



HORIZONTAL FACILITY FOR THE WESTERN BALKANS AND TURKEY 2019-2022

*FOR YOUR RIGHTS:
TOWARDS
EUROPEAN STANDARDS*

INTRODUCTION TO THE EUROPEAN CONVENTION ON HUMAN RIGHTS – MAIN PRINCIPLES

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- **The role of the Court**
- An approach shaped by:
 - - not being a fourth instance
 - *Dimitar Yordanov v. Bulgaria*, no. 3401/09, 6 September 2018
 - - the principle of subsidiarity
 - *Sergey Zolotukhin v. Russia* [GC], no. 14939/03, 10 February 2009
 - - the margin of appreciation
 - *Hirst v. the United Kingdom* (no. 2) [GC], no. 74025/01, 6 October 2005
 - *Dickson v. United Kingdom* [GC], no. 44362/04, 4 December 2007

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- **The text of the Convention**
- It is important to keep in mind that:
 - - provisions have an autonomous meaning
 - *Anheuser-Busch Inc. v. Portugal* [GC], no. 73049/01, 11 January 2007
 - *G.I.E.M. S.r.l. and Others v. Italy* [GC], no. 1828/06, 28 June 2018
 - - it is a bilingual text
 - *Perinçek v. Switzerland* [GC], no. 27510/08, 15 October 2015
 - - provisions are not to be viewed in isolation
 - *Osmanoğlu and Kocabaş v. Switzerland*, no. 29086/12, 10 January 2017



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- **The term “Law”**
- The rule of law requires:
 - - rules of general application
 - - observance of the rules in practice
 - - effective supervision over the application of the rules
- The need to meet certain quality requirements:
 - - accessibility
 - *Silver v. United Kingdom*, no. 5947/72, 25 March 1983
 - - foreseeability
 - *Maestri . Italy* [GC], no. 39748/98, 17 February 2004
 - - precision in the scope of powers
 - - *Rotaru v. Romania* [GC], no. 28341/95, 4 May 2000



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- Also decision-making should not be arbitrary
 - *S., V. and A. v. Denmark* [G], no. 35553/12, 22 October 2018
- **The nature of the rights and duties**
- The rights fall into four broad categories:
 - - those which are absolute
 - - those subject to a range of more broadly stated competing interests
 - - those subject to very specific limitations
 - - those for which no limitations are specified but with implied limitations
 - *Rowe and Davis v. United Kingdom* [GC], no. 28901/95, 16 February 2000
 - *Ahmed and Others v. United Kingdom*, no. 22954/93, 2 September 1998



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- The existence of implied rights
 - *Golder v. United Kingdom* [P], no. 4451/70, 21 February 1975
 - *Saunders v. United Kingdom* [GC], no. 19187/91, 17 December 1996
- and positive obligations for the State
 - *A. v. United Kingdom*, no. 55599/94, 23 September 1998
 - *Hämäläinen v. Finland* [GC], no. 37359/09, 16 July 2014
 - *O’Keeffe v. Ireland* [GC], no. 35810/09, 28 January 2014



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- *Vinter and Others v. United Kingdom* [GC], no. 66069/09, 9 July 2013
- *Lautsi and Others v. Italy* [GC], no. 30814/06, 18 March 2011
- as well as certain procedural obligations
- *Baltiņš v. Latvia*, no. 25282/07, 8 January 2013
- and rights that are non-derogable and not subject to reciprocity
- *Ireland v. United Kingdom* [P], no. 5310/71, 18 January 1978



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- **Interpreting the Convention**

- This is based on:

- the ordinary meaning of the words used
 - *Hirsi Jamaa and Others v. Italy* [GC], no. 27765/09, 23 February 2012
- the object and purpose
 - *Soering v. United Kingdom* [P], no. 14038/88, 7 July 1989
- being practical and effective
 - *Golder v. United Kingdom* [P], no. 4451/70, 21 February 1975
- not being literal
 - *Scoppola v. Italy (No. 2)* [GC], no. 10249/03, 17 September 2009



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- maintaining and promoting democracy
 - *Refah Partisi (the Welfare Party) and Others v. Turkey* [GC], no. 41340/98, 13 February 2003
- being a living instrument
 - *Ferrazzini v. Italy* [GC], no. 44759/98, 12 July 2001
- not ignoring deliberate omissions
 - *Johnston and Others v. Ireland* [P], no. 9697/82, 18 December 1986
- being alert to the need for a change in approach
 - *Stubbings and Others v. United Kingdom*, no. 22083/93, 22 October 1996
- the importance of a European consensus
 - *Dudgeon v. United Kingdom* [P], no. 7525/76, 22 October 1981
 - *Bayatyan v. Armenia* [GC], no. 23459/03, 7 July 2011



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- *Bryan v. United Kingdom*, no. 19178/91, 22 November 1995
- *A., B. and C. v. Ireland* [GC], no. 25579/05, 16 November 2010
- *V. v. United Kingdom* [GC], no. 24888/94, 16 December 1999
- the absence of a rigid doctrine of precedent
- *Demir and Baykara v. Turkey* [GC], no. 34503/97, 12 November 2008
- - a readiness to clarify rulings
- *Schatschaschwili v. Germany* [GC], no. 9154/10, 15 December 2015



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- **Striking of a fair balance between the rights and freedoms**
- Where there is a restriction on a right or freedom, the Court considers whether:
 - - a legitimate aim is being pursued
 - *Khuzhin and Others v. Russia*, no. 13470/02, 23 October 2008
 - - there are relevant and sufficient reasons for the restrictions
 - *Wille v. Liechtenstein* [GC], no. 28396/95, 28 October 1999



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- there is proportionality in the means being used to pursue
- *Hertel v. Switzerland*, no. 25181/94, 25 August 1998
- *De Haes and Gijssels v. Belgium*, no. 19983/92, 24 February 1997
- *Lehideux and Isorni v. France* [GC], no. 24662/94, 23 September 1998
- *Immobiliare Saffi v. Italy* [GC], no. 22774/93, 28 July 1999
- *Ceylan v. Turkey* [GC], no. 23556/94, 8 July 1999
- *Christine Goodwin v. United Kingdom* [GC], no. 28957/95, 11 July 2002