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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

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To my parents

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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.

