
The European Court of Human Rights and Participation in Judicial Rule-Making

Introduction

In the latter half of the 20th century, strong judiciaries began proliferating around the world. International and domestic court systems were formed or revised to grant judicial review: the power to scrutinize and annul legislation contrary to a central code of law (Stone Sweet 2013; Reinhardt 1994). The power of judicial review inevitably expanded the role of courts to do more than interpret the law; indeed, through the review process, law can be created, modified, and torn down by unelected judges. Some scholars have heavily criticized judiciaries' increasing involvement in the shaping of law, arguing that only elected, representative legislatures can legitimately create law (Graglia 1994; Shapiro 1994; Rosenberg 2005).

Other authors have pointed out how courts can preserve the integrity of a democratic society by protecting individual rights from a majoritarian system of rule (Arrington 2019; Brinks 1994; McCann 2006). Through litigation, minority groups can challenge the law and influence how it is interpreted in the courts by advancing rights claims. Courts therefore may serve a valuable role of enhancing citizens' participation in the formation of law (Barber 1984; Cichowski 2006; Michels 2011). *Amicus curiae* is one such method of participation that provides individuals with an opportunity to engage in lawmaking at the courts. *Amicus curiae* originated as means to aid a court's evaluation of a case, and some scholars have shown that amici can shape the decision-making of courts and may be welcomed as a measure to bolster judicial

legitimacy (Dolidze 2012; Eynde 2013). It is possible that advocacy groups may find amicus participation to be an avenue through which the law can be challenged and shaped. In this paper, I frame my inquiry in the context of the European Court of Human Rights and its processes of third-party interventions and NGO communications. I examine the following question: How has participation by advocacy groups shaped the ECtHR's decisions and the implementation of judgments?

The first section dives deeper into the theory behind judicial rule-making and democratic participation, and more closely discusses the European Court. I then describe how I measured the research question with variables in the data and methods section. In the analysis, I present and interpret the findings drawn from case coding and examinations of examples from ECtHR judgments, addressing the research question and demonstrating how the data contributes to the scholarship. I conclude by discussing the limitations of my research and suggesting further avenues of research.

Theoretical Framework

Courts have become deeply embedded in politics and the creation of law. With the growth of judicial review, courts were no longer limited to the interpretation of the law, but rather became empowered to scrutinize, modify, and annul legislation (Hirschl 2011; Shapiro 1994). Along with the rise of empowered judiciaries came the phenomena known as the judicialization of politics, in which democratic societies increasingly turned to the courts to resolve political, moral, or social controversies (Hirschl 2008). The influence of courts upon prominent social issues—such as the legitimacy of elections or civil rights movements—has therefore increased significantly in the last few decades.

Some scholars have criticized the courts for embracing this form of rule-making power. Indeed, some authors describe judicial policymaking as the usurpation of power from the legislature and an antithesis to representative democracy (Graglia 1994; Merrill 1994; Shapiro 1994). Because judges are appointed rather than democratically elected by majority rule, courts are rule-making bodies that are not beholden to the will of the people, contrary to traditional elected legislatures. Judges are often unelected and tenured; these same individuals make authoritative decisions with significant legal, social, and political ramifications (Davies 2011; Helfer and Voeten 2013).

In contrast, other scholars point out the benefits of strong judiciaries. Precisely because courts do not abide by the same principles of representative, elected legislatures, judiciaries can protect the rights of minority groups against the will of a majoritarian democracy (Arrington 2019; Cichowski 2006). The famed U.S. Supreme Court case *Brown v. Board of Education*, in which judicial power was used to strike down laws sanctioning racial segregation, may serve as one example (Brinks 1984; Hirschl 2008). Thus, one beneficial feature of strong courts is their ability to protect individual rights and prevent the enforcement of unjust laws (McCann 2006). This aspect of courts have become widely used by interest groups, which mobilize using litigation to challenge laws and push for social, legal, and political reforms (Arrington 2019; Brinks 1984; McCann 2006; Zemans 1983).

In addition, scholars have argued in support of judicial empowerment by offering an alternative perspective on the requirements of democratic societies. Instead of only focusing on representative rule—exemplified by the popular election of legislatures—some scholars have called for democratic societies to enable *participation* from constituent members (Barber 1984; Cichowski 2006; Michels 2011). In this model, a strong democracy should enable citizens to

participate in the process of shaping law. Therefore, if a lawmaking institution invites members to engage in the formation of the law, it may very well support the aims of democratic society even in the absence of elected, representative rule (Cichowski 2006; 2007). This alternative analysis of democratic society and participation may offer insight into the scholarly debate on the legitimacy of judicial rule-making. Courts indeed may not promote representative democracy. However, through litigation, courts can provide individuals with an avenue through which they can challenge the law and take part in shaping its construction and application. In this way, courts may strongly support the goals of a democratic society by enabling participation in the rule-making process (Brinks 2014; Cichowski 2006; Zemans 1983). However, directly bringing a claim before a court is not the only means of participation. The remainder of this paper focuses on *amicus curiae* and how it can enable engagement in judicial rule-making.

Amicus Curiae

Translated literally as “friend of the court,” *amicus curiae* briefs originated as a way to aid judges in their decisions. Neutral, observing parties without interest in the outcome of a case could provide information or a legal argument that might be helpful for the court to consider in its decisions (Eynde 2013). In contemporary judiciaries, amicus participation similarly permits interested parties to submit briefs for judges to consider, and may be accessible to individuals, businesses, rights organizations, or even UN bodies and state governments at international courts. Amicus curiae has also become widespread in judiciaries worldwide (Cichowski 2016; Collins 2004; Collins 2008; Larsen 2014). The United States Supreme Court, for instance, has seen tremendous growth in the number of amicus briefs submitted and the number of participants who cosign on briefs (Collins 2004; Collins 2008). The European Court of Human Rights

(ECtHR) has likewise been flooded with an increasing number of amicus submissions, ranging from 20 briefs filed in 1999, to almost 120 in 2011 (Cichowski 2016).

On first glance, amicus submissions may not strike one as being able to significantly sway the decision-making of judges. Could a court really be swayed by the opinions of third-parties to a case? Yet, the literature demonstrates that amicus participants at some judiciaries have abandoned neutrality and begun advocating for the judges to favor one side of the dispute and sway the outcome of cases (Krislov 1963). Other scholars have studied how arguments and information provided by amici participation have been engaged by international courts and may shape their decisions (Dolidze 2012). It is possible that third-parties are perceiving the amicus processes as a method through which changes to the law can be advocated for. Amicus curiae may provide a means through which members of a democracy may engage in the formation of law at the courts. Filing an amicus brief vying for a court to rule one way or another, consider a new facet of the case, or adopt a different legal standard—all backed by an abundance of evidence—may serve as a worthy supplement or even alternative to litigation. The core aim of this paper is to examine how amicus curiae have shaped the decisions of an international court: the European Court of Human Rights.

The European Court of Human Rights

The European Court of Human Rights (henceforth “ECtHR,” or “Court”) is an international court with jurisdiction over 47 member-states. The Court is the judicial body of the Council of Europe, and is tasked with ensuring state compliance with the European Convention on Human Rights by evaluating individual claims of rights violations. Alongside the Court, the Committee of Ministers supervises the implementation of ECtHR judgments into domestic law

and practice. Thus, to ensure the tenets of the Convention are observed by member-states, the Council of Europe has at its disposal a judiciary to interpret the law and an executive body to supervise its implementation. With the adoption of Protocol 11 into the Convention in 1994, the Court began permitting “third-party interventions,” a process very similar to *amicus curiae* submissions (Eynde 2013). These interventions, which can be made by parties such as rights organizations, state governments, individuals, or academic groups, may provide the Court with information or arguments, just like in traditional forms of *amicus curiae*.

Interestingly, third parties can also participate and make submissions in the process of implementing ECtHR judgments into domestic systems. The Court’s adjunct body responsible for supervising national compliance with the Court’s judgments is the Committee of Ministers. The Committee reviews state governments’ actions taken to remedy particular violations, and requires a series of reports detailing progress made in fulfilling national obligations. The Committee permits third parties to submit information concerning national compliance with ECtHR judgments. Formally referred to as “NGO communications,” these written comments can only be submitted by non-government organizations and human rights institutions. These communications contain independent reports made by third party organizations regarding governments’ implementation of Court judgments in domestic practice. To illustrate, in the case *Hirsi Jamaa and Others v. Italy* (27765/09 ECHR 2012), Amnesty International and UNHCR submitted communications to the Committee in September of 2012. In their submission, Amnesty and UNHCR advised the Committee that Italy had not ceased its practice of collective expulsion at sea, and that many arrivals continued to be prevented from disembarking and applying for asylum. The submission also informed the Committee that Italian border police lacked formal training in the reception of asylum seekers and refugees. NGO communications in

other judgments are similar in nature, providing independent reports on whether a respondent state had fulfilled its obligations under the ECtHR judgment. This procedure of NGO communications to the Committee—in which interested parties may engage in the decision-making of a judicial body—is therefore similar to the previously-explored third-party interventions to the Court.

The Court has attracted the attention of the scholarship with its expanding caseload and influence. Interest groups and individuals challenge the actions of their governments and push for rights protections, while literature also suggests that the judges have embraced “judicial activism,” in which the Court has expanded the meaning of the Convention to protect a greater range of rights (Cichowski 2016; Helfer and Voeten 2013; Letsas 2013; McCann 2006; Reinhardt 1994). These conditions raise the possibility that participation at the ECtHR, whether through formal litigation or the third-party intervention procedure, may have substantial impact on the interpretation of the Convention. Scholarship has demonstrated that third-party interventions at the Court may shape its decisions by providing information or arguments with which the Court engages (Dolidze 2012). However, other literature studying amici at the ECtHR suggests that the Court is not more likely to rule in favor of the position of interveners, and furthermore that interventions are rare among the Court’s overall case list (Eynde 2013). These findings create fertile grounds for study on interventions at the ECtHR, further compounded by the sparsity in literature on NGO communications at the Committee. Therefore, rooted in the theory on amicus curiae as a form of democratic participation in judicial rule-making, I focus my analysis on the ECtHR how participants have shaped the interpretation and implementation of the Convention.

Context of Research

I frame this research inquiry in the context of the European migration crisis, which was sparked in part by the civil war in Syria and related unrest in the Middle East. As millions of refugees and asylum seekers fled into Europe, many nations began to adopt restrictionist policies and tighten their borders. Migrants were subjected to ill-treatment by hostile governments, including indefinite detention, refoulement, family separation, failure to provide access to asylum procedures, and pushback at sea. As a result, many rights claims have come before judiciaries challenging government actions that mistreat and refuse entry to refugees and asylum seekers. International courts such as the ECtHR must carefully balance the interests of sovereign states against the rights of individuals. In this context, I examine participation from organizations and advocacy groups and how it has shaped the Court's decisions.

Data and Methods

To address the research question, I engaged in case-coding and qualitative analysis of judgments, interventions, and NGO communications. This data was collected from texts of Court judgments and Committee decisions, which are made available in the official databases *HUDOC* and *HUDOC-EXEC*. I compiled a dataset of 153 judgments involving refugees and asylum seekers, selected by reviewing the Court's published factsheets on this issue area. These 153 judgments, spanning from 1983 to 2019, were taken as a roughly representative sample of the Court's case law concerning refugees and asylum seekers. The judgments were then analyzed for third-party interventions (*amicus curiae*) and cross-referenced with *ECtHRdb*, a database of ECtHR judgments assembled by authors Cichowski and Chrun (*European Court of Human*

Rights Database, Version 1.0 Release 2017). Out of these 153 cases, 39 judgments involved third-party interveners, which I coded for a set of variables.

Firstly, I examined the content of interventions, coding each submission whether it focused on providing information or presenting an argument. Information-based interventions refrained from making specific claims, and only presented neutral facts such as details of the plaintiff's circumstances or comparative research on a relevant issue area. In contrast, argument-based interventions advanced a claim explicitly in support of one side to the dispute. Among argument-based interventions, I also coded for whether interventions argued for the Court to consider the circumstances of a case to constitute a violation of the Convention. A high frequency of "jurisprudential arguments" would therefore suggest that interveners are seeking to influence the jurisprudence of the Court. I also coded for whether interveners advocated for the Court to adhere to some existing consensus among Council of Europe nations. The presumption is that interveners, in citing consensus, may be attempting to pressure the Court into accepting certain prevailing standards or beliefs. Interventions that made only generalized arguments without citing a consensus or vying for the Court to rule a particular violation were tracked as well.

Additionally, I examined how third-party interventions have shaped ECtHR decisions. The primary variable coded for was whether the Court "engaged" with a third-party intervention. If the Court explicitly made reference to the contents of an intervention in its assessment of the merits of a case, I considered the Court to have "engaged" with the submission. Thus, the Court's citation of the contents of interventions was used as a rough measure for whether participants contributed to the ECtHR's decision-making in a particular case. I also coded for how the Court "responded" to an intervention. On occasion, the Court explicitly acknowledged

that an intervention had provided content that was relevant, useful to consider, or otherwise important in the evaluation of the plaintiff's case. "Positive" responses by the Court may indicate that the intervention may have shaped the Court's decision-making. On other hand, "negative" responses ruling out the relevance of a submission may indicate that it was not factored into the Court's decision.

Thirdly, I coded for whether the Court quoted the text of an intervention. A direct quotation of a brief to support the Court's rationale for a judgment may suggest that the ECtHR considered the submission to be of importance, and may have been influenced by the intervention. Next, I coded for whether the outcome of a case was consistent with the position of interveners who had argued for a particular violation. A high percentage of "consistent" outcomes suggests that the ECtHR commonly decides in favor of interveners' positions, whether intentionally or not, and raises the possibility that the interveners can shape the Court's decisions. I also compared the rates of engagement, response, quotation, and consistency of outcome between different types of interventions: information-based, argument-based, those that contained jurisprudential arguments, and those that cited consensus. The purpose was to examine how the content of interventions affected the Court's interaction with each respective type of submission.

Fourthly, I drew on a case study of judgments involving unaccompanied migrant minors to more directly investigate whether interventions shape the Court's jurisprudence. From the time period between 1989-2020, I located and collected 12 cases involving unaccompanied minors who were refugees, asylum seekers, or irregular migrants. Out of these 12 cases, 4 contained third-party interventions, which were all submitted by UN bodies and human rights organizations. To illustrate how these interveners impacted the Court's jurisprudence, I examine

the chronological development of Convention rights protecting unaccompanied migrant minors.

In the last section of my analysis, I examine how NGO communications have shaped the Committee of Ministers' implementation of ECtHR judgments. I analyze a set of NGO communications to the Committee. Out of the overall dataset of 153 Court cases that I previously analyzed for third-party interventions, 10 judgments involved NGO communications. I coded the information in the submissions and the Committee's evaluation of the briefs, tracking a set of variables. Firstly, I coded for the Committee's "engagement" of communications, defined as whether the Committee explicitly acknowledged the information submitted by a participant. Engagement with an intervention suggests that the participants had provided useful material for the Committee to consider in determining how a respondent government should comply with the Court's judgment. Secondly, I coded for whether the Committee went one step further and adopted issue areas raised by communications into its formal supervision of national compliance. This variable "adoption" thus measures the frequency in which NGO communications submit information that is formally used by the Committee to monitor state governments' compliance. The greater the frequency of adopted information, the more likely the possibility that participants shaped the Committee's decisions in implementing judgments.

Lastly, the reader must note that the original texts of submissions—both interventions and NGO communications—were not accessible. The content of interventions and communications could only be examined by reading the summaries of the briefs, provided by the ECtHR and Committee. While this gives us a snapshot of key points in the briefs and enables the coding of basic variables, a more nuanced understanding of this dynamic would come from analyzing the full texts. I present the findings and the analysis in the following section.

Analysis

Given these theoretical expectations, I now analyze the findings and examine how participation by advocacy groups has shaped the ECtHR's decisions and the implementation of judgments.

Third-Party Interventions to the ECtHR

Firstly, I examine whether third-party interveners focused primarily on presenting arguments or information to the Court. The data demonstrates that a greater proportion of interventions advanced a specific claim before the Court, rather than limiting their brief to the provision of neutral information. Of the 39 judgments involving interventions, 28.9% presented only information to the Court without making an accompanying claim. As an example of these “information-based” interventions, in the case *Abdolkhani and Karimnia v. Turkey* (30471/08 ECHR 2009), UNHCR submitted an intervention informing the Court that the plaintiffs—who had been associated with the Islamic mujahideen in the past—would face severe persecution if deported to Iraq. UNHCR did not advance any specific argument in the submission, and only provided context on the volatile situation in Iraq and the persecution of members of the mujahideen due to their linkage with the Hussein regime. Information-based interventions therefore do not push forward an argument, nor do they explicitly side with one party to the dispute.

In contrast, 63.1% of interventions focused on advancing a central claim. For instance, the case *M.E. v. Sweden* (71398/12 ECHR 2014) involved a homosexual individual facing expulsion to Libya, where laws had criminalized same-sex marriage. Intervenors FIDH, ILGA-Europe, and International Commission of Jurists argued that the act of forcing individuals to hide

their sexual orientation and live in secrecy constituted inhumane and degrading treatment. The interveners claimed that the plaintiff's expulsion to Libya would thereby subject him to ill-treatment in contradiction to many contemporary laws in Europe and Article 3 of the Convention. Argument-based interventions thus advance some claim before the Court, typically in favor of one side of the dispute. The data is summarized below in Table 1.

Table 1. Contents of Third-Party Interventions, 1989-2019.

	Information-Based	Argument-Based
Percentage of Cases	28.9%	63.1%
% Change Since 1989	+ 72.0%	+ 83.1%
% Change Since 2010	+ 9.3%	+ 30.6%

N = 39 judgments. Source: Data compiled by the author from HUDOC, the official database of the European Court of Human Rights.

In the first row, we see that 63.1% of interventions in my dataset focused on advancing an argument, while only 28.9% of interventions were information-based. This large disparity seems to suggest that participants more frequently submit briefs to argue before the Court and persuade the judges to decide one way or another. This in turn raises the possibility that interveners are intentionally utilizing the third-party procedure as a means of advocacy and claim-making. The second row of Table 1 demonstrates that both informative and argumentative interventions have increased significantly since 1989. However, argument-based interventions have increased more greatly by a margin of around 10%. This disparity between growth rates is further substantiated by the data in the third row, which presents the percent-change since 2010. Since 2010, we see a much greater increase in argument-based interventions over information-

based interventions. The data shows a +30.6% increase in argument-based interventions, but only a 9.3% increase in information-based interventions. This finding suggests that over the last decade—and perhaps in the 21st-century—participants have opted not to participate neutrally, but instead participate as a form of advocacy before the Court and vie for the judges to consider specific claims.

Next, I examined argument-based interventions more closely, determining whether they presented *jurisprudential arguments*, whether they cited *consensus*, or whether they simply contained a *generalized argument*. The findings are summarized below in Table 2.

Table 2. Argument-Based Interventions, 1989-2019.

	Jurisprudential Argument	Cited Consensus	General Argument
% of Argument Interventions	36.8%	39.5%	23.7%
% Change Since 1989	+ 30.8%	+ 57.9%	+ 64.4%
% Change Since 2010	+ 41.9%	+ 162.7%	- 13.3%

N = 39 judgments. Source: Data compiled by the author from HUDOC, the official database of the European Court of Human Rights.

The first row demonstrates that the majority (76.3%) of argument-based interventions made jurisprudential arguments or cited consensus, and a minority (23.7%) only advanced a general claim. Because jurisprudential claims and citations of consensus involve an intervener calling the Court to rule for certain violations, this finding suggests that participants are intentionally trying to shape the Court's decisions. As an illustration, in the case *Suso Musa v.*

Malta (42337/12 ECHR 2013), the International Commission of Jurists (ICJ) submitted a “jurisprudential argument.” The judgment involved an irregular migrant who had entered Malta. The plaintiff was detained and scheduled for deportation before being allowed to request voluntary departure or plead asylum. The ICJ argued that this action was a form of automatic detention of migrants and violated his Article 5 right to judicial review of detention. This example illustrates the nature of jurisprudential arguments. These claims not only present a particular argument, but in fact try to persuade the Court to consider certain state actions as a violation of Convention rights. In other words, jurisprudential arguments seek to shape how the Court interprets and applies the Convention, and how individual rights are protected domestically. Considering that 36.8% of argument-based interventions followed this mould of argumentation, the data appears to show that participants are advancing claims in hopes of shaping how the Court decides cases and interprets Convention rights.

Interventions that cited consensus adopted a similar approach, with an addition of citing contemporary standards to back their claim. For example, in the landmark case *Soering v. The United Kingdom (14038/88 ECHR 1989)*, Amnesty International intervened and argued for the Court to consider capital punishment a violation of Article 3 of the Convention. Amnesty stated that the majority of nations in the Council of Europe had already abolished the death penalty, and that “... the evolving standards in Western Europe ... required that the death penalty should now be considered as an inhuman and degrading punishment” and be prohibited by the Court as a violation of Article 3 (*Soering v. The United Kingdom*). In this example, Amnesty cited existing agreement among European nations in order to try and persuade the Court to adopt a specific interpretation of Article 3—namely, that it prohibits capital punishment. Interestingly, 39.5% of argument-based interventions adopted a similar pattern of persuasion, calling for the ECtHR

judges to observe and adhere to some transnational legal standard. This data therefore seems to suggest that many interveners have attempted to shape the Court's decision-making by citing consensus.

In contrast to this straight-forward form of advocacy before the Court, a minority (23.7%) of participants advanced only generalized claims that did not outrightly push for the Court to rule specific violations. For example, in the case *Z.A. v. Russia (61411/15 ECHR 2017)*, UNHCR intervened and stated that the detention of any asylum seeker must abide by principles of necessity, reasonableness, and proportionality, and argued that Russia's detainment of an asylum seeker at an airport transit zone was not justified under those metrics. UNHCR's submission did not explicitly make an effort to shape the ECtHR's jurisprudence. Although the case involved the plaintiff's Article 5 right against arbitrary detention, UNHCR did not try to persuade the Court that Russia had violated a Convention right. It is possible that interveners advancing these "generalized claims" do so in hopes of shaping the Court's decisions, but simply do not explicitly try to contribute to the Court's interpretation of Convention rights. It is alternatively possible that interveners who adopt this approach are purposefully restrained for other reasons unknown. Nonetheless, the data overall suggests that a majority (76.3%) of argument-based interventions in this dataset advanced jurisprudential claims and citations of consensus to try and shape the ECtHR's decisions.

To lend further significance to this finding, rows two and three of Table 2 demonstrate that jurisprudential interventions and those that cited consensus have greatly increased in frequency. Since 1989, the data shows an increase of 30.8% and 57.9% respectively. Measured from 2010, the growth rates are even higher: jurisprudential claims have increased in frequency by 41.9%, and interventions citing consensus have grown by a dramatic 162.7%. This data

therefore suggests that these persuasion-oriented interventions are on the rise, and may be a growing focus of participants at the ECtHR. This inference also is supported by the fact that interventions containing only generalized arguments have declined by 13.3% since 2010. Altogether, these findings suggest that interveners—in the last decade—have shifted towards advancing arguments that try to shape the Court’s decisions and interpretation of the Convention.

The logical next step in the research is to examine how third-party interventions have actually shaped the decisions of the Court. I address this question by examining the Court’s interactions with submissions in its assessment of the merits of each case. Initial findings demonstrate that the Court has engaged with interveners at a high frequency, has responded positively to submissions, directly quotes interventions at a mixed rate, and delivers consistent outcomes in a relatively high percentage of cases. I summarize the data in Table 3.

Table 3. Engagement of Interventions by the Court, 1989-2019.

	Engaged by the Court	Positive Response	Negative Response	Quoted by the Court	Consistent Outcome
Percentage of Cases	44.2%	18.4%	7.9%	13.2%	46.3%
Percent Change	+ 73.3%	+ 23.5%	+ 9.4%	- 68.7%	+ 36.6%

N = 39 judgments. Source: Data compiled by the author from HUDOC, the official database of the European Court of Human Rights.

The first row demonstrates that the Court interacts with 44.2% of interventions in its assessment of the case. An “interaction” means that a submission was explicitly mentioned in the section of the judgment where the Court evaluates the merits of the plaintiff’s case. For example,

the case *F.G. v. Sweden (43611/11 ECHR 2014)* involved a question concerning the standard of proof necessary for an asylum seeker to qualify for refugee protection. In its consideration of the relevant protections afforded by Article 3's prohibition of refoulement, the Court ruled in favor of the plaintiff. The Court stated that while applicants for asylum must produce evidence of persecution, the state also has the obligation to carefully evaluate the evidence provided, and here Sweden had failed to adequately assess the plaintiff's case. In developing this reasoning for finding a violation, the Court—among other things—cited UNHCR's intervention, which had argued that a fair asylum procedure required a two-fold obligation: first, for the applicant to produce evidence of persecution, but furthermore, for the state to take a genuine interest in evaluating the evidence provided. The Court's explicit reference to UNHCR's submission, which I coded for as an "interaction," suggests that the intervention may have helped shape the Court's final decision. The fact that nearly fifty percent of interventions in this dataset were similarly engaged by the Court is significant, raising the possibility that interventions can be explicitly considered as a contributing factor to the Court's decision-making.

Furthermore, the first row of Table 3 shows that 18.4% of interventions received "positive" responses from the Court. Positive responses are interactions in the judgment text that explicitly states the Court considered the submission to be relevant or useful in deciding the case. For example, in *M.S.S. v. Belgium and Greece (30696/09 ECHR 2011)*, the interveners UNHCR, Amnesty International, and AIRE Centre provided information that Greek authorities were forcibly expelling irregular migrants to high-risk nations, despite a risk of refoulement. In the assessment of whether the respondent states had violated the Convention, the Court gave a positive response to the interveners' submissions. In paragraph 314, the text of the judgment states: "The Court is not convinced by the Greek Government's explanations ... It cannot ignore

the fact that forced returns by Greece to high-risk countries have regularly been denounced by the third-party interveners...” (*M.S.S. v. Belgium and Greece*). This specific citation—a “positive response”—suggests that the interveners’ submission had been considered important by the Court and perhaps shaped its decision to ultimately rule a violation against Greece for inadequately reviewing asylum applications. The data shows that 18.4% of interveners received similar “positive” responses, which suggests that a relatively large proportion of submissions are cited by the Court as useful or critical to consider. This finding suggests that interventions can shape the Court’s decision-making.

However, note that Table 3’s first row also illustrates that 7.9% of submissions received a “negative” response from the ECtHR. For example, in the case *H.L.R. v. France* (24573/94 *ECHR* 1997), the Court responded negatively to an intervention by Amnesty International. The organization had provided information on the instability and violence in Columbia to which the plaintiff might be exposed upon deportation from France. However, the Court stated: “Amnesty International’s reports for 1995 and 1996 do not provide any information on the type of situation in which the applicant finds himself. ... Only in the 1995 report is there any reference, in a context which is not relevant to the present case...” (*H.L.R. v. France*). In this example, the Court appeared to strike out Amnesty’s intervention and consider it a non-factor in the evaluation of the plaintiff’s case, suggesting that it had no impact on the decision. Similar occurrences were thus measured by the 7.9% negative response rate. However, since the percentage is comparatively small, this data does not detract heavily from the possibility that interveners can shape the Court’s decisions if their submissions remain relevant to the case.

Table 3 also demonstrates that interventions arguing for a specific Convention violation receive a consistent outcome in 46.3% of judgments. In other words, in this dataset, an intervener

arguing for the Court to consider an instance of state action as a violation of the Convention will be successful in a little less than half of the time. For example, in the case *O.M. v. Hungary* (9912/15 ECHR 2016), AIRE Center, European Council on Refugees and Exiles, and International Commission of Jurists argued that Hungarian laws regulating detention were not in accordance with UNHCR and EU guidelines and were in violation of Article 5 of the Convention. The Court ultimately ruled that Hungary had indeed violated Article 5, which I coded as a consistent outcome. The finding suggests that around half (46.3%) of interveners that similarly argued for a particular violation received a favorable outcome. The data collected of course does not demonstrate that interveners *caused* the Court to rule one way or another with its arguments, only that there is a probabilistic correlation between the arguments presented and the Court's final decisions. However, taken in conjunction with earlier findings on the Court's frequent and positive interactions with submissions, this data supports the possibility that interveners can shape the outcomes of cases.

In the second row, Table 3 illustrates the trend over time of the Court's interactions with third-party interveners. The data shows that there are marked increases in the rates of the Court's engagement, rate of response, and delivery of consistent outcomes. Since 1989, there has been an increase of 73.3% of interventions that are engaged by the Court's majority opinion in its assessment of the merits, with a 23.5% increase in favorable responses and 36.6% increase in delivery of consistent outcomes. Meanwhile, the rate of negative responses has only increased by less than ten percent. The increase in favorable responses, even when controlled for the rise in the ECtHR's case load since 1989, is substantial, suggesting that interventions are growing in recognition and potentially in influence on Court decisions. However, one area of concern is the drastic decrease in interventions quoted by the Court, plummeting by almost 70 percent since

1989. One possible explanation is that the rising quantity of interventions has prevented the Court from carefully reading and extracting text from briefs for quotation in judgments. I suggest further research be done in this area to examine whether this explanation is sufficient.

In sum, the data in Table 3 suggests that the Court interacts frequently and positively with submissions by third-party interveners. With high rates of engagement in the Court's decision-making process, delivery of consistent outcomes, and a rough one-in-five chance of explicitly citing an intervention as helpful in its consideration, the ECtHR appears to take seriously and consider the submissions of third parties. These findings give rise to the possibility that interveners can shape the Court's decisions by supplementing majority opinions with information or arguments.

Finally, to corroborate the findings presented in Tables 1-3, I examine a study of ECtHR case law concerning unaccompanied migrant minors and the role of third-party interveners in introducing the "best interests" standard to the Court. I collected 12 cases involving migrant minors facing detention or deportation, who had claimed rights violations under the European Convention and petitioned the Court. The first three judgments—in 1996, 2006, and 2012—demonstrate that there were initially no concrete standards in the Convention that afforded added protection for migrant children. While the Convention prohibits arbitrary detention, inhumane conditions of detention, and refoulement of asylum seekers or refugees, the Convention does not explicitly lay out protections for migrant minors, in contrast to other international laws such as the UN Convention on the Rights of the Child. Thus, while the Court ruled in favor of the unaccompanied minors in the majority of the earlier cases, the grounds for doing so were circumstantial, rather than by a formal, expanded interpretation of the Convention.

In the first 1996 judgment *Nsona v. The Netherlands* (23366/94 ECHR 1996), the Court ruled in favor of the respondent state after a 10-year-old child, found in possession of forged travel documents, was denied entrance to The Netherlands and deported to her nation of origin. The Court ruled that although the child's deportation was "open to criticism," the Dutch government had not violated her Convention rights. The Court gave no special consideration of the child's age in the judgment. In the next two cases in 2006 and 2012, *Mubilanzila Mayeka v. Belgium* (13178/03 ECHR 2006) and *Popov v. France* (39472/07 ECHR 2012), the Court's position continued to remain uncertain. In *Mubilanzila*, the Court seemed to give additional consideration of a 5-year-old child who was deported alone onboard an airplane, stating that Belgian had demonstrated a "lack of humanity towards someone her age" and attributing some weight to the plaintiff's status as an unaccompanied minor. Nevertheless, a few years later in *Popov v. France*, a case involving the detention of migrant minors in an adult holding facility, the Court ruled an Article 3 violation without acknowledging the vulnerable status of children. Throughout these cases, no expansion of Convention rights was made to guarantee greater protection for children.

However, in the 2014 case *M.S.S. v. Belgium and Greece* (30696/09 ECHR 2011), a group of third-party interveners attempted to persuade the Court to adopt a standard from the UNCRC that would guarantee additional protections for migrant minors. Amnesty International, AIRE Centre, European Council for Refugees and Exiles (ECRE), and Organization Defense for Children submitted interventions, arguing that the Court should begin to consider the "best interests of the child" in addressing detention and deportation cases. The phrase "best interests of the child" originates from the UNCRC, defined as the "physical, mental, spiritual, moral, psychological and social development" of a child (Committee on the Rights of the Child, 2013).

The interveners argued that the Court should only consider detention or deportation in conformity with the Convention if it was carried out with deference to these interests of migrant minors. This interpretation, if adopted by the Court, would provide a more robust basis upon which states could be held liable for violating Article 3 and its prevention of inhuman and degrading treatment.

In *M.S.S. v. Belgium and Greece*, the Court did not explicitly adopt the standard of requiring states to consider the “best interests of the child” under Article 3. However, in the 2016 judgment *Abdullahi Elmi v. Malta* (25794/13 ECHR 2016), the applicants—two unaccompanied migrant minors who were held for half a year in an adult detention facility—took up the argument that the detention of minors must take into account the “best interests of the child” as a primary consideration. A concurring opinion of the ECtHR argued in support of this principle, although the majority decision did not explicitly give mention of the standard. It is possible that the earlier interventions in *M.S.S. v. Belgium and Greece* may have notified the later applicants and judges of the “best interest” standard.

In the 2019 case *Khan v. France* (12267/16 ECHR 2019), an 11-year-old migrant minor, who was living alone in the Calais refugee camp, was forced into homelessness when the French government conducted a partial deconstruction of the camp. Three NGOs submitted third-party interventions advocating for the Court to hold France accountable for neglecting the applicant’s “best interests” when tearing down his living quarters and forcing the child out onto the streets. In this case, the ECtHR agreed with the interveners. The Court ruled that the authorities had failed to consider the best interests of unaccompanied migrant minors living in Calais, and had razed the camp without providing safeguards for children who were unable to relocate. The French authorities were found to have violated Article 3. As of the writing of this paper, the

Court has yet not acknowledged the “best interest” standard in any further judgment after *Khan*. However, it is possible that this standard may become integrated into the ECtHR’s interpretation of Article 3 of the Convention concerning migrant minors.

It is first of all possible that the development of the “best interests” standard resulted from a third factor that was not considered. However, these findings offer the possible explanation that the third-party interveners were responsible for introducing the “best interest” standard to the Court. This interpretation of the data is supported by the fact that plaintiffs and separate opinions of the Court adopted the standard shortly after the interveners’ arguments in *M.S.S. v. Belgium and Greece*. If true, these findings strongly suggest that third-party interventions can shape the Court’s jurisprudence. Combined with earlier findings on the Court’s interactions with interventions and the increasing frequency of advocacy in submissions, the data suggests that participation at the ECtHR can enable interest groups to engage in rule-making.

NGO Communications to the Committee of Ministers

In this final section of the analysis, I shift focus away from the judicial process of the Court, and instead examine the system of post-judgment implementation of the ECtHR decisions. Here, I study the Committee of Ministers and how it has interacted with briefs submitted by third-party participants. The Committee accepts submissions—formally referred to as “NGO communications”—from non-government organizations and international human rights institutions (*Rules of the Committee, 10 May 2006 964th Meeting*). In the dataset collected, it appears that most international groups that frequent the Court, such as Amnesty International, UNHCR, or European Council on Refugees and Exiles (ECRE), are also accepted as participants by the Committee.

To examine how participation has shaped the implementation of ECtHR judgments, I first measure the Committee’s interactions with third parties and whether their submissions were factored into the Committee’s final decision. I present the data below in Table 4.

Table 4. The Committee’s Interactions with NGO Communications, 2009-2018.

	Engaged by Committee <i>(Communications explicitly referenced by the Committee in its decisions)</i>	Adopted by Committee <i>(Percentage of issue areas raised by communications that were adopted into the Committee’s supervision of the case)</i>
Overall Average:	71.4%	62.5%
% Change: (2009-2018)	+ 36.7%	– 5.9%

N = 10 cases. Source: Data compiled by the author from HUDOC-EXEC, the official database of the European Court of Human Rights and Committee of Ministers.

The first row indicates that submissions are specifically cited as a point of consideration by the Committee in 71.4% of cases. For example, in its supervision of the judgment *Sharifi and Others v. Italy and Greece (16643/09 ECHR 2014)*, the Committee “... noted with concern the information provided by ... [UNHCR] concerning incidents of collective expulsions to Greece from Italian ports in late 2019...” (*Committee of Ministers, 3-5 March 2020*). The Committee’s explicit reference to UNHCR’s submission suggests that it had read the submission, evaluated its contents, and considered the information to be a point of consideration in its supervision of the implementation of ECtHR judgment. While the citation in this context cannot show that the Committee’s decision was shaped by the submission, other cases demonstrate such an occurrence more clearly. For example, in the case *M.S.S. v. Belgium and Greece (30696/09 ECHR 2011)*, the Committee acknowledged the communications submitted by a group of 10

NGOs, “... noting however the concurring reports of the Greek Ombudsman and NGOs concerning persistence of delays in the asylum procedures ... and the limited legal aid that is still provided notably during these procedures, ... [and] encouraged the authorities to further pursue their efforts ... and to keep the Committee informed of further progress achieved” (*M.S.S. v. Belgium and Greece*). In this case, the citation of the NGO communications suggests that the Committee not only had considered their information as important, but also acted on the material and requested additional reports from the Greek government about their asylum procedure. This example from *M.S.S.* seems to show that NGO communications can genuinely shape how the Committee decides to review the policies of state governments and whether they have complied with ECtHR judgments. Considering that over 71% of communications were referenced by the Committee in a similar fashion, the data first and foremost suggests that NGO communications are generally well-received by the Committee and considered noteworthy, and secondly, that communications have the potential to shape the Committee’s decisions.

The first row of Table 4 also demonstrates that 62.5% of individual issues raised by NGOs regarding government non-compliance were adopted by the Committee in its supervision of implementation. Stated otherwise, more than half of all information provided by NGOs was ultimately used to guide the Committee’s monitoring of national fulfillment of their Convention obligations. For example, in the case *Rahimi v. Greece (8687/08 ECHR 2011)*, the participants UNHCR, Refugee Support Aegean, Equal Rights Beyond Borders, and Greek Council for Refugees submitted communications to the Committee. The briefs made five main points: (1) a massive backlog of asylum applicants had created long delays for new arrivals, (2) Greek authorities had failed to provide interpreters and regularly distributed notices that asylum seekers were unable to read, (3) two-thirds of asylum seekers had no access to legal aid, (4) that the

Chios and Lesvos reception centers were severely overcrowded and lacked adequate medical staff, and finally, (5) that Greece regularly detained unaccompanied migrant minors in police stations without providing accommodations or legal aid. In its decision, the Committee explicitly cited the information provided by the communications, and requested reports from the Greek authorities detailing their progress on resolving all five issue areas. Thus, in *Rahimi*, every issue area of concern raised by the NGOs was adopted by the Committee's final decision. Most other cases had lower rates of information adopted by the Committee, but the average of 62.5% is still significant. The data suggests that the majority of information raised by participants is adopted by the Committee and can shape how it supervises national compliance with Court judgments.

Furthermore, in the second row of Table 4, the data shows a sharp increase in the percentage of communications engaged by the Committee, rising by 36.7% since 2009. This finding corroborates the early data on the Committee's frequent and favorable references to NGO communications. However, the data also shows a slight decrease in the percentage of adopted communications from 2009-2018. This suggests that over the last decade, information provided by NGOs has been integrated into the Committee's decisions at a slightly decreasing rate. This decline may be partially explained by the massive increase in NGO communications submitted to the Committee in recent years. In January of 2017, the Committee made a series of amendments to the "Rules of the Committee," which are its governing mandate. These amendments defined more broadly the categories of organizations and institutions that could submit communications to the Committee, and emphasized that communications would be considered in the implementation of judgments. These amendments appeared to encourage increased participation. In the years after the amendments, the number of NGO communications saw a massive upward surge, doubling from 90 communications in 2016, to 186 in 2020.

Therefore, it is possible that the decrease in the Committee's adoption of NGO-provided information is due to the increase in communications submitted. The Committee may simply be forced to pick and choose information to consider among the many submissions received, lacking the resources to examine all communications in depth.

In summary, the data demonstrates that NGO communications are frequently referenced by the Committee, suggesting that they may have played a role in shaping the Committee's decisions. Examples from individual cases illustrate how the Committee oftentimes explicitly notes the importance of information submitted, and alters its supervision of national compliance to include the issue areas raised by participating organizations. Examining the trend of communications over time suggests further that NGO communications are growing in number and in engagement by the Committee. These findings altogether suggest that NGO communications can shape how the Committee implements the Court's decisions at the domestic level.

Conclusion

The purpose of this research paper was to contribute to the scholarship on democratic participation and the role of amicus curiae in enhancing engagement in judicial rule-making. I examined the ECtHR and how third-party participants can shape the decisions of the Court and the implementation of its judgments. Examining the content of interventions to the ECtHR, I presented data suggesting that interested parties are shifting away from neutral participation, and more frequently argue for the Court to support one side of the dispute or alter its interpretation of the Convention. Through an examination of the Court's interaction with interveners, the data suggests that interventions can shape the decision-making of the Court. As evidence, I

demonstrated how the ECtHR has explicitly cited and acknowledged interventions with increasing frequency, and has regularly delivered judgments that are consistent with participants' arguments. I also presented a case study on the Court's adoption of legal principles from interveners' arguments. Secondly, NGO communications to the Committee of Ministers were examined to determine whether this mode of participation could impact the process of implementing ECtHR judgments. The findings suggest that information submitted by participants are consistently factored into the Committee's supervision of national compliance; it is possible, therefore, that participants can shape how state governments comply with the Convention. Taken altogether, the findings of this paper suggest that participation at the ECtHR and Committee of Ministers can impact how the Convention is interpreted and implemented in European states, and may be increasingly utilized by interested parties in the 21st century.

The data suggests that third-party interventions—and possibly *amicus curiae* in general—may enhance democratic participation in judicial rule-making. By enabling interested parties to advocate for the Court to favor one side of the dispute, adopt a new legal standard, or alter its interpretation of the Convention, interventions allow participants to have a say in the outcome of judgments and how the law is decided. Therefore, in addition to formal litigation, the process of third-party interventions can facilitate individual engagement in the formation of law at the ECtHR, an outcome that is beneficial to democratic society. While the findings in this paper are limited to the European Court, it is possible that *amicus* participation in other judiciaries also enable interest groups to engage in judicial rule-making. Further research is recommended to confirm the applicability of these findings to other court systems.

The primary limitation of these findings is the small sample size of judgments, interventions, and communications. The set of cases selected for analysis may not be

representative of the overall case law of the ECtHR or the Committee. The set of 153 cases were drawn from published ECtHR factsheets listing key judgments involving refugees and asylum seekers. Yet as of the writing of this paper, the ECtHR has published over 63,000 judgments in its database, making the dataset collected an incredibly small portion of all cases. The 39 judgments involving third-party intervention and the 10 cases with NGO communications are an even smaller fraction of the overall number of cases. It is possible, therefore, that the findings of this research project are not representative of the Court's overall case law nor indicative of systemic trends.

Many avenues for future research remain open. Firstly, I suggest additional inquiry into the impact and accessibility of amicus curiae participation in other judicial systems around the world. Do amicus curiae influence the decisions of judges in other judiciaries? Does amicus participation inherently favor parties with more resources to gather evidence for submissions? This paper only investigates interventions at the ECtHR, and the scholarship's understanding of the impact of participation in the courts may be furthered by studying amicus curiae in other judiciaries.

I also recommend a broader examination of third-party interventions and NGO communications at the ECtHR. The data collected for this paper was limited to only 153 cases in the context of refugee and asylum law. Thus, I suggest that additional research be conducted to determine whether these findings are supported by further inquiry into the content, trends, and impact of third-party interventions and NGO communications. In addition, locating and examining the original texts of submissions may cast insight on the objectives and impact of amicus participation.

Although many avenues for future research remain unexplored, the preliminary findings that I present in this article suggest that external participation can impact the interpretation and enforcement of the European Convention on Human Rights. Whether third-parties continue to engage with the ECtHR and Committee of Ministers, and whether they continue to shape the formation of the Convention, is a question that remains to be seen.

References

- “1275th meeting, 18 January 2017,” Committee of Ministers. Council of Europe.
<<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806dda95>>
- “Thematic Factsheets,” European Court of Human Rights. Council of Europe.
<<https://www.coe.int/en/web/execution/thematic-factsheets>>
- Amendments to Rule 9: Communications from international organisations or bodies - New deadlines for State responses,” Department for the Execution of Judgments of the European Court of Human Rights. <<https://www.coe.int/en/web/execution/-/amendments-to-rule-9-communications-from-international-intergovernmental-organisations-or-bodies-new-deadlines-for-state-responses>>
- Arrington, Celeste. “The Mechanisms behind Litigation’s “Radiating Effects”: Historical Grievances against Japan,” *Law & Society Review* 53, no. 1 (2019): 6–40
- Barber, Benjamin. “Strong democracy: Participatory politics for a new age,” *University of California Berkeley*, University Press. 1984.
- Brinks, M. Daniels, Varun Gauri, “The Law’s Majestic Equality? The Distributive Impact of Judicializing Social and Economic Rights,” *American Political Science Association*, 12, no. 2 (2014): 375-393
- Cichowski, Rachel A. “Introduction: Courts, Democracy, and Governance,” *Comparative Political Studies* 39, no. 3 (2006): 3-23

- Cichowski, Rachel A. "Mobilisation, Litigation and Democratic Governance," *Representation* 49, no. 3 (2013): 321-332
- Cichowski, Rachel A. "The European Court and civil society: Litigation, mobilization and governance," *Cambridge University Press* (2007): 1-15
- Cichowski, Rachel A. "The European Court of Human Rights, Amicus Curiae, and Violence against Women," *Law & Society Review* 50, no. 4 (2016): 890-820.
- Cichowski, Rachel A. and Elizabeth Chrun (2017). European Court of Human Rights Database, Version 1.0 Release 2017. URL: <http://depts.washington.edu/echrdb/>
- Collins, Paul M. "Friends of the Supreme Court: Interest Groups and Judicial Decision Making," *Oxford University Press*. 2008.
- Collins, Paul M. "Friends of the Court: Examining the Influence of Amicus Curiae Participation in U.S. Supreme Court Litigation," *Law & Society Review* 38, no. 4 (2004): 807-832
- Communications by NHRIs/NGOs," Department for the Execution of Judgments^[1] of the European Court of Human Rights. Council of Europe. <<https://www.coe.int/en/web/execution/nhri-ngo>>
- Court Interventions / Amicus Curiae," RefWorld. www.refworld.org
- Davies, Gareth. "Activism relocated. The self-restraint of the European Court of Justice in its national context," *Journal of European Public Policy* 19, no. 1 (2012): 76-1
- Dolidze, Anna. "Making International Property Law: The Role of Amici Curiae in International Judicial Decision-Making," *Syracuse Journal of International Law and Commerce* 40, no. 1 (Fall 2012): 119-154
- European Convention on Human Rights," Council of Europe. www.echr.coe.int
- Eynde, Laura Van Den. "An Empirical Look at the Amicus Curiae Practice of Human Rights NGOs before the European Court of Human Rights," *Netherlands Quarterly of Human Rights* 31, no. 3 (2013): 271-313
- Graglia, Lina A. "Do Judges Have a Policy-Making Role in the American System of Government?" *Harvard Journal of Law & Public Policy*, 17 (1994): 119-130
- Hirschl, Ran. "The Judicialization of Mega-Politics and the Rise of Political Courts," *Annual Review of Politics Science* no. 11 (2008): 93-118
- HUDOC EXEC," Department for the Execution of Judgments of the ECHR. Council of Europe. <<https://www.coe.int/en/web/execution>>
- HUDOC," European Court of Human Rights. Council of Europe. <http://www.echr.coe.int/ECHR/Homepage_EN>
- Information from NGOs & National HR institutions & IGOs," Committee of Ministers. Council of Europe. <<https://search.coe.int/>>
- Kochevar, Steven. "Amici Curiae in Civil Law Jurisdictions," *Yale Law Journal* 122, no. 6 (April 2013): 1653-[ix]
- Krislov, Samuel. "The Amicus Curiae Brief: From Friendship to Advocacy," *Yale Law Journal*, 72 (1963): 694-721

- Larsen, Allison. "The Trouble with Amicus Facts," *Virginia Law Review* 100, no. 8 (December 2014): 1757-1818
- Letsas, George. "The ECHR as a living instrument: its meaning and legitimacy," *Cambridge University Press* (2016): 106-142
- McCann, Michael. "Law and Social Movements: Contemporary Perspectives," *Annual Review of Law and Society* no. 2 (2008): 17–38
- Merrill, Thomas W. "A Modest Proposal For A Political Court," *Harvard Journal of Law & Public Policy*, 17 (1994): 137-147
- Michels, Ank. "Innovations in democratic governance: how does citizen participation contribute to a better democracy?" *International Review of Administrative Sciences* 77, no. 2 (2011): 275-293
- Reinhardt, Stephen. "The Supreme Court as a Partially Political Institution," *Harvard Journal of Law & Public Policy* 17 (1994): 149-153
- Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements," Department for the Execution of Judgments^[1] of the European Court of Human Rights. Council of Europe. <<https://rm.coe.int/16806eebf0>>
- Shapiro, Martin. "Judges As Liars," *Harvard Journal of Law & Public Policy*, 17 (1994): 155-156
- Voeten, Erik, Laurence R. Helfer. "International Courts as Agents of Legal Change: Evidence from LGBT Rights in Europe," *International Organization*, 68 (2014): 77-110
- Zeman, Frances. "Legal Mobilization: The Neglected Role of the Law in the Political System," *The American Political Science Review*, 77, no. 3 (1983): 690-703

Cases Cited

- Soering v. The United Kingdom*, no. 14038/88, ECHR 1989.
- Chahal v. The United Kingdom*, no. 22414/93, ECHR 1996.
- Nsona v. The Netherlands*, no. 23366/94, ECHR 1996.
- Halford v. The United Kingdom*, no. 20605/92, ECHR 1997.
- H.L.R. v. France*, no. 24573/94, ECHR 1997.
- Mamatkulov and Askarov v. Turkey*, no. 46827/99, ECHR 2003.
- Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, no. 13178/03, ECHR 2006
- N. v. The United Kingdom*, 26565/05, ECHR 2008.
- Ismoilov and Others v. Russia*, no. 2947/06, ECHR 2008.
- Abdolkhani and Karimnia v. Turkey*, no. 30471/08, ECHR 2009.
- S.D. v. Greece*, no. 53541/07, ECHR 2009.
- Al-Saadoon and Mufdhi v. The United Kingdom*, no. 61498/08, ECHR 2010.
- M.S.S. and Others v. Belgium and Greece*, no. 30696/09, ECHR 2011.
- Rahimi v. Greece*, no. 8687/08, ECHR 2011.
- Popov v. France*, no. 39472/07, ECHR 2012.

Babar Ahmad and Others v. The United Kingdom, no. 24027/07, ECHR 2012.
Othman (Abu Qatada) v. The United Kingdom, no. 8139/09, ECHR 2012.
El-Masri v. Macedonia, no. 39630/09, ECHR 2012.
Hirsi Jamaa and Others v. Italy, no. 27765/09, ECHR 2012.
Suso Musa v. Malta, no. 42337/12, ECHR 2013.
Mohammadi v. Austria, no. 71932/12, ECHR 2014.
Tarakhel v. Switzerland, no. 29217/12, ECHR 2014.
Hassan v. The United Kingdom, no. 29750/09, ECHR 2014.
Sharifi and Others v. Italy and Greece, no. 16643/09, ECHR 2014.
Paposhvili v. Belgium, no. 41738/10, ECHR 2014.
F.G. v. Sweden, no. 43611/11, ECHR 2014.
M.E. v. Sweden, no. 71398/12, ECHR 2014.
Kim v. Russia, no. 44260/13, ECHR 2014.
V.M. and Others v. Belgium, no. 60125/11, ECHR 2015.
Sakir v. Greece, no. 48475/09, ECHR 2016.
A.B. and Others v. France, no. 11593/12, ECHR 2016.
Abdullahi Elmi and Aweys Abubakar v. Malta, no. 25794/13, ECHR 2016.
Shioshvili and Others v. Russia, no. 19356/07, ECHR 2016.
Khlaifia and Others v. Italy, no. 16483/12, ECHR 2016.
R.C. and V.C. v. France, no. 76491/14, ECHR 2016.
O.M. v. Hungary, no. 9912/15, ECHR 2016.
Z.A. and Others v. Russia, no. 61411/15, ECHR 2017.
N.D. and N.T. v. Spain, no. 8675/15, ECHR 2017.
Kebe and Others v. Ukraine, no. 12552/12, ECHR 2017.
Bistieva and Others v. Poland, no. 75157/14, ECHR 2018.
Ilias and Ahmed v. Hungary, no. 47287/15, ECHR 2019.
H.A. and Others v. Greece, no. 19951/16, ECHR 2019.
Sh.D. and Others v. Greece and Others, no. 14165/16, ECHR 2019.
Kaak and Others v. Greece, no. 34215/16, ECHR 2019.
Khan v. France, no. 12267/16, ECHR 2019.
A.S.N. and Others v. The Netherlands, no. 68377/17, ECHR 2020.
Nur and Others v. Ukraine, no. 77647/11, ECHR 2020.