

The Companion to the European Convention on Human Rights

Edited by

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administration of justice” [*García Ruiz v. Spain* [GC], no. 39544/96, 21 January 1999, para. 26].

Under what scholars have dubbed as “proceduralisation”, two typologies can be identified. Under the first typology, the Court has come to increasingly emphasise the importance of implied procedural safeguards for the effectuation of other Convention rights “with varying degrees of detail and consistency” [Brems, E., “Procedural protection: an examination of procedural safeguards” in: Brems, E., Gerards, J. (eds), *Shaping Rights in the ECHR: The Role of the European Court of Human Rights in Determining the Scope of Human Rights* (Cambridge 2014), pp. 137–138]. According to the Court, Articles 13, 6, 5, and Articles 1, 2, 3, 4 of Protocol no. 7 – have been identified as locales explicitly requiring procedural guarantees; and – Article 8, Article 1, of Protocol no. 1, Articles 2, 3, 4, 9, 10, 11 and 12, Article 3 of Protocol no. 1, and Articles 2 and 4 of Protocol no. 4 – as provisions where the Court has added implied procedural protection [e.g. *Muhammad and Muhammad v. Romania* [GC], no. 80982/12, 15 October 2020, paras 115, 119–127, 129; with respect to implied procedural safeguards and inadequacy thereof more generally, see *Pindo Mulla v. Spain* [GC], no. 15541/20, 17 September 2024, paras 144, 175–184].

Although it may be difficult to differentiate in practice, a distinction is to be made between procedural versus substantive review of the domestic authorities’ reasoning by the Court. In procedural review, the assessment focuses on whether or not domestic judicial authorities made sufficiently clear why a particular judgment or decision was reached and that it was not reached arbitrarily. In substantive review, the Court’s assessment is focused on whether or not reasons provided can sustain the outcome of a domestic judgment or decision, in light of material Convention standards. Compliance from a procedural perspective must, in all cases, be considered a prerequisite, in that the other forms of review cannot be effectuated if the reasons underlying a specific judgment or decision are absent or unclear.

Most sophisticatedly developed in Article 6, reasoning duties occur in two implied formats within this provision, namely as a self-standing right and a procedural safeguard vis-à-vis other fairness rights [for the distinction, see *Moreira Ferreira v. Portugal* (No. 2) [GC], no. 19867/12, 11 July 2017, para. 84; see: **Fair Hearing (Trial)**]. As a self-standing right under Article 6, the obligation of courts and tribunals to provide reasons is guaranteed under the notion of fairness in paragraph 1 of Article 6 (civil and criminal limbs). Inadequacy of reasoning can lead the Court to establish a violation of Article 6 on that basis alone, as first explicitly established by the Court in *Van de Hurk v. the Netherlands* [no. 16034/90, 19 April 1994, para. 6]; *Ruiz Torija v. Spain*, no. 18390/91,

Drawing upon the “reasonable expectation of privacy”, the Court has also developed a doctrine of “legitimate expectations”. Everyone, including people known to the public, has a legitimate expectation that their private life will be protected [*Von Hannover v. Germany*, no. 59320/00, 24 June 2004, paras 50–69]. This doctrine relates to the justifiability of a rights restriction and has often been applied in cases involving a balancing between the right to respect for private life under Article 8 and freedom of expression under Article 10 [see also: **Balancing of Rights**].

Further reading

Gómez-Arostegui, H.T., “Defining Private Life Under the European Convention on Human Rights by Referring to Reasonable Expectations” 35(2) *California Western International Law Journal* 153 (2005).

Van Der Sloot, B., “Expectations of Privacy: The Three Tests Deployed by the European Court of Human Rights” in: Hallinan, D., Leenes, R., and De Hert, P. (eds), *Data Protection and Privacy Enforcing Rights in a Changing World* (Hart Publishing 2022).

Reasoning of Judicial Decisions

Paulo Pinto de Albuquerque and Pinar Ölçer

Nowhere in the Convention text is there an explicit reference to a duty of judicial reasoning. The text, however, is not indifferent to the notion of reasoning; see for explicit references thereto, Article 5(2) (not *per se* in a judicial decision, to provide reasons for arrest and charge); Article 15(3) (the duty of any High Contracting Party availing itself of the right of derogation to provide reasons therefore); Articles 45(1), 46(1) (for own reasoning duties of the Court, in relation to judgments and decisions, and advisory opinions, respectively); Article 1(1)(a) of Protocol no. 7 (the duty to allow lawfully resident aliens to submit reasons against expulsion); Article 1(3) of Protocol no. 16 (the duty of courts requesting advisory opinions to provide reasons therefore), and Articles 2(1) and 4(1) of Protocol no. 16 (the duty of a Grand Chamber panel to give reasons for the refusal to accept a request for an advisory opinion and the duty to give reasons for advisory opinions, respectively). That the decisions and judgments of courts and tribunals are to be reasoned may however be considered an over-arching Convention principle, “linked to the proper