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DRAFTING GROUP ON THE EVALUATION OF THE FIRST EFFECTS OF PROTOCOLS NO. 15 and NO. 16 TO THE EUROPEAN CONVENTION OF HUMAN RIGHTS

(DH-SYSC-PRO)

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Report on the European Court of Human Rights' use of the principle of subsidiarity and margin of appreciation in relation to Protocol No. 15 to the European Convention on Human Rights

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The views and opinions presented herein are those of the author and do not reflect an official position of the Council of Europe.

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1. Introduction

The Steering Committee for Human Rights of the Council of Europe (CoE) is currently evaluating the first effects of Protocols No. 15 and 16. A CDDH drafting Group (DH-SYSC-PRO) has been set up in this regard. At the first meeting of the Drafting group in March 2024, it was decided to request external input for undertaking their mission. More specifically, the following was decided.

> "8. The Group considered that collecting and processing data as regards the margin of appreciation and the principle of subsidiarity is a specialised task which cannot be performed by a member of the Group or the Secretariat. It noted the expertise and experience of Danish National Research Foundation's Centre of Excellence for International Courts and Governance (iCourts) in analysing the case-law of the Court. The Group decided to collect other proposals by 10 April 2024 for possible experts to gather data from publicly accessible sources and process this data, along with any received from the Registry.
>
> 9. The Chair and the rapporteur, with the support of the Secretariat, will consider these proposals. The data gathered as per above will be considered by the rapporteur in the preparation of the draft report, which should be presented to the Group for its examination at its 3rd meeting in 2025."

Consequently, we have prepared a report on the European Court of Human Rights' (ECtHR or Court) use of the principle of subsidiarity and the doctrine of margin of appreciation (MaO) since the coming into force of Protocol No. 15 on 1 August 2021, as well as broader trends in these regards since the beginning of the reform process, starting with the 2010 Interlaken High-Level Conference.

More specifically, the mandate was defined as follows:

"The expert will collect data on the margin of appreciation and the principle of subsidiarity from the Court's judgments, analyse them and prepare a report on the following issues:

1. Parties' reliance on the new preambular recital of the Convention introduced by Article 1 of Protocol No. 15. Overview of the cases in which parties evoked it and their pertinent observations/arguments, if applicable.
2. The Court's reliance on the new preambular recital of the Convention introduced by Article 1 of Protocol No. 15. Overview of the cases in which the Court evoked it and any pertinent observations/arguments.
3. Possible trends in the use of the terms margin of appreciation and principle of subsidiarity in the Court's caselaw regarding all substantive rights as well as the requirement of exhaustion of domestic remedies for the period between Interlaken High-level Conference (18-19 February 2010) and the entry into force of Protocol No.15 (1 August 2021).
4. Possible trends in the use of the terms margin of appreciation and principle of subsidiarity in the caselaw regarding all substantive rights and the requirement of exhaustion of domestic remedies for the period 1 August 2021 to 1 July 2024.
5. Comparison of findings under 3 and 4.
6. Comparison of the Court's conditions/ criteria for accepting that national authorities' decisions are compatible with the Convention for two periods: (1) the period from the Interlaken High-level Conference (18-19 February 20210) to the entry into force of Protocol No.15 (1 August 2021) and (2) the period after 1 August 2021 to 1 July 2024.
    a. Overview of the Court's caselaw examining the quality of national legislative decision-making processes; highlighting the evolution, if applicable, of the

procedural criteria for defining the level of deference to be afforded to States Parties established in the Animal Defenders International line of cases.

b. Overview of the Court's caselaw examining the quality of national judicial decision-making processes; highlighting the evolution, if applicable, of the criteria for defining the level of deference to be afforded to States Parties established in the Axel Springer and Von Hannover (No. 2) line of cases.

7. Comparison of the Court's criteria in assessing whether the requirement of exhaustion of domestic remedies has been fulfilled for two periods: (1) the period from the Interlaken High-level Conference (18-19 February 20210) to the entry into force of Protocol No.15 (1 August 2021) and (2) the period after 1 August 2021 to 1 July 2024."

The parties have discussed the specific analytical strategies and emphasised that more data-driven analysis is preferred to detect the broader picture of developments and trends in these regards and, thereby, provide the CDDH drafting Group the kind of input they currently do not have.

The present report has been produced with the assistance of Nicolai Ole Lillegaard Nyströmer, Data Specialist, and Ioannis Panagis, Computer Scientist, both working at iCourts, Centre for Excellence for International Courts. The structure of the present report largely reflects the mandate outlined above.

2. Parties' and Court's reliance on the new preambular recital of the Convention introduced by Article 1 of Protocol No. 15

This section responds to the following inquiries formulated by the CoE:

"Parties' reliance on the new preambular recital of the Convention introduced by Article 1 of Protocol No. 15. Overview of the cases in which parties evoked it and their pertinent observations/arguments, if applicable."

And

"The Court's reliance on the new preambular recital of the Convention introduced by Article 1 of Protocol No. 15. Overview of the cases in which the Court evoked it and any pertinent observations/arguments."

A search of the case-law of the HUDOC database reveals that Protocol No. 15, in the period from 24 June 2013 (the date Protocol No. 15 was adopted and opened for signature) until 31 July 2021 (the day before it entered into effect), was only cited in eight cases (judgments and decisions). Of these citations, one is in a concurring opinion (**CASE OF ERLA HLYNSDÓTTIR v. ICELAND (No. 3)** (54145/10), one a dissenting opinion (**CASE OF A AND B v. NORWAY** (24130/11 and 29758/11), two were government submissions (**CASE OF OLIARI AND OTHERS v. ITALY** (18766/11 and 36030/11) and **CASE OF PARRILLO v. ITALY** (46470/11)), one was in the assessment of the Court (**CASE OF M.A. v. DENMARK** (6697/18), and three concerned the change in admissibility criteria with regard to the criterium of 'significant disadvantage'.

It can be concluded that during this period applicants did not often rely on Article 1 of Protocol No. 15 and only one government, Italy, used it twice. The same can be said about the Court which only once cited Article 1 of Protocol No. 15. The other citations are in dissenting or concurring opinions or concern other legal matters covered by Protocol No. 15.

In the subsequent period, from 1 August 2021 (the date of coming into force of Protocol No. 15) and until 15 September 2024 (the latest date for harvesting data for the preliminary report), Protocol No. 15 is cited in 46 judgments and 33 decisions.

Some of the *judgments* are linguistic duplicates (in the sense the same judgments exits in both English and French) and it leaves us with 38 judgments once duplicates are removed. In the judgments, applicants only once relied on Article 1 of Protocol No. 15, governments once, and the court 15 times. In a follow-up search to conclude this report with data on the full year of 2024, conducted on the 7 January 2025, we find 5 additional judgments referencing to Protocol No. 15 of which only one judgment is citing Article 1 and subsidiarity (in a dissenting opinion). The data on all judgments with reference to Art. 1 of Protocol no. 15 since 1 August 2021 is included in Appendix 1.

As in the previous period, we can observe that applicants and respondent states are not very frequently citing Article 1 of Protocol No. 15 in judgments. In fact, we find only one applicant and one respondent state citing it during the period. The Court is more actively citing it (15 times), but it is not a high frequency considering the total number of judgments during the period (3.706 judgments of which 570 concern subsidiarity).

In the assessed 32 *decisions* (one duplicate removed) we found seven references to Article 1 and subsidiarity. In a follow-up search to conclude this report, conducted on 7 January 2025, we find one additional decision citing Protocol No. 15, but it does not concern Article 1. The data on decisions is included in Appendix 2.

The clear impression, considering the thousands of judgments and decisions delivered during the period under examination, is that neither the parties nor the Court very frequently rely on the new preambular recital of the Convention introduced by Article 1 of Protocol No. 15. There is a higher frequency following the coming into force of Protocol No. 15, but the number of cases citing it is still very low and close to statistically insignificant.

We also explored whether these references to Art. 1 of Protocol No. 15 concerned a specific subset of Convention articles. We can observe that the articles most frequently involved in these cases are articles 6, 8 and 10. However, these are also among the most litigated provisions of the Convention.

At a more qualitative level, when judgments or decisions do cite Article 1 of Protocol No. 15, we can, however, observe the gradual development of new language to frame subsidiarity. Most significantly, terms to signify subsidiarity that have only sporadically been used previously such as “primary responsibility”, which dates back to a partly dissenting opinion of judge Lagergren in **MARGARETA AND ROGER ANDERSSON v. SWEDEN** (12963/87), is now frequently used.

One new term that can be identified as resulting from the Interlaken process is the notion of “shared responsibility”. It appears the first time in a partly dissenting opinion of Judges Spielmann and Malinverni in **MAKSIMOV v. RUSSIA** (43233/02), delivered at the time of the Interlaken Conference (18/03/2010) and explicitly citing the Interlaken Declaration. They note:

”2. We would like to observe from the outset that it is for the States, through their national courts in the first place, to address violations of Convention rights at the domestic level according to the criteria adopted by the Court. This principle – the principle of subsidiarity – was recently reaffirmed at the Interlaken conference. Indeed, the Interlaken Declaration of 19 February 2010 reiterated *“the obligation of the States Parties to ensure that the rights and freedoms set forth in the Convention are fully secured at the national level”,* called for *“a strengthening of the principle of subsidiarity”* and stressed that “*this principle implies a shared*

responsibility between the States Parties and the Court" (point 2 of the preamble to the Declaration). Moreover, it recalled that "*it is first and foremost the responsibility of the States Parties to guarantee the application and implementation of the Convention"*, and consequently called upon the States Parties *"to commit themselves to* [inter alia] *ensuring ... that any person with an arguable claim that their rights and freedoms as set forth in the Convention have been violated has available to them an effective remedy before a national authority providing adequate redress where appropriate"* (point B. 4. (d) of the Declaration).

3. In our view, the Court should develop its interpretation of Article 13 by requiring that an effective remedy include an examination based on criteria set out by the Court and on its case-law, thereby "forcing" member States to ensure that the Convention is effectively incorporated in the domestic court's application of the law."

Since then, "shared responsibility" appears 36 judgments and is increasingly becoming accepted language for depicting subsidiarity. A recent example is **GRZĘDA v. POLAND** (43572/18) where the Court notes:

"324. The Court considers it appropriate to emphasise in this regard the importance of the principles of **subsidiarity and shared responsibility**. It reiterates its fundamentally subsidiary role in the supervisory mechanism established by the Convention, whereby the Contracting Parties have the primary responsibility of securing the rights and freedoms defined in the Convention and the Protocols thereto (see, for instance, *Garib v. the Netherlands* [GC], no. 43494/09, § 137, 6 November 2017, and *Guðmundur Andri Ástráðsson*, cited above, § 250). Protocol No. 15 to the Convention has recently inserted the principle of subsidiarity into the Preamble to the Convention. The Court further notes that **the principle of subsidiarity imposes a shared responsibility between the States Parties and the Court**, and that national authorities and courts must interpret and apply domestic law in a manner that gives full effect to the Convention" (my emphasis with bold).

Overall, to answer to the questions posed by the CoE on the parties' and the Court's reliance on Article 1 of Protocol No. 15, we observe that it is only rarely explicitly relied upon, neither by parties nor the Court. However, new language for articulating subsidiarity, notably "spared responsibility", has emerged.

These conclusions do not, however, mean that the system has not more broadly changed towards relying increasingly more on subsidiarity. In the next section, we have conducted a broader analysis which can test for the indirect reliance on the changes towards more subsidiarity in the system. Such changes might well have been prompted by the introduction of Article 1 of Protocol No. 15, even if it is not explicitly cited.

3. Broader developments towards subsidiarity in the case-law of the Court

In this section, rather than relying on the explicit citation of Article 1 of Protocol No. 15, we searched for the most relevant legal terms related to subsidiarity. These include "margin of appreciation", "subsidiarity" and "subsidiary role" as well as their French equivalents. Using these keywords allow us to more broadly assess whether subsidiarity has become more central to operation of the Court over time.

More specifically, we searched for the following three terms: "margin of appreciation", "marge nationale d'appréciation", and "marge d'appréciation". In terms of the more structural dimensions of subsidiarity, we searched for the following terms: "subsidiarity", "subsidiary role", "subsidiarité", and "rôle subsidiaire". This identification of keywords builds on previous

work that has used similar approaches.[1] However, we expanded the set of keywords by also exploring the Court's reference to its "subsidiary role" in the European human rights system as an evocation of subsidiarity.[2]

These terms were searched for within the dataset of judgements, which we established using the HUDOC database. To be able to see changes in the longue durée when conducting this analysis, we established a dataset for the period from 1 January 2000, to 31 December 2024. In this period, there are 26.775 judgements. This is not the same number as in the HUDOC database because some documents exist in both English and French (as well as other languages) in the official database. We decided to prioritise English documents over the French, meaning a French document is only included in our investigation if an English translation does not exist. This is only a practical matter and does not impact on findings.3

The central measure we use for the analyses are evocations of the outlined terms referring to subsidiarity. The frequencies which we can observe do not indicate what has been argued by evoking those terms but only that they have been evoked. Put differently, assessing the evocation of subsidiarity this way is a quantitative measure, which is indicative of structural changes, but not a qualitative doctrinal measure per se. It is thus, a proxy for measuring a set of broader changes that can then be further explored using other methods, including doctrinal methods, since the cases are now identified. Another limitation is of course that we can only capture positive evocations. Implicit evocations are not captured by this approach.

Of the 26.775 judgements assembled, in 3.776 judgments there were evocations of "margin of appreciation" / "marge (national) d'appréciation", "subsidiarity"/ "subsidiarité", and/or "subsidiary role" / "rôle subsidiaire" as defined above. Of the total number of 3.776 judgments, "margin of appreciation" / "marge d'appréciation" was evoked in 3.097 cases,. In 1.057 cases, "subsidiarity"/ "subsidiarité", and/or "subsidiary role" / "role subsidiaire"was evoked. Of course, the frequency of evocations or the ratio of evocations vis-à-vis other cases are not necessarily stable over time. Moreover, the different forms of subsidiarity are also evoked differently over time. These differences can be explored statistically.

To visualise broad structural changes, the figures below show the total number of evocations per year, the total number of judgments per year, the ratio[4] of subsidiarity evocations per year compared to the total number of cases, as well as the median of the ratio[5] before and after the 2010 Interlaken Conference.

In the first figure, we only measure the frequency of evocations of "margin of appreciation" / "marge (nationale) d'appréciation" since 2000 in the four dimensions just outlined.

Figure 3.1. Evocation of subsidiarity since 2000 as "margin of appreciation"

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[1] Mikael Rask Madsen, "Rebalancing European Human Rights: Has the Brighton Declaration Engendered a New Deal on Human Rights in Europe?," *Journal of International Dispute Settlement* 9, no. 2 (2018); Mikael Rask Madsen, ""Unity in Diversity" Reloaded: The European Court of Human Rights' Turn to Subsidiarity and its Consequences," *Law & Ethics of Human Rights* 15, no. 1 (2021)..

[2] Please note that we use a conservative approach here to avoid any false positives in the analysis. We estimate that our findings of subsidiarity are probably 2-5 percent too low because of our approach.

[3] Please note that evocations of subsidiarity in dissenting and concurring opinions are not included in this dataset.

[4] Here defined as the percentage of subsidiarity cases of the total number of cases of that year.

[5] Defined as the average ratio of the two periods.

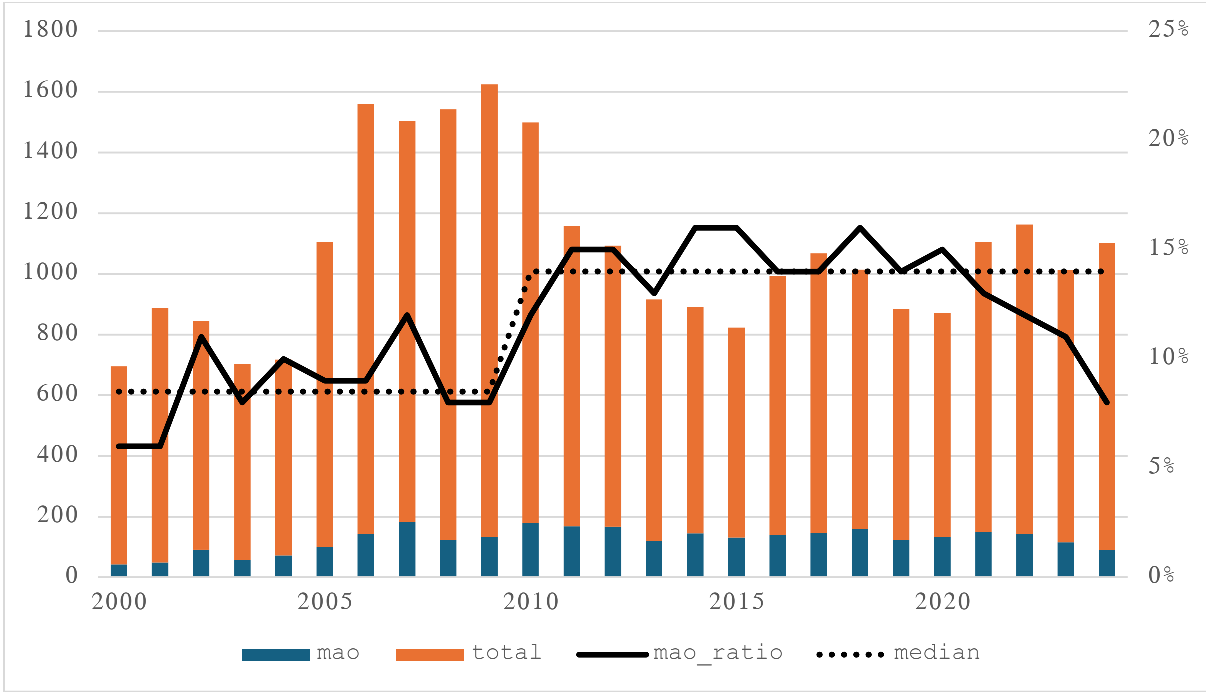
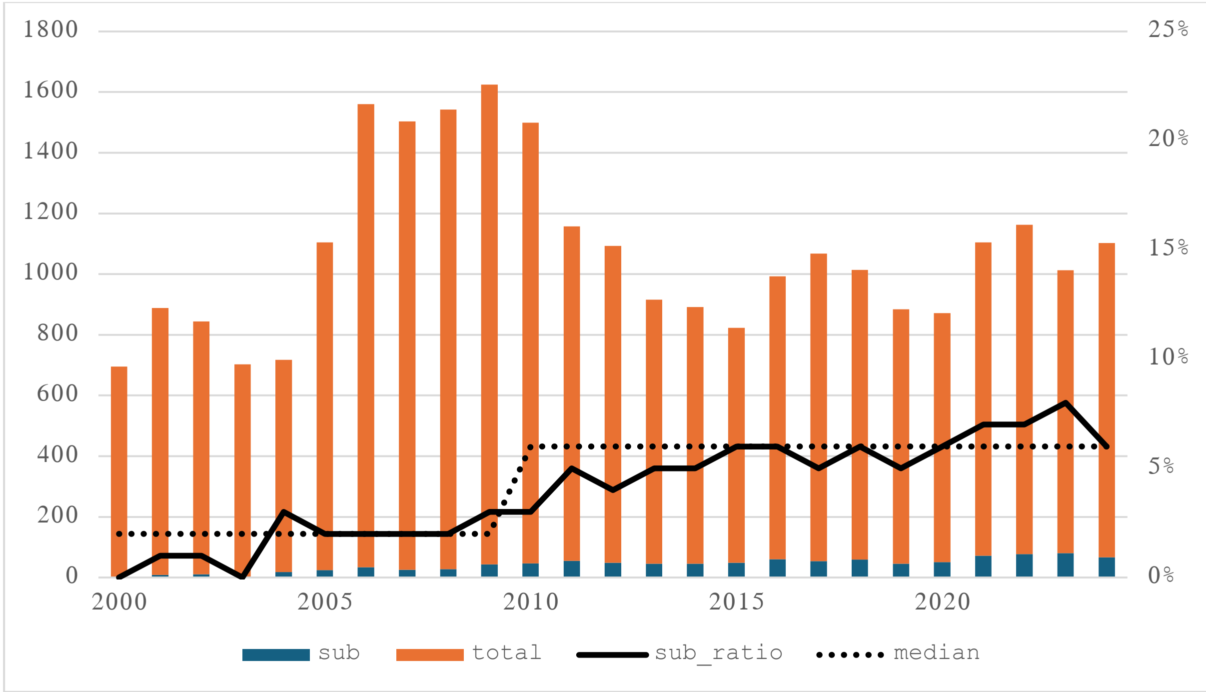


Figure 3.1 demonstrates that the growth in MaO evocations starts around 2010 and continues until around 2020. After 2020 there is a drop in the number of cases which evoke Mao. The ratio towards the end of the second period (2010-2024) is getting close to the median in the first period (2000-2010). In other words, there appears to be a boom in the evocations of MaO during the reform process. This has, however, started to ebb out in recent years. This is a new finding as previous studies have not analysed the period beyond 2020 and, thus, have not noticed this recent change.

While MoA is the historic and operative way of referring to the systems in-built notion of subsidiarity, the terms “subsidiarity” and “subsidiary role” are also appearing in the case-law, albeit initially less frequently and typically referring to the more structural dimensions of the Convention system in terms of the subsidiary role of the Court vis-à-vis national institutions. The evocation of subsidiarity as “subsidiarity” / “subsidiarité”, and/or “subsidiary role”/ “rôle subsidiaire” is visualised below in Figure 3.2.

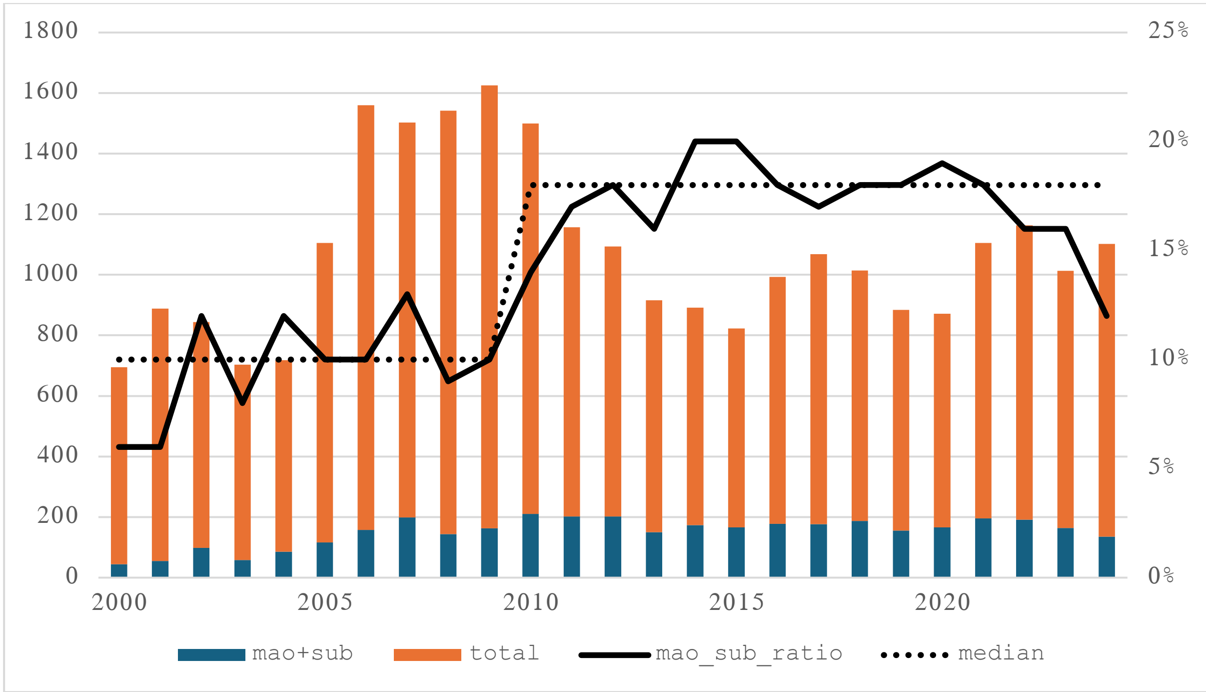
Figure 3.2. Evocation of subsidiarity since 2000 as “subsidiarity” and/or “subsidiary role”



The evocations of “subsidiarity”/ “subsidiarité”, and/or “subsidiary role”/ “rôle subsidiaire” are more recent than MaO evocations as it appears in the graph. They are relatively new terms that only slowly have entered the legal vocabulary of the Court but with an increased frequency all the way until 2024 where we see a light drop.

When we combine the two measurements (“margin of appreciation” *and* “subsidiarity”, or “subsidiary role”), we get the following overall picture of the development of references to subsidiarity since 2000.

Figure 3.3. Evocation of subsidiarity as “margin of appreciation”, “subsidiarity” or “subsidiary role” since 2000



The overall trends that have already been identified are here amplified since the growths and contractions are mostly overlapping in the two datasets. Overall, we see a peak around 2014/2015 and then a beginning decrease since 2020 which continues until the end of the period under scrutiny. The frequency towards the end of the period is close to the median of the first period.

These findings contrast with the idea that the coming into force of Article 1 of Protocol No. 15 has increased attention to subsidiarity. Although, the limited data we introduced above about the direct, explicit reference to Article 1 of Protocol No. 15 suggested growth, the bigger picture shows the reverse development. The fact that subsidiarity was intensively debated during the reform process might have already triggered the effects of that debate in terms of increased attention to the subsidiarity. In other words, the effects (in terms of evocations of subsidiarity) did not await the coming into force of Article 1 of Protocol No. 15. The social-political effects basically preceded the legal effects. Add to that that forms of subsidiarity pre-existed in the doctrine and language of the court, including the very word “subsidiarity”, the expected impact of the introduction of the term in the preamble must always have been assumed to be limited. What is perhaps surprising, however, is that there is an overall decline in evocations of subsidiarity at the precise moment Protocol 15 come into force. An alternative explanation of this development is that subsidiarity is becoming increasingly ingrained as a form of tacit knowledge which is less so spelled out in the judgments. This might account for the observed development.

These statistics have so far collapsed all evocations into one category. To return to the more specific questions posed by the CoE in Section 2 above, we have attempted to divide the evocations between the parties (applicant and respondent state) and the Courts. Since we are dealing with a dataset consisting of 3.776 judgments where subsidiarity is evoked, it is not feasible to hand code who has evoked subsidiarity in each of these many cases. We therefore used AI to train an algorithm to find the sections in each judgement, where respectively the applicant, the respondent state, and the court evoked subsidiarity.

Using our subsidiarity dataset which consists of 3.776 judgments where one or more terms related to subsidiarity occur and to determine which actor (Court, Respondent, or Applicant) is using a given term, the term and its surrounding context were extracted and stored. Over 11,000 contexts were retrieved from the dataset of judgments, far exceeding what could be feasibly analysed manually. To automate this process, we employed a large language model, GPT-4o-mini, to assess the actor associated with each term. GPT-4o-mini is a powerful large language model (LLM) designed for understanding and generating human language. This model has been trained on vast amounts of text data, enabling it to recognize linguistic patterns and contexts effectively.

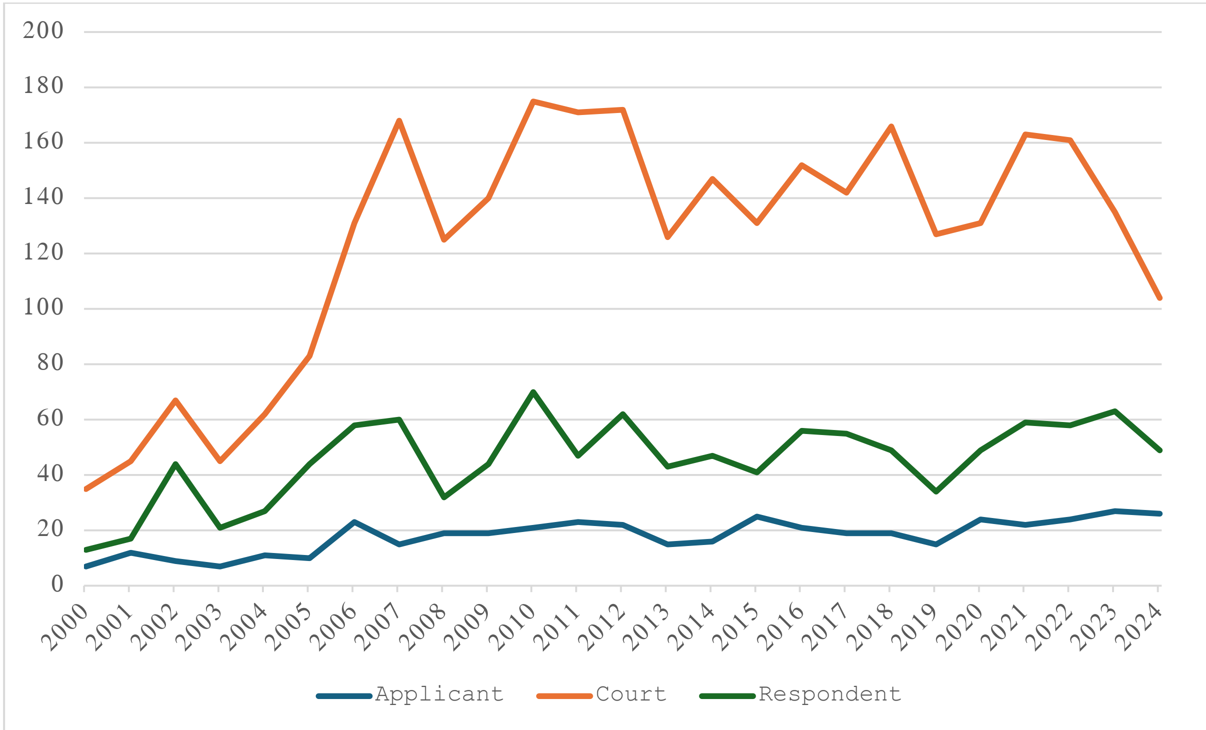
The language model was tasked with analysing the extracted contexts and making an informed decision about who was using the term based on the surrounding text. The primary task involved identifying which actor – Court, Respondent or Applicant – was using the margin/subsidiarity terms within the judgments. By leveraging GPT-4o-mini, we could automate the analysis of over 11,000 contexts of where subsidiarity is evoked. The model analysed the extracted contexts and made informed decisions based on the surrounding text to identify the speaker. The ability of GPT-4o-mini to process language in a nuanced way allowed it precisely to navigate the complexities inherent in legal texts, making it a good choice for this task.

This way of dissecting legal materials has not to our knowledge been tried before and the approach was developed specifically for this report. Since it is new and untested beyond our own testing when developing this analysis, we cannot guarantee that there are not some

inaccuracies. While GPT-4o-mini offers advanced capabilities, there are inherent risks of errors in its output. Misinterpretation of ambiguous language, complex legal phrasing, or context can lead to incorrect attributions of terms to the wrong actor. Such inaccuracies could compromise the validity of our analysis. To mitigate these risks, we have manually cross-checked a sample of the dataset (about 5 percent of the cases) and have found little problems so far. Nevertheless, the findings below should be read in this light and mainly with the aim of observing general trends. This also means that smaller distortions should be of less significance.

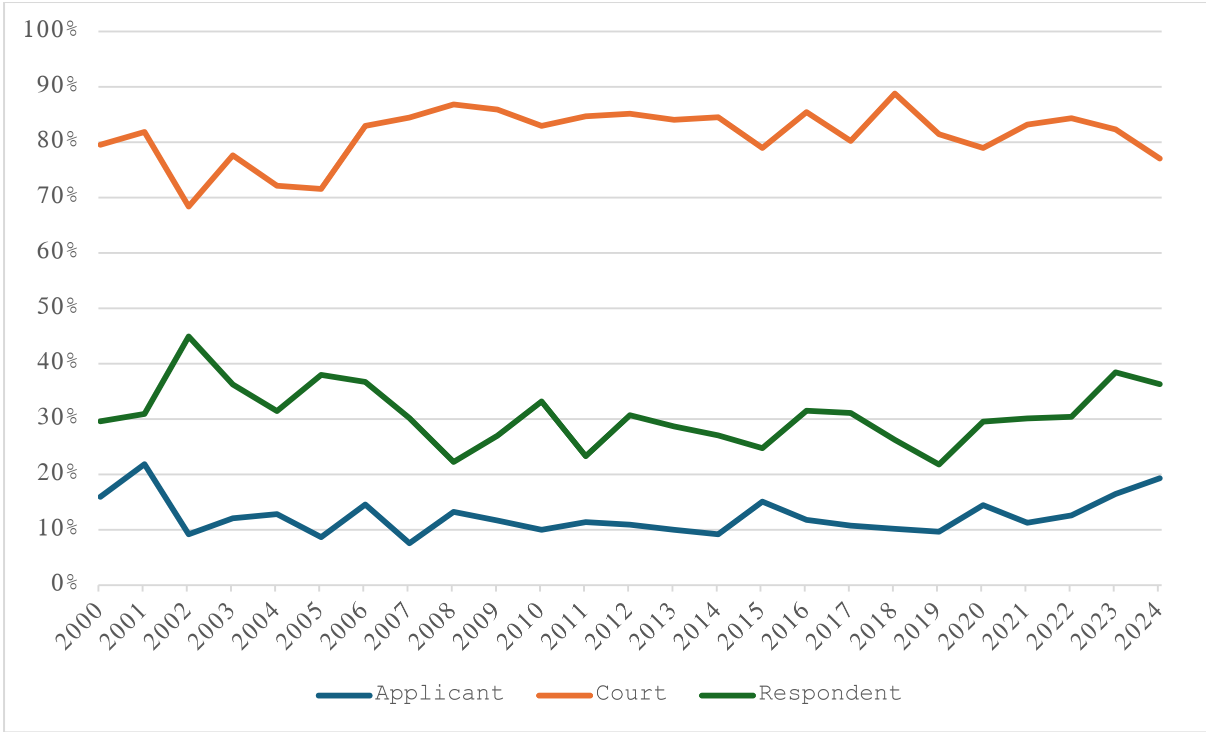
In the next figure we visualise the frequencies in absolute numbers of evocations of subsidiarity by respectively the Court, applicants and respondents by year. We have hand-drawn a black line to indicate when Article 1 of Protocol No. 15 approximately came into force.

Figure 3.4. Evocation of subsidiarity by parties, Court and respondents since 2000 (by year and in absolute numbers)



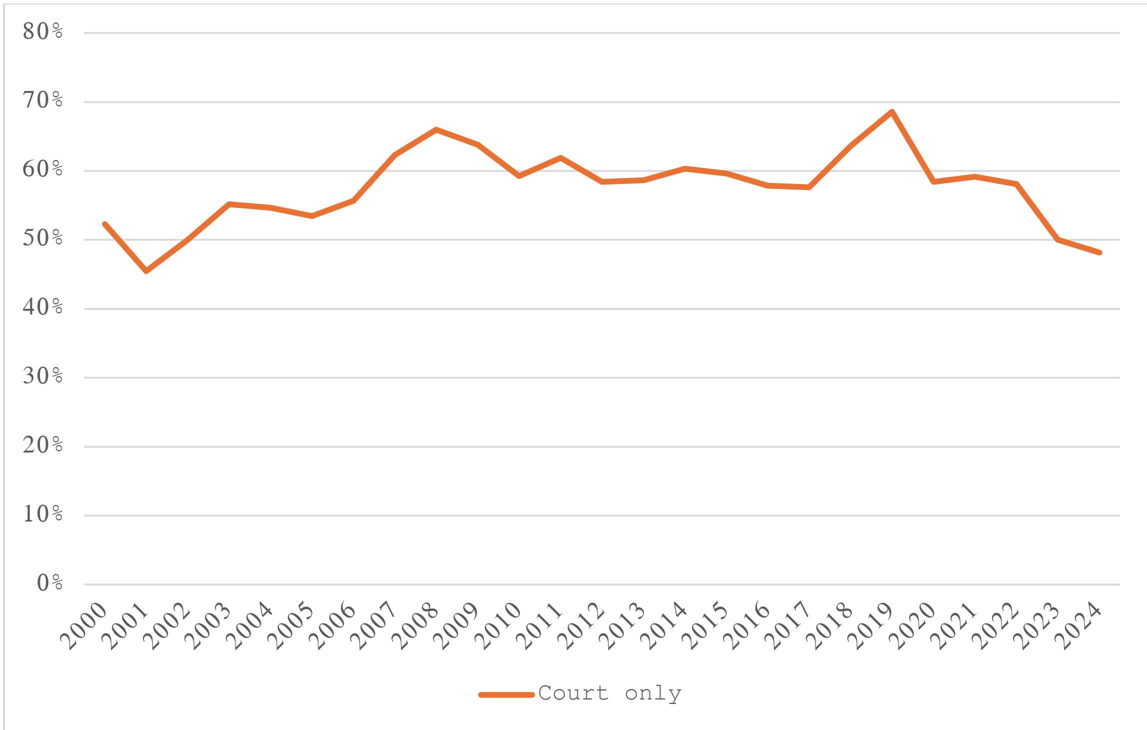
From this graph, it becomes clear that the patterns we have observed so far also apply here. What is most interesting is that the main actor when it comes to evoking subsidiarity is the Court. Unsurprisingly, respondent States evoke subsidiarity more than applicants. We can further tease out these differences by looking at the relative importance of each of the three actors. In the next figure we look at the percentages of each of the three actors of the total set of evocations of subsidiarity (relative). Please note that the percentages do not add up to 100 as in some cases more actors are evoking subsidiarity in the same judgment.

Figure 3.5. Evocation of subsidiarity by parties, Court and respondents since 2000 (relative)



We can further unpack the finding by looking at cases in which the Court alone is evoking subsidiarity and where neither applicants nor respondents are evoking subsidiarity. This is presented in the next graph.

Figure 3.6. Percentage of subsidiarity cases where subsidiarity is evoked only by the Court since 2000



It becomes clear that the Court is actively evoking subsidiarity on its own in roughly half the subsidiarity cases. The Court, in many cases, does that to qualify its role in the present case and to remind the parties of its position in the broader European Convention system.

We can conclude **that subsidiarity, since 2000, has increasingly become important in the case-law although it has declined somewhat over the last few years. We can also conclude that a key driver in the increased importance of subsidiarity in the case-law has been the Court itself. The Court has since 2000 consistently been the main actor in these regards. We also note that since the coming into force of Article 1 of Protocol No. 15 the frequency of evocations has declined somewhat. This suggests that the system had already integrated subsidiarity as an institutional and legal feature and that the coming into force of Protocol No. 15 has not altered that significantly. One can speculate that the decline in evocations is precisely a result of the issue having become more settled over the preceding years and, thus, less so the object of litigation.**

4. Possible trends in the use of the terms margin of appreciation and principle of subsidiarity in the Court's case-law since 2010

This section responds to the following questions formulated by the CoE:

"Possible trends in the use of the terms margin of appreciation and principle of subsidiarity in the Court's case-law regarding all substantive rights as well as the requirement of exhaustion of domestic remedies for the period between Interlaken High-level Conference (18-19 February 2010) and the entry into force of Protocol No.15 (1 August 2021)."

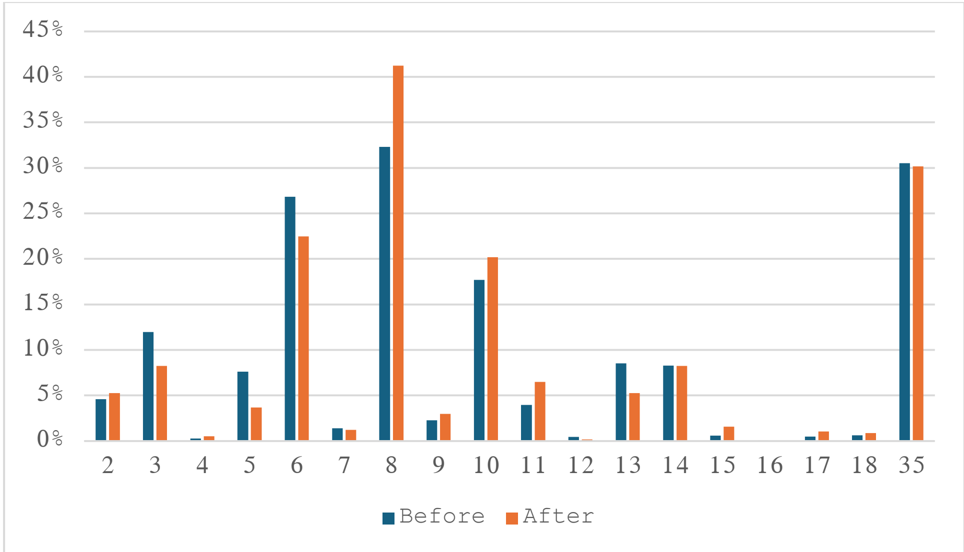
And

"Possible trends in the use of the terms margin of appreciation and principle of subsidiarity in the caselaw regarding all substantive rights and the requirement of exhaustion of domestic remedies for the period 1 August 2021 to 1 July 2024."

To respond to this query, we used the subsidiarity dataset of 3.776 judgments already constructed for the analysis in Section 3 and conducted the following analyses. We explored the dataset to find which convention or protocol articles were at stake in cases that evoked subsidiarity (as defined above in terms of MaO, "subsidiarity", and "subsidiary role". In this section, we look at the two periods from the Interlaken Process and until the coming into force of Protocol No. 15 on 1 August 2021 (with a cut-off date set as 31 July 2021) and the period in which Protocol No. 15 came into force (1 August 2021) until 31 December 2024. Please note we explored a slightly longer period that what was requested as we were able to harvest new data until the end of 2024 for the final report. The first period is identified as "before" and the second as "after": before Protocol No. 15 came into force and starting with the Interlaken Conference *and* after Protocol No. 15 came into force.

In the next figure we identify which ECHR articles are cited in subsidiarity cases, measuring it as a percentage of the total set of subsidiarity cases. In many cases, the same case can cite more articles.

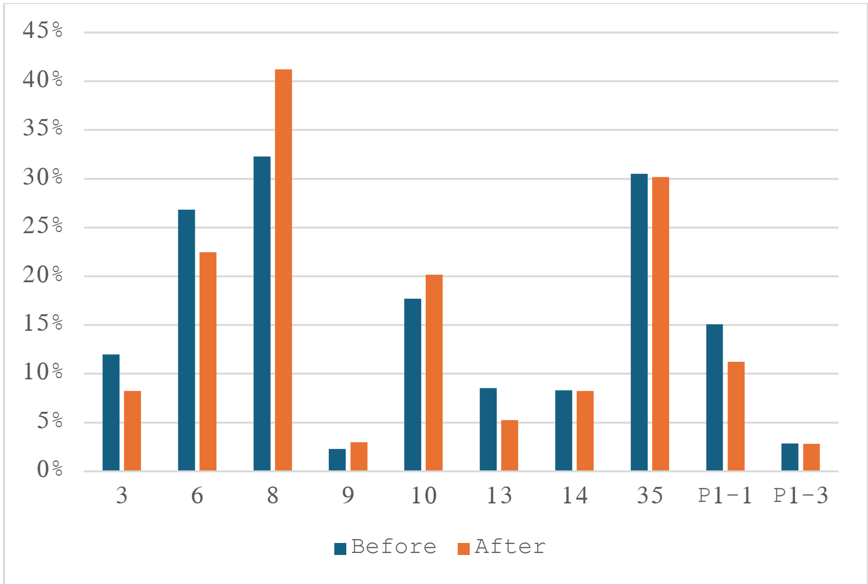
Figure 4.1. Percentage of subsidiarity cases in relation to specific ECHR articles



It is clear from these two figure that the main articles with regard to which subsidiarity is evoked are articles 6, 8, 10, and 35. What we also can observe is that in the second period, after the coming into force of Protocol No. 15, there is a relative growth of references to article 8.

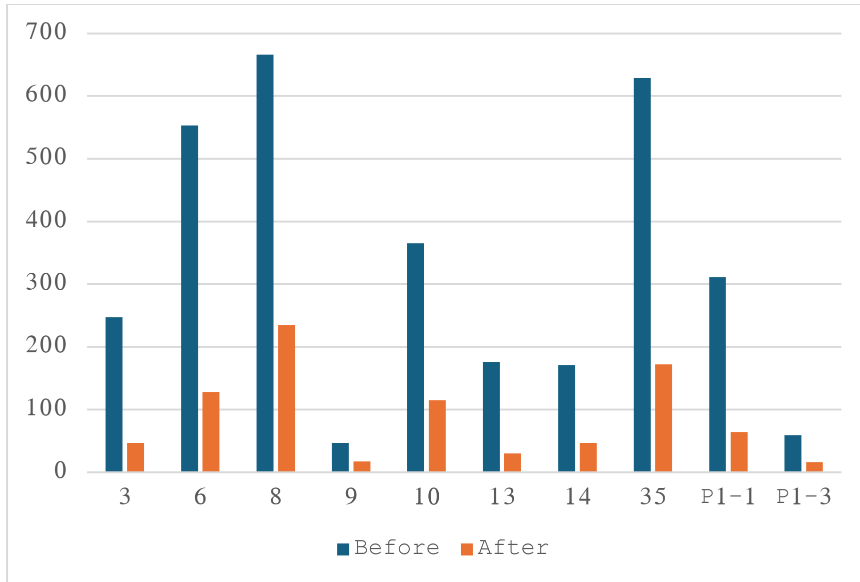
In the following slides, we conduct the same analysis but only include the most important articles from the previous figure and then add substantive articles from the additional Protocols in which we see some levels of subsidiarity references.

Figure 4.2. Percentage of subsidiarity cases in relation to specific ECHR and protocol articles



We can also visualise the same by using absolute numbers instead of percentages to gain further understanding of these developments.

Figure 4.3. Total number of subsidiarity cases in relation to specific ECHR and protocol articles



Based on these three figures, it becomes clear that a few Convention Articles are driving the change, namely ECHR Articles 6, 8 and 35. This finding is consistent with the findings of earlier work which, although based on a much smaller dataset and shorter time-periods, reached similar conclusions.[6]

To conclude these analyses and respond to the questions formulated by the CoE, the main substantive right at stake in subsidiarity cases is Article 8. Among procedural rights, Article 35 is the most relevant and most cited. After the coming into force of Article 1 of Protocol No. 15, Article 8 is the only Convention article which increases its frequency. It is also numerically the most frequent companion to subsidiarity in both periods.

5. Comparison of the Court's conditions/ criteria for accepting that national authorities' decisions are compatible with the Convention

This section responds to the following question formulated by the CoE: "Comparison of the Court's conditions/ criteria for accepting that national authorities' decisions are compatible with the Convention for two periods: (1) the period from the Interlaken High-level Conference (18-19 February 2010) to the entry into force of Protocol No.15 (1 August 2021) and (2) the period after 1 August 2021 to 1 July 2024.

a. Overview of the Court's caselaw examining the quality of national legislative decision-making processes; highlighting the evolution, if applicable, of the procedural criteria for defining the level of deference to be afforded to States Parties established in the Animal Defenders International line of cases.

b. Overview of the Court's caselaw examining the quality of national judicial decision-making processes; highlighting the evolution, if applicable, of the criteria for defining the level of deference to be afforded to States Parties established in the Axel Springer and Von Hannover (No. 2) line of cases."

The first preliminary question is the extent to which these three cases have been cited more widely by other cases since they were adjudicated. *Animal Defenders International v. UK*

[6] Madsen, "Rebalancing European Human Rights: Has the Brighton Declaration Engendered a New Deal on Human Rights in Europe?," 207; Madsen, ""Unity in Diversity" Reloaded: The European Court of Human Rights' Turn to Subsidiarity and its Consequences."

(48876/08) was delivered on 22 April 2013, *Axel Springer AG v. Germany* [GC] (39954/08) was delivered on 7 February 2012 and *Von Hannover v. Germany (No. 2)* (40660/08) was delivered on 7 February 2012. In other words, they were all delivered at the early stages of the Interlaken Process and around the time of Brighton Declaration (2012).

When we search the already assembled subsidiarity network of judgments, we can observe the citation patterns towards these cases: *Animal Defenders International v. UK* has been cited 60 times; *Axel Springer AG v. Germany* 99 times; and *Von Hannover v. Germany (No. 2)* 101 times.[7] We can depict the developments in citations over time to observe possible changes. In the following two figures, we depict developments in absolute numbers but use two different visualisations.

Figure 5.1. Evolution in citations to the three focus cases in absolute numbers

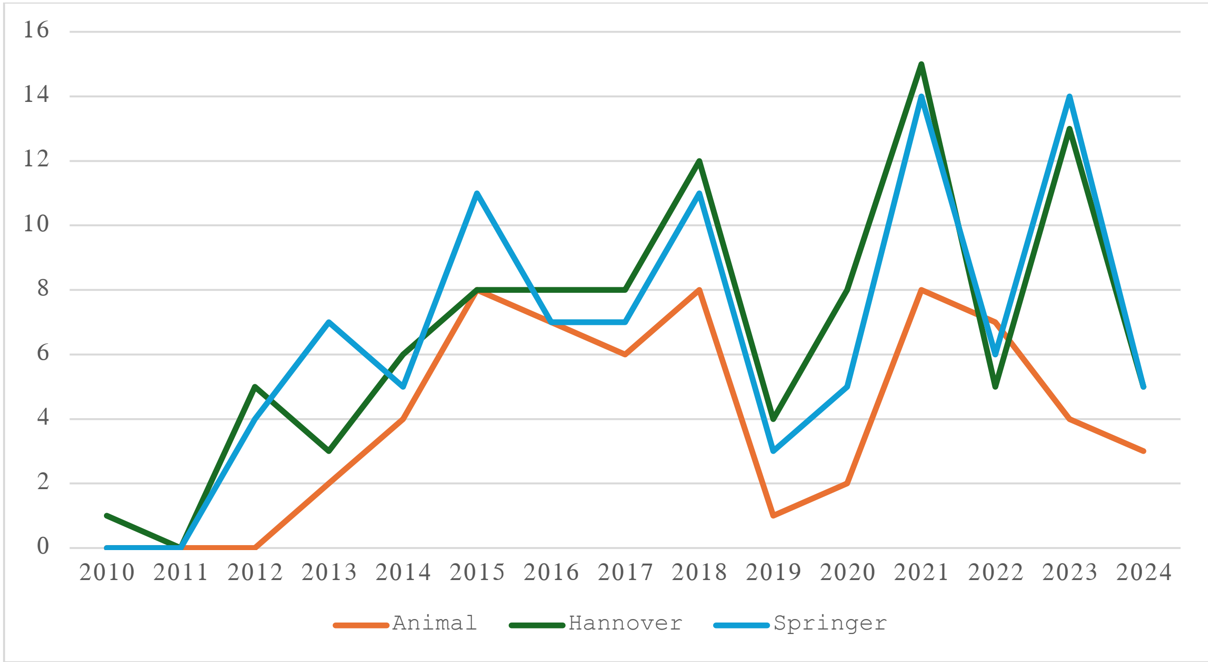


Figure 5.2. Evolution in citations to the three focus cases in absolute numbers (alternative)

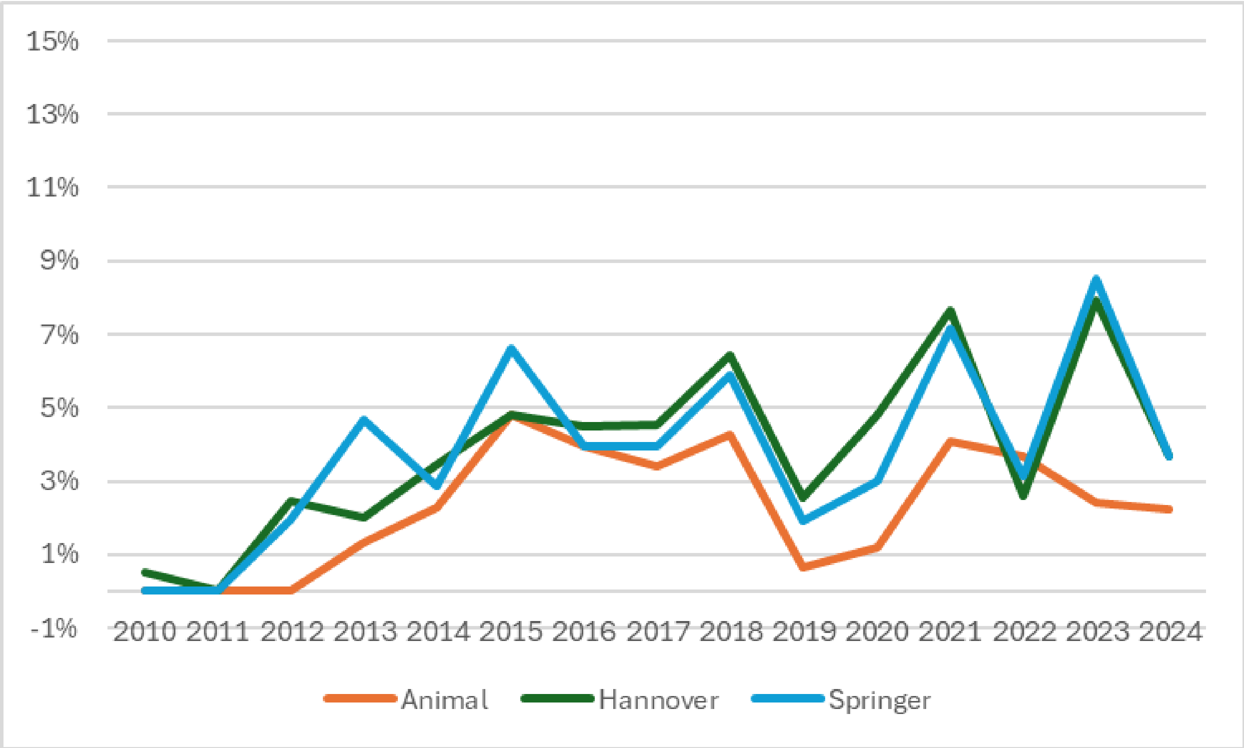
[7] The calculation case of citations is based on the unique identifier of each case in terms of the application number. A case citation is any citation to the case number by another case number, so-called case-to-case citation. If a case is cited multiple times in the same case, it only counts as one citation.

0	Animal	Hannover	Springer
2010	0	1	0
2011	0	0	0
2012	0	5	4
2013	2	3	7
2014	4	6	5
2015	8	8	11
2016	7	8	7
2017	6	8	7
2018	8	12	11
2019	1	4	3
2020	2	8	5
2021	8	15	14
2022	7	5	6
2023	4	13	14
2024	3	5	5

What we can observe is that all three cases have gotten traction and that *Axel Springer AG v. Germany* and *Von Hannover v. Germany (No. 2)* have a slight upward curve that continues after the coming into force of Protocol No. 15. *Animal Defenders International v. UK* remains stable after a short incubation period.

These changes can also be visualised in percentages. In the next figure we measure the percentage of subsidiarity cases which cites these three cases.

Figure 5.3. Evolution in citations to the three focus cases as ratio of all subsidiarity cases



We now observe the same evolution but in percentages. In all three figures we can detect growth, although it is small and close to statistically insignificant. In other words, statistically,

we can note that all three cases continue to be cited throughout the period and that they are among the most cited subsidiarity cases (particularly Axel Springer AG v. Germany and Von Hannover v. Germany (No. 2). This suggests that they have become part of the general jurisprudence of the Court.

To explore more precisely the possible impact on these cases of Protocol No. 15, we employed qualitative doctrinal methods. To detect cases where the possible effect of Protocol No. 15 had impact on the doctrines of the three focus cases, we assessed the 174 cases that cite these three cases and looked for pertinent developments in the doctrine. We found two cases that clearly consider the combined effects of the Interlaken Process and Protocol No. 15, as well as the Brighton and Copenhagen Declarations.

As to the doctrine derived from Animal Defenders International v. UK concerning the quality of national legislative decision-making processes and the level of deference to be afforded to States Parties, the case of M.A. v Denmark [GC](6697/18) is highly pertinent. The case was delivered by the Grand Chamber on 9 July 2021 less than a month before Protocol No. 15 came into force. In fact, in para 150, the Court refers explicitly to Protocol No. 15: “The Court also notes that Protocol No. 15 amending the Convention, including by emphasising the principle of subsidiarity and the doctrine of the margin of appreciation, enters into force on 1 August 2021”.

In the same section on “*The quality of the parliamentary and judicial review*”, a sentence first introduced in *Animal Defenders International v. UK*, the Court first reiterates and underscores its subsidiary role, using an update subsidiarity language (emphasised with bold) that is not found in *Animal Defenders International v. UK*:

“147. Another factor, which has an impact on the scope of the margin of appreciation**, is the Court’s subsidiary role in the Convention protection system**. The Contracting Parties, in accordance with **the principle of subsidiarity**, have the primary responsibility to secure the rights and freedoms defined in the Convention and the Protocols thereto, and in doing so they enjoy a margin of appreciation, subject to the supervisory jurisdiction of the Court. Through their democratic legitimation, the national authorities are, as the Court has held on many occasions, in principle better placed than an international court to evaluate local needs and conditions (see, *inter alia*, *Lekić v. Slovenia* [GC], no. 36480/07, § 108, 11 December 2018)”. (my emphasis with bold).

In the next two paragraphs, the Court states that this applies both to parliamentary processes of law-making and proceedings before domestic courts:

“48. **Where the legislature enjoys a margin of appreciation, that margin will, in principle, extend both to its decision to intervene in a given subject area and, once it has intervened, to the detailed rules it lays down in order to ensure that the legislation is Convention-compliant and achieves a balance between any competing public and private interests**. However, the Court has repeatedly held that the choices made by the legislature are not beyond its scrutiny and has assessed the quality of the parliamentary and judicial review of the necessity of a particular measure. It has considered it relevant to take into account the risk of abuse if a general measure were to be relaxed, that being a risk which is primarily for the State to assess. A general measure has also been found to be a more feasible means of achieving the legitimate aim than a provision allowing a case-by-case examination, when the latter would give rise to a risk of significant uncertainty, of litigation, expense and delay, as well as of discrimination and arbitrariness. The application of the general measure to the facts of the case remains, however, illustrative of its impact in practice and is thus material to its proportionality (see *Animal Defenders International v. the United*

Kingdom [GC], no. 48876/08, § 108, ECHR 2013, with further references). **It falls to the Court to examine carefully the arguments taken into consideration during the legislative process and leading to the choices that have been made by the legislature and to determine whether a fair balance has been struck between the competing interests of the State or the public generally and those directly affected by the legislative choices** (compare *Correia de Matos v. Portugal* [GC], no. 56402/12, § 129, 4 April 2018) (my emphasis with bold).

Compared to *Animal Defenders International v. UK*, the subsidiarity doctrine with regard legislative processes is here far more succinctly spelled out. The same is true as to legal proceedings. The Court notes:

"149. In this connection the Court also notes that the domestic courts must put forward specific reasons in the light of the circumstances of the case, not least to enable the Court to carry out the European supervision entrusted to it. Where the reasoning of domestic decisions is insufficient, and the interests in issue have not been weighed in the balance, there will be a breach of the requirements of Article 8 of the Convention (see, for instance, *I.M. v. Switzerland*, no. 23887/16, § 72, 9 April 2019). **Where, on the other hand, the domestic courts have carefully examined the facts, applied the relevant human rights standards consistently with the Convention and the Court's case-law, and have adequately weighed up the individual interests against the public interest in a case, the Court would require strong reasons to substitute its own view for that of the domestic courts** (see the recent case-law on Article 8 in relation to the expulsion of settled migrants, for example, *Levakovic v. Denmark*, no. 7841/14, § 45, 23 October 2018, and its reference to *Ndidi v. the United Kingdom*, no. 41215/14, § 76, 14 September 2017) (my emphasis with bold).

The doctrine the Court is putting forward is that the ECtHR will show reluctance to intervene if the domestic political and judicial institutions have carefully balanced the competing interests. If they have done so, it would require "strong reasons" not to follow the domestic institutions. The case is concerned with articles 8 and 14 but ended up with a finding of violation of Article 8 on the basis that the balancing exercised by the domestic institutions did not strike a fair balance:

"194. Having regard to all the above considerations, the Court is not satisfied, notwithstanding their margin of appreciation, that the authorities of the respondent State, when subjecting the applicant to a three-year waiting period before he could apply for family reunification with his wife, struck a fair balance between, on the one hand, the applicant's interest in being reunited with his wife in Denmark and, on the other, the interest of the community as a whole to control immigration with a view to protecting the economic well-being of the country, to ensuring the effective integration of those granted protection and to preserving social cohesion (see paragraph 165 above)."

The case is interesting because it very clearly lays out the doctrine as to the quality of national legislative decision-making processes, and that in the politically charged area of immigration law. Compared to *Animal Defenders International v. UK*, it is clear that the doctrine is more sharply articulated in *M.A. v Denmark*. In fact, it is the clearest articulation of the doctrine which we have found. This suggests that the doctrine has evolved over time and perhaps matured around 2021 when it is brought before the Grand Chamber. [8]

[8] This can be compared to earlier cases that deal with similar issues: *Parillo v Italy*, no. 46470/11, 27 August 2015; *Lambert and others v France*, no. 46043/14, 5 June 2015; *S.A.S. v France*, no. 43835/11, 1 July 2014.

As to the doctrine derived *Axel Springer AG v. Germany* and *Von Hannover v. Germany (No. 2)* concerning the quality of national judicial decision-making processes and the definition of criteria for affording States Parties deference, we faced an even larger set of cases. As noted above, both cases are frequently cited within the subsidiarity network and all the way until recently. We will like to highlight one case, which to our opinion best articulates the doctrine.

In the case of *Savran v. Denmark [GC]* (57467/15), delivered on 7 December 2021, that is after the coming into force of Protocol No. 15, the Court reuses some of the arguments from *M.A. v Denmark* regarding judicial processes to wrap up the doctrine in just six lines. It notes:

"189. At the same time, where independent and impartial domestic courts have carefully examined the facts, applying the relevant human rights standards consistently with the Convention and its case-law, and adequately weighed up the applicant's personal interests against the more general public interest in the case, it is not for the Court to substitute its own assessment of the merits (including, in particular, its own assessment of the factual details of proportionality) for that of the competent national authorities. The only exception to this is where there are shown to be strong reasons for doing so (see *Ndidi*, § 76; *Levakovic*, § 45; *Saber and Boughassal*, § 42; and *Narjis*, § 43, all cited above)."

In the concrete case, which is about Articles 3 and 8 and expulsion, the Court found a violation of Article 8 because the domestic courts had not sufficiently and thoroughly enough considered changes in the applicant's life situations in the time-period from the expulsion to when the case came before the courts. As in the previous section, this clearly suggests that the doctrine has matured since the original judgements. In fact, the doctrine seems to have matured in the short timespan from *M.A. v. Denmark* to *Savran v. Denmark*.

To conclude this section, we find that all three cases – Animal Defenders International, Axel Springer, and Von Hannover (No. 2) – remain central nodes in the subsidiarity network and important references for deference granted regarding respectively national legislative decision-making processes and the quality of national judicial decision-making processes. Our qualitative assessment of subsequent developments clearly suggests that the doctrines have matured since then and are now established parts of the jurisprudence. The core elements of the doctrines have not changed but they are now more clearly articulated and, consequently, more easily applicable.

6. Comparison of the Court's criteria in assessing whether the requirement of exhaustion of domestic remedies has been fulfilled

This section responds to the following question formulated by the CoE: "Comparison of the Court's criteria in assessing whether the requirement of exhaustion of domestic remedies has been fulfilled for two periods: (1) the period from the Interlaken High-level Conference (18-19 February 2010) to the entry into force of Protocol No.15 (1 August 2021) and (2) the period after 1 August 2021 to 1 July 2024."

To respond to this question, we explored whether the growing focus on subsidiarity within the Convention system has triggered new ways of assessing the exhaustion of domestic remedies. More specifically, the question is whether we can observe changes in the requirements of how expressly applicants should have evoked their Convention rights at domestic level before launching a claim before the ECtHR before and after the coming into force of Protocol No. 15. In other words, the question is whether increased attention to subsidiarity has had the implication that applicants have to more clearly evoke convention rights before domestic institutions to be admissible before the ECtHR.

In the case *UNSEEN EHF. v. Iceland* (55630/15), this logic is spelled out very clearly. We will cite the decision with some details as it is central to our analysis. The Court notes:

"12. It is a fundamental feature of the machinery of protection established by the Convention that it is subsidiary to the national systems safeguarding human rights. This Court is concerned with the supervision of the implementation by the Contracting States of their obligations under the Convention. It should not take on the role of the Contracting States, whose responsibility it is to ensure that the fundamental rights and freedoms enshrined therein are respected and protected on a domestic level. **States are dispensed from answering before an international body for their acts before they have had an opportunity to put matters right through their own legal system**, and those who wish to invoke the supervisory jurisdiction of the Court as concerns complaints against a State are thus obliged to use first the remedies provided by the national legal system (see, among other authorities, *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 69-70, 25 March 2014)." (My emphasis with bold).

In Para 13 the Court further specifies:

"13. While in the context of machinery for the protection of human rights the rule of exhaustion of domestic remedies must be applied with some degree of flexibility and without excessive formalism, it does not require merely that applications should be made to the appropriate domestic courts and that use should be made of remedies designed to challenge impugned decisions which allegedly violate a Convention right. It normally requires also that the complaints intended to be made subsequently at **the international level should have been aired before those same courts, at least in substance,** and in compliance with the formal requirements and time-limits laid down in domestic law (see, among other authorities, *Azinas v. Cyprus* [GC], no. 56679/00, § 38, ECHR 2004-III and *Nicklinson and Lamb v. the United Kingdom* (dec.), nos. 2478/15 and 1787/15, § 89, 23 June 2015)." (My emphasis with bold).

In Para 14, this is wrapped up in the following way:

"14. The object of the rule on exhaustion of domestic remedies is to allow the national authorities (primarily the judicial authorities) to address the allegation made of a violation of a Convention right and, where appropriate, to afford redress before that allegation is submitted to the Court. In so far as there exists, at national level, a remedy enabling the national courts to address, at least in substance, the argument of a violation of the Convention right, it is that remedy which should be used. If the complaint presented before the Court **has not been put, either explicitly or in substance**, to the national courts when it could have been raised in the exercise of a remedy available to the applicant, the national legal order has been denied the opportunity to address the Convention issue which the rule on exhaustion of domestic remedies is intended to give it. **It is not sufficient that the applicant may have exercised, unsuccessfully, another remedy which could have overturned the impugned measure on other grounds not connected with the complaint of violation of a Convention right. It is the Convention complaint which must have been aired at national level for there to have been exhaustion of "effective remedies".** It would be contrary to the subsidiary character of the Convention machinery if an applicant, ignoring a possible Convention argument, could rely on some other ground before the national authorities for challenging an impugned measure, but then lodge an application before the Court on the basis of the Convention argument (see among others, *Azinas,* cited above, § 38, and *Nicklinson and Lamb,* cited above, § 90)." (My emphasis with bold).

The decision, delivered on March 2018 and thus before the coming into force of Art. 1 of Protocol 15, ultimately found the application inadmissible because:

“18. In the Court’s view, it is clear from the applicant company’s written submissions before the Supreme Court **that it did not rely on its Article 6 rights explicitly, nor did it frame its complaints in such a way that it could be considered to have sufficiently invoked its rights under Article 6 of the Convention**, which it raises now before the Court, in substance.

19. In these circumstances, the Court concludes that even assuming that Article 6 of the Convention applies to proceedings of this nature, **the applicant company did not provide** the Icelandic courts, notably the Supreme Court, with the opportunity which is in principle intended to be afforded to a Contracting State by Article 35 of the Convention, namely **the opportunity of addressing, and thereby preventing or putting right, the particular Convention violation alleged against it** (see among others, *Azinas,* cited above, § 41). (My emphasis with bold).

Within the first period under consideration (before the coming into force of Protocol No. 15), this decision is the clearest example of explicitly linking subsidiarity to admissibility which we have found. The decision refers to two well-known cases, namely *Vučković and Others v. Serbia* (preliminary objection) [GC], (17153/11 and 29 others) and *Azinas v. Cyprus* [GC] (56679/00). The case itself, *UNSEEN EHF. v. Iceland*, has not gotten much traction, and it is only cited in two other cases, both also involving Iceland as respondent state.[9]

In *Vučković and Others v. Serbia*, delivered by the Grand Chamber on 25 March 2014, the Court first underlines its subsidiary role (para 69-70), using language very similar to the just cited paragraphs of *UNSEEN EHF. v. Iceland*, and then adds the well-known formula of Article 35, that it “requires that the complaints intended to be made subsequently in Strasbourg should have been made to the appropriate domestic body, **at least in substance**” (para 72) (My emphasis with bold). It further adds in para 75 that:

“It would be contrary to the subsidiary character of the Convention machinery if an applicant, ignoring a possible Convention argument, could rely on some other ground before the national authorities for challenging an impugned measure, but then lodge an application before the Court on the basis of the Convention argument”

Finding the application inadmissible, it concludes in para 90:

“Thus, the applicants failed to take appropriate steps to enable the national courts to fulfil their fundamental role in the Convention protection system, that of the European Court being subsidiary to theirs”

Vučković and Others v. Serbia is a key case regarding the tightening of the requirements of exhaustion of local remedies because of the subsidiary role of the Court. However, compared to *UNSEEN EHF. v. Iceland*, it is clear that *UNSEEN EHF. v. Iceland* tightens it further.

Another key case cited in *UNSEEN EHF. v. Iceland* is *Azinas v. Cyprus* delivered already on 28 April 2004. This case introduces the flexibility standard in the assessment of Art. 35 that the other cited cases refer to. It states: “the rule of exhaustion of domestic remedies **must be applied with some degree of flexibility and without excessive formalism**, it does not require merely that applications should be made to the appropriate domestic courts and that use should be made of remedies designed to challenge impugned decisions which allegedly violate a Convention right. **It normally requires also that the complaints intended to be made subsequently at the international level should have been aired before those same**

[9] CASE OF BJARKI H. DIEGO v. ICELAND (30965/17) and CASE OF GESTUR JÓNSSON AND RAGNAR HALLDÓR HALL v. ICELAND (68273/14 and 68271/14).

courts, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law' (para 38)". The term "explicitly" found in *UNSEEN EHF. v. Iceland* does also appear in *Azinas v. Cyprus*, which – like a long series of cases – requires that the ECHR matter has been raised "at least in substance" or "either explicitly or in substance". In a later case *Peacock v. UK* (no. 52335/12) delivered in 2016, "a passing reference" to convention rights was insufficient for fulfilling the requirements, thus upholding the doctrine of "at least in substance".

These developments in the case-law in the first period are necessary for establishing a benchmark to detect possible new doctrinal developments following the coming into force of Protocol No. 15. It is clear that with *UNSEEN EHF. v. Iceland* the Court was seeking to tighten the requirements.

After the coming into force of Protocol No. 15 the most striking case to our knowledge is *Lee v. UK* (no. 18860/19) which has been seen as introducing higher subsidiarity requirements for exhausting domestic remedies that differ from those that already established in cases like *Azinas v. Cyprus*, *Peacock v. UK* and *Vučković and Others v. Serbia*. In those cases, the applicants were required to put the Convention complaint at "least in substance" to the national courts or "either explicitly or in substance". In Para 69 the Court notes: "The applicant in the present case did not invoke his Convention rights **expressly** at any point in the domestic proceedings." This is a new formulation and *Lee v. UK* seems to heighten the requirements for admissibility in terms of how expressly the case has been argued in ECHR terms at domestic level.

In *Lee v. UK*, the applicants relied on domestic law that enacted Convention rights, but they never "aired, either explicitly or in substance" the Convention rights under contention (para 68). The novelty is arguably that Convention rights have to be argued more **expressly** in domestic litigation than previously, and that the ECtHR is making this a formal admissibility criterium and thereby deviating from previous case-law.

As we have already seen, in *UNSEEN EHF. v. Iceland* such a requirement was in the making (see also *Peacock v. UK*), but it is more clearly articulated in *Lee v. UK*. According to a search in HUDOC, *Lee v. UK* has however only been cited once.[10] Hence, like *UNSEEN EHF. v. Iceland*, it might introduce a higher threshold, but it does not appear to have been picked up by other cases subsequently. The ECtHR's "Practical Guide on Admissibility Criteria" (updated in August 2024) does also not mention any of these recent cases. This suggests that some of the older cases such as *Azinas v. Cyprus*, *Peacock v. UK* and *Vučković and Others v. Serbia* are still more relevant for generally understanding the doctrine but that are indications of change.

We can explore this question statistically. For this purpose, we constructed a different dataset that includes all Article 35 cases (judgments and decisions) from 19 February 2010 (Interlaken) until 31 December 2024. This is a total of 10.590 documents, including 2.008 judgments and 8.582 decisions. The data is derived from the HUDOC database which is incomplete when it comes to admissibility decisions. The metadata provided by HUDOC is also incomplete in some instances. We note this because we have found an amount of inconsistency in the metadata provided in HUDOC and this obviously impacts our dataset. This should be kept in mind when analysing the findings and they should be read as providing indications of general trends in the case-law.

[10] CASE OF MACATĖ v. LITHUANIA (61435/19).

Using this dataset, we find that *Lee v. UK* has not been cited by other cases regarding Article 35 in this dataset. Within the dataset, *UNSEEN EHF. v. Iceland* has been cited once, and *Peacock v. UK* has been cited three times regarding Article 35. However, *Azinas v. Cyprus* has been cited 44 times regarding Article 35 since the Interlaken Conference and all the way until recently (7 times since the coming into force of Protocol No. 15). *Vučković and Others v. Serbia* has been cited 206 times and is, thus, a highly cited case within the Article 35 network in the period from Interlaken until 31 December 2024. We find that *Vučković and Others v. Serbia* has been cited 83 times since the coming into force of Protocol No. 15.

These empirical findings suggests that *Azinas v. Cyprus* and particularly *Vučković and Others v. Serbia* are still leading cases and that the requirements stipulated in these cases are still largely prevailing. Conversely, the heighted criteria found in for example *UNSEEN EHF. v. Iceland* and *Lee v. UK* have not been picked up in a significant number of cases. Considering that *Azinas v. Cyprus* was judged on 28 April 2004 and *Vučković and Others v. Serbia* on 25 March 2014, the coming into force of Article 1 of Protocol No. 15 does not seem to have substantively impacted on these requirements.

These conclusions are, it should be underlined, alone based on the analysis conducted on a sample of cases generally assumed to be of significance in these regards. It is probably possible to identify other cases that concern the combined issues of subsidiarity and Article 35 to better assess how the turn to subsidiarity has impacted the exhaustion of domestic remedies.

Appendix 1 – References to Art. 1 of Protocol No. 15 in judgments since 1 August 2021

		Appl	Gov	Court	Concur op	Diss op
1	CASE OF COMMUNAUTÉ GENEVOISE D'ACTION SYNDICALE (CGAS) v. SWITZERLAND				1	
2	CASE OF GRZĘDA v. POLAND			1		1
3	CASE OF LINGS v. DENMARK			1		
4	CASE OF KAVALA v. TÜRKİYE		1	1		
5	CASE OF THÖRN v. SWEDEN			1		
6	CASE OF PINKAS AND OTHERS v. BOSNIA AND HERZEGOVINA			1		
7	CASE OF K.K. AND OTHERS v. DENMARK			1		
8	CASE OF FEDOTOVA AND OTHERS v. RUSSIA					1
9	CASE OF HALET v. LUXEMBOURG	1				
10	CASE OF SANCHEZ v. FRANCE			1		
11	CASE OF TULEYA v. POLAND					1
12	CASE OF HUMPERT AND OTHERS v. GERMANY					1
13	CASE OF SNIJDERS v. THE NETHERLANDS					1
14	CASE OF VEREIN KLIMASENIORINNEN SCHWEIZ AND OTHERS v. SWITZERLAND			1		
15	AFFAIRE LIDIYA NIKITINA c. RUSSIE			1		
16	AFFAIRE BOURAS c. FRANCE			1		
17	AFFAIRE AVCIOĞLU c. TÜRKIYE			1		
18	AFFAIRE ȘTEFAN-GABRIEL MOCANU ET AUTRES c. ROUMANIE			1		
19	AFFAIRE EXECUTIEF VAN DE MOSLIMS VAN BELGIË ET AUTRES c. BELGIQUE			1		
21	AFFAIRE LEFEBVRE c. FRANCE			1		
22	CASE OF Z.A. v. IRELAND			1		
23	CASE OF SOUROULLAS KAY AND ZANNETTOS v. CYPRUS					1
	Total	1	1	15	1	6

Appendix 2 – References to Art. 1 of Protocol No. 15 in decisions since 1 August 2021

								Appl	Gov	Court

1	OLKHOVIK ET AUTRES c. RUSSIE									1
2	M c. FRANCE									1
3	THEVENON c. FRANCE									1
4	VLAD c. ROUMANIE									1
5	DOHNAL v. THE CZECH REPUBLIC									1
6	FOUGASSE c. FRANCE									1
7	GERNELLE ET SA SOCIÉTÉ D'EXPLOITATION DE L'HEBDOMADAIRE LE POINT c. FRANCE									1
	total									7

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