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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?



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To my parents

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Table of Contents

Abstract	13
Introduction	15
I. Facts and Rules of Evidence in the Sphere of International Adjudication	17
1. What Are Facts?	17
2. Particularities of the International Sphere	20
a. Fragmentation	20
b. International Law and Domestic Law	22
c. Multi-Perspectivity and Agenda-Setting	25
3. Defining Fact-Assessment	28
4. Goals of International Fact-Assessment	31
a. Ascertaining ‘the Truth’?	31
b. Other (Potentially Competing) Goals	33
c. Truth Founded on Evidence	34
5. Rules of Evidence in International Adjudication	37
a. The Powers of International Courts and Tribunals Regarding Evidence	38
i. Power to Order Parties to Produce Evidence	38
ii. Power to Conduct Own Investigations	42
iii. Power to Engage Experts	44
b. Basic Concepts	49
i. Admissibility of Evidence	49
ii. The Burden of Proof	51
iii. Standard of Proof	53
(1) Prima Facie Evidence	55
(2) Preponderance of Evidence	57
(3) Beyond Reasonable Doubt	59
6. The ECtHR’s Institutional Variations	62
a. Applications Before the ECtHR	62
b. Final Assessment of the Facts	64
c. Rules on Fact-Assessment and Evidence Before the ECtHR	66

Table of Contents

d. Subsidiarity and Fact-Assessment	67
7. Conclusion	73
II. Facts, Law and Interdisciplinarity	75
1. Interdisciplinarity and International Legal Theory	75
2. Pragmatist Optimism towards Interdisciplinarity	77
a. Pragmatism	77
b. The First Step to Interdisciplinarity: Pragmatist Wariness of Dichotomies	80
c. The Second Step to Interdisciplinarity: the Importance of Context to Inquiry	83
3. Positivism's Arguments against Interdisciplinarity	86
4. The Blurred Line between the Factual and the Normative	91
a. The Chicken or the Egg? – or the Wandering Gaze	91
b. Adjudicative Facts and Legislative Facts	95
c. The Intrinsic Link between Facts and Law before the ECtHR	100
5. Conclusion	108
III. Principles of Scientific Method and Case Analysis	109
1. Principles of Scientific Method	109
2. Analysis of the ECtHR's Case-Law Using Principles of Scientific Method	111
a. Simplicity	113
i. The Principle	113
ii. Case Analysis	115
iii. Summary and Comment	127
b. Explanatory Power and External Validity	129
i. The Principles	129
ii. Case Analysis	130
iii. Summary and Comment	145
c. Falsifiability	147
i. The Principle	147
ii. Case Analysis	150
iii. Summary and Comment	166
3. Implications of these New Categories	168
a. Focusing on the Quality of the Fact-Assessment Procedure	168

b. How Do These Categories Change the Critique of Jurisprudence?	171
Conclusion	177
List of Cases	181
ECtHR Cases	181
ICJ Cases	183
WTO Cases	184
Cases from Other Jurisdictions	185
List of Legislation	187
Bibliography	189
List of Abbreviations	199

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.

