence or removal of non-nationals, or to the granting of asylum or deportation.

2. How often does the European Court of Human Rights rule in favour of migrants?

The Court has processed over 420,000 applications in the past ten years. Less than 2% of those applications (7,175) related to immigration.

Of the 7,175 immigration-related applications, over 90% (6,657) were dismissed by the Court. Only around 450 applications related to immigration – that is, around one in a thousand of the total applications – led to the Court finding a human rights violation.

¹ This explainer draws on the exhaustive and authoritative case-law Guides produced by the Registry of the ECtHR ([Guide on Immigration](#), [Guide on Admissibility](#), [Guide on Article 5](#), [Guide on Article 6 \(civil\)](#), [Guide on Article 6 Criminal](#), [Guide on Article 8](#)) and in the recently released thematic factsheet "[Focus on Immigration](#)" and does not bind the Council of Europe or the ECtHR.

3. Does the ECHR stop states from controlling their borders?

One of the guiding principles underlined by the Court is that states have the right to control the entry of non-nationals into their territory, in line with international law.

The Court stresses that the ECHR should generally be applied according to national circumstances, which national authorities are best placed to evaluate and decide upon.

This principle, known as the “margin of appreciation”, was developed by the Court in its judgments and then added to the text of the ECHR by Council of Europe governments following a conference in Brighton, in the United Kingdom, in 2012.

This means that the Court will look at national decision-making processes and generally support them, as long as the authorities involved – including courts – have taken into account the different factors or interests involved and taken well-explained decisions.

For example, the Court recently backed a decision by the Spanish authorities to deny a residence permit to a Bolivian man who had fathered a child in Spain but failed to prove that he could support himself.

The Court found no violation of Article 8 (right to private and family life) as the Spanish authorities had struck a fair balance between the interests of the applicant and the need for the state to control immigration, in the interests of the country as a whole.

In another recent case, the Court found no violation of the ECHR in the case of a man convicted of serious drug-related crimes who was subject to expulsion from Denmark despite having lived there legally for over 34 years.

The Court considered that the Danish authorities had provided relevant and sufficient reasons for the deportation, despite its impact on the man’s private and family life.

4. Would leaving the ECHR mean states no longer had international legal obligations concerning refugees and asylum seekers?

No. All Council of Europe member states are also bound by other international legal agreements in this area, including the UN refugee convention, the UN covenant on civil and political rights, and the UN convention on torture.

5. Does the European Court of Human Rights regularly stop migrants being deported?

Under its Rule 39, and in exceptional circumstances, the Court can grant “interim measures” indicating that a state should not expel one or more people in order to prevent possible serious and irreversible violations of their human rights while their application is pending before the Court.

However, the vast majority of requests for such interim measures are rejected by the Court (see the figures below).

Rule 39 requests received by the European Court of Human Rights in 2022-2024

State	Outside the scope	Refused	Granted	Total received	Rejected OTS + refused	Rejection rate%
Albania	33	8		41	41	100%
Andorra	1			1	1	100%
Armenia	30	22		52	52	100%
Austria	64	20	1	85	84	99%
Azerbaijan	17	48	6	71	65	92%
Belgium	34	290	2290	2614	324	12%
Bosnia and Herzegovina	14	3	6	23	17	74%
Bulgaria	18	19	2	39	37	95%
Croatia	19	6	1	26	25	96%
Cyprus	11	4		15	15	100%
Czech Republic	27	10	1	38	37	97%
Denmark	3	8		11	11	100%
Estonia	9	8		17	17	100%
Finland	31	20	1	52	51	98%
France	272	162	59	493	434	88%
Georgia	36	10	1	47	46	98%
Germany	222	26		248	248	100%
Greece	75	66	222	363	141	39%
Hungary	30	7	1	38	37	97%
Iceland	8	3	1	12	11	92%
Ireland	15	1		16	16	100%
Italy	138	56	17	211	194	92%
Latvia	26	10	1	37	36	97%
Liechtenstein	2			2	2	100%
Lithuania	51	23	11	85	74	87%
Luxembourg	4	3		7	7	100%
Malta	5	5	4	14	10	71%
Rep.of Moldova	57	2		59	59	100%
Monaco	1	1		2	2	100%
Montenegro	7	1		8	8	100%
Netherlands	34	18	1	53	52	98%
North Macedonia	8	2		10	10	100%
Norway	7	2		9	9	100%
Poland	84	88	72	244	172	70%
Portugal	26	3		29	29	100%
Romania	28	12	2	42	40	95%
Russia	85	61	134	280	146	52%
San Marino				0		
Serbia	23	14	8	45	37	82%
Slovakia	9			9	9	100%
Slovenia	12	3	1	16	15	94%
Spain	110	21	1	132	131	99%
Sweden	87	100	11	198	187	94%
Switzerland	122	66	3	191	188	98%
Türkiye	962	69	11	1042	1031	99%
Ukraine	100	54	8	162	154	95%
United Kingdom	150	36	6	192	186	97%
Total	3107	1391	2883	7381	4498	61%

* Source https://www.echr.coe.int/documents/d/echr/stats_art_39_02_eng