

# The limits of transnational justice

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## VALORISATION ADDENDUM

### 1) What is the social relevance of the research results?

The effectiveness of supranational courts in remedying some of the deficiencies of domestic legal systems is a highly relevant question, particularly in the European context. It has long been a topic of academic discussion, not least since the late 1990s when the European Convention on Human Rights (ECHR) has been regarded as the most effective human rights regime in the world. Due to the social and political implications of the issues brought before the European Court of Human Rights (ECtHR/Court), the relationship between the ECHR and domestic orders has also been a topic of public debate. From its highly controversial rulings which caused deep rifts within and between member states (e.g. *Lautsi v. Italy*) to its unpopular interventions in domestic political debates on behalf of disenfranchised individuals (e.g. *Ilias and Ahmed v. Hungary*, *Hirst v. UK*), the Court has long been an object of public debate in Europe. With its jurisdiction over 800 million in 47 countries, its importance for the lives of ordinary individuals is undisputable. As such, the research results are highly relevant for legal practitioners and NGOs across Europe.

Domestic and international debates on the ECtHR have long suffered from lack of nuance. In one extreme, authoritarian, populist or nationalist circles in countries ranging from the United Kingdom to Russia have depicted the Court in a demonizing way. In the other, the ECtHR's friends in the academic, policy and legal communities have failed to adopt a critical approach to it, depicting the continuity of systemic violations in member states merely as a compliance problem. Clearly, there is need for an impartial analysis of the ECHR system on the basis of empirically grounded in-depth case studies. This thesis fills this crucial gap with respect to Turkey. Despite being in the ECHR system for over 60 years and subject to the ECtHR oversight for nearly 30, Turkey remains an authoritarian state engaged in gross human rights abuses. In addressing this puzzle, the thesis shows that the Court has never made full use of the jurisprudential tools and doctrines available to it in its oversight of state violence and the systematic infringement of minority rights. In showing that this reflects a political choice on the part of the Court rather than stemming from inherent limitations of supranational judicial review, the research results offer theoretical insights on the limitations and possibilities for consequential engagement by supranational courts in authoritarian settings. They also offer policy-relevant contributions to the public debate on the ECtHR.

The research results are also highly relevant for the ongoing debates on reforming the ECHR system. The findings concerning the adverse domestic implications of the application of the pilot judgment mechanism to the Kurdish cases put into question the recent calls by scholars, policymakers and practitioners for constitutionalizing the ECtHR by, *inter alia*, an enhanced application of the subsidiarity principle. In concluding, on the basis of the Turkish case, that the principle of subsidiarity should not be applied across the board without due attention to differences between the politico-legal regimes of contracting parties, the research results will

contribute to this debate. In that regard, the results are particularly timely and relevant in light of the executive crackdown of judiciaries and/or the authoritarian tendencies of high courts in several post-communist European countries. More detailed discussion of the social relevance of my research findings can be found in the Conclusion chapter of my thesis.

## **2) To whom are the research results of interest?**

The research results are of interest first and foremost to the ECtHR. The process-oriented analysis offered in the thesis provides the Court with the unique opportunity to reflect back on its engagement in one of the most repressive state practices in recent European history. For a supranational court used to being praised for its progressiveness and effectiveness, the findings concerning the Court's failure to make full use of its review powers in protecting the Kurds against systematic state violence and structural discrimination offers the chance to engage in critical self-reflection.

The research results are also relevant for the global and regional non-judicial human rights monitoring systems. One of the findings of the thesis is the remarkable disconnect between the ECtHR and the Council of Europe's (CoE) non-judicial mechanisms in their assessment of Turkey's politico-legal regime. Unlike the former, the latter has made full use of their powers - limited and non-binding as they may be - to document Turkey's egregious human rights record. The CoE's Commissioner for Human Rights has been particularly active and visible in this regard. Making use of his newly gained power under Article 36 of the ECHR, the Commissioner has been submitting critical third-party interventions to the Court in cases concerning serious violations, including those in the Kurdish region. In highlighting this contribution, the research results will not only draw public attention to the less-known work of the Commissioner but will also be a useful reference point for his monitoring work.

Next, the results will be highly relevant for policymakers within the ECHR system, including those involved in monitoring the domestic execution of ECtHR rulings. One of the research findings, as discussed in detail in Chapter 6, is that the Committee of Ministers (CoM) has prematurely closed its examination of Turkey's execution of ECtHR rulings concerning gross human rights abuses. These findings will contribute to debates concerning the effectiveness of the ECHR monitoring mechanism.

The results will also be very relevant for decision makers at the EU institutions and member states. One of the research findings is that the limited progress Turkey has made in the area of human rights, including in the selective and limited execution of ECtHR judgments, speaks to the effectiveness of the EU accession process, not that of the ECHR regime. The findings show that just as it was premature for the EU to declare Turkey an accession country in late 2004, it was also a mistake to effectively halt the accession talks with the Turkish government very soon after the process started. In demonstrating the adverse implications of this outcome for Turkey's adherence to the ECHR norms, the results will invite the EU

decision makers to a candid reassessment of their responsibility in the dramatic collapse of democracy and the rule of law in Turkey.

Finally, the research results will be highly relevant for lawyers and NGOs who litigate before the ECtHR as well as for civil society organizations which invoke the ECHR norms in their advocacy and monitoring work. The longitudinal analysis of the political, legal, institutional and financial challenges of mobilizing the ECHR system against state violence, and of the evolution of the Court's case law in response to such mobilization and to broader political and legal developments will be useful for minorities and their advocates in their pursuit of justice in Strasbourg. The finding that the British lawyers' premature withdrawal from the Kurdish cases to engage in strategic litigation on behalf of Chechen victims against Russia has adversely affected the impact of Kurdish legal mobilization at the ECtHR will be highly relevant for transnational advocacy networks.

**3) Into which concrete products, services, processes, activities or commercial activities will the research results be translated and shaped?**

The research results can be used in multi-faceted ways by various actors. First and foremost, the lessons learned from the limited impact of Kurdish legal mobilization at the ECtHR offer invaluable and unique insights for legal practitioners and NGOs who mobilize the ECHR on behalf of minorities. The longitudinal analysis of the experience of Kurdish human rights lawyers in Strasbourg based on primary empirical data generated from fieldwork and archival material offers unique insights into the challenges of transnational legal mobilization in authoritarian settings. The research findings can be used by minorities and their advocates in developing legal strategies. They will be beneficial for the ECtHR in reflecting back on its jurisprudential history for developing and, in some cases, changing its case law. They will be useful for national decision makers in designing laws and policies, as well as for civil society organizations in calling for legal reform. Finally, they can be used in legal education for the training of future litigators on effective human rights advocacy.

**4) To what degree can research results be called innovative in respect of the existing range of products, services, processes, activities and commercial activities?**

The research results are innovative due to the process-oriented and interdisciplinary research methodology used in producing them. Based on the premise that a methodologically sound and theoretically meaningful approach to assessing the ECtHR's effectiveness requires a longitudinal analysis, the thesis has analyzed the impact of the broader political developments on the ECtHR's receptiveness to Kurdish claims. In doing so, it did not confine itself to the doctrinal and top-down approach of judicial impact studies, but also adopted the social science methodology in studying the bottom-up processes of legal mobilization at the ECtHR. It is the combination of these methodological approaches which has produced innovative research results which show that the Court's impact on Turkey's

human rights policies, specifically in the context of the Kurdish conflict, and its receptiveness to Kurdish claims has not been static. Contrary to conventional scholarship which makes rather categorical – and unduly positive – assessments about the ECtHR’s effectiveness and receptiveness, the research results show that the Court’s oversight of state violence in Turkey has fluctuated in response to political developments in Europe and in Turkey.

##### **5) How will this/these plan(s) for valorization be shaped?**

The research results can be made directly available to various stakeholders, including the ECtHR, CoE’s non-judicial human rights mechanisms, legal practitioners, NGOs engaged in litigation at the ECtHR, academics, and civil society groups. Of particular importance in this regard are the ECtHR judges and the Registry lawyers, who develop the Court’s case law, and the CoE’s Commissioner for Human Rights who provides the Court empirical data on domestic legal systems in his third party interventions. Equally important are international NGOs specialized in monitoring the ECtHR and member states, such as Human Rights Watch and Amnesty International, as well as legal centers engaged in strategic litigation before the ECtHR, such as the European Human Rights Advocacy Centre founded by British lawyers who had co-litigated the Kurdish cases in the 1990s and are currently representing victims of gross abuses in the Northern Caucasus.

The research results can also be made available for EU institutions, in particular the European Commission which produces annual reports on Turkey’s progress in fulfilling the EU’s accession criteria. The longitudinal analysis of the Commission’s assessments of Turkey’s laws and practices governing the Kurdish conflict over the years will be a useful reference for self-assessment and re-evaluation purposes.

The results can also be made directly available for officials of the three branches of the Turkish state, including the Constitutional Court, the Ministries of Justice and Interior as well as the specialized commissions of the Parliament engaged in lawmaking, monitoring and enforcement in the area of human rights.

In addition, the research results can be used in writing op-eds for Turkish and English language news outlets on the potentials and limitations of the ECHR system as well as possible solutions to these problems. In light of the ECtHR’s docket crisis which renders the delivery of individual justice for every human rights victim impossible, the study’s proposal of a differentiated jurisprudential approach would generate interest. The results can also be used for writing blog entries in websites which are specialized in the ECHR system and regularly followed by ECtHR scholars and practitioners.

Finally, the research results can be used in curriculum development by scholars teaching undergraduate and graduate level classes on human rights, the ECHR system, legal mobilization, democratization, and the area study of Turkey.