

Schriftenreihe

Europäisches Recht, Politik und Wirtschaft

Alexandra Ellen Hansen

Facts Before the European Court of Human Rights

How does the European Court of Human Rights (ECtHR) contend with facts, and how can principles of scientific method be used to critique the factual analyses by the ECtHR in its case-law?



Nomos

Schriftenreihe Europäisches Recht, Politik und Wirtschaft

Herausgegeben von

Prof. Dr. Dres. h.c. Jürgen Schwarze,
Direktor des Europa-Instituts Freiburg e.V.,
Universität Freiburg

Prof. Dr. Armin Hatje, Universität Hamburg

Band 402

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The publication was supported by the Swiss National Science Foundation (SNSF).



SCHWEIZERISCHER NATIONALFONDS
ZUR FÖRDERUNG DER WISSENSCHAFTLICHEN FORSCHUNG

The Deutsche Nationalbibliothek lists this publication in the Deutsche Nationalbibliografie; detailed bibliographic data are available on the Internet at <http://dnb.d-nb.de>

a.t.: Zürich, Univ., Rechtswissenschaftliche Fakultät, Diss., 2021

ISBN 978-3-8487-8985-6 (Print)

978-3-7489-3322-9 (ePDF)

British Library Cataloguing-in-Publication Data

A catalogue record for this book is available from the British Library.

ISBN 978-3-8487-8985-6 (Print)

978-3-7489-3322-9 (ePDF)

Library of Congress Cataloging-in-Publication Data

Hansen, Alexandra Ellen

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201 pp.

Includes bibliographic references.

ISBN 978-3-8487-8985-6 (Print)

978-3-7489-3322-9 (ePDF)

1st Edition 2022

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Published by

Nomos Verlagsgesellschaft mbH & Co. KG

Waldseestraße 3–5 | 76530 Baden-Baden

www.nomos.de

Production of the printed version:

Nomos Verlagsgesellschaft mbH & Co. KG

Waldseestraße 3–5 | 76530 Baden-Baden

ISBN 978-3-8487-8985-6 (Print)

ISBN 978-3-7489-3322-9 (ePDF)

DOI <https://doi.org/10.5771/9783748933229>



Onlineversion
Nomos eLibrary



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To my parents

Acknowledgements

For his expertly supervision, mentoring and encouragement throughout my PhD, I wish to thank Tilmann Altwicker. He managed to keep me on track when my own thoughts led me astray but also allowed me the necessary space and freedom to develop my own mechanism to write this thesis. The many discussions we had during my employment as his research assistant helped me narrow down my research interests. I am extremely grateful for the opportunity to present earlier versions of my work in front of Tilmann Altwicker and the members of the Swiss National Science Foundation research group. I received very helpful feedback in these sessions and am thankful to all members of the research group. I am also grateful to Oliver Diggelmann for having agreed to be the second assessor of my work.

I wish to express my deepest gratitude to Lilian Buchmann, Fabienne Krebs, Aileen Kreyden, Severin Meier, and Sandra Ujpétery for their valuable inputs and support. Their diverse backgrounds provided for invaluable feedback at various stages of my doctoral process.

I am grateful to the Faculty of Law of the University of Zurich for having provided me with funds via the Candoc research credit* for my last year of research. Unfortunately, my plans to go to the University of Glasgow as a visiting researcher were thwarted by the Coronavirus pandemic. Nonetheless, I would like to express my gratitude to Lea Raible and James Devaney, who supported my application to the law school in Glasgow.

A very special word of thanks goes to my parents, Margaret and Bjørn, my sister Charlotte, my partner Carim, and my friends. I cannot put into words how much I appreciate the support on all levels imaginable that they have provided to me over the last years. Without them, I would not have been able to complete this project.

This PhD thesis was handed in on 15 July 2021 and accepted by the Faculty of Law of the University of Zurich on 6 October 2021.

Published with the support of the Swiss National Science Foundation.

Basel, 28 May 2022

* UZH Candoc Grant, grant no. [FK-20-007]

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Abstract

Legal decision-making is not a ‘one way street’. Any legal analysis is based on a factual context. Before any legal analysis can commence, the facts of a given case have to be detangled and a decision is reached as to which facts are deemed relevant for the legal analysis that is to follow. The legal norms that are considered applicable to the factual circumstances will, in turn, bring into focus those facts that best fit under the legal norm. There is, thus, a back-and-forth between the factual and the normative; the factual gaze is influenced by the legal gaze and vice versa. It is the factual-side of this back-and-forth, that is of interest in this thesis.

The contribution of this PhD thesis is that it suggests using principles of scientific method as fact-assessment criteria. These scientific principles are employed as a methodology to assess and criticise nine judgments by the ECtHR. In a nutshell, it is shown that reading and analysing the ECtHR’s case-law using the principles of scientific method, allows the detection of flaws in the factual analyses. A strong factual analysis, freed of logical flaws and inconsistencies, that is based on principles of scientific method, will provide a strong basis on which the legal analysis can then follow. Any inconsistencies in the factual analyses will impact the legal assessment. This thesis aims at stressing the importance to pay more attention to the factual analysis in legal decision-making, and it outlines how a more appropriate factual analysis can be achieved.

