

Public



Scrutiny

Precognition and international principles
for the scrutiny on judgments
within the law-frame of the Protection of the
Human Rights and Fundamental Freedoms
this version and the Dutch version are authentic

Introduction

Prior knowledge is a level of ready knowledge in scope and depth. In practice, a lot of prior knowledge is refreshing knowledge that has sunk away.

All the following knowledge topics are the official inventory of legal public control (statement in the document "Manual for Public Control"). The list below is not in any order as it could have been of importance.

Container

Inside information also includes what is to be interpreted (document "Interpretation of the Articles of the Convention (ECHR)") and the identifiers (document "Inventory of the identifiers"). All documents are available on this site www.publicscrutiny.nl in the chapter "The Manual for Public Scrutiny (...) and more documents".

Abbreviations

The European Convention for the Protection of Human Rights and Fundamental Freedoms is hereinafter referred to as "Convention" and the European Court of Human Rights is referred to hereinafter as "the European Court".

The note [* n] is explained in the end.

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(I) Knowledge subjects and international principles

1. The law is made and written for every private individual

- (1) Each law or regulation is made and written for every private individual: (quote) "A third principle is that "a norm cannot be regarded as a 'law' unless it is formulated with sufficient precision to enable the citizen to regulate his conduct: he must be able – if need be with appropriate advice - to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail." (*case of Silver and Others v. United Kingdom case, 25 March 1983, §88*). The consequence is that a standard without the required precision is not binding on the citizen.

2. Every court, tribunal or judge is always last in line, forever

- (2) The European Court is also one of the courts, tribunals or judges.
- (3) Every private individual knows his rights always first and knows first forever. Quote: "Similarly, the "contestation" (claim) generally exists prior to the legal proceedings and is a concept independent of them." (*case of Golder v. United Kingdom, 21 February 1975, §32*). This quote is in harmony and continues or complements the quote in §1 above.
- (4) The combat from out of each court's ambition, including the European Court, to become first in line and to dictate, is nothing different from the national licensing authority and with that the tribunal of Article 6, §1 instantly vanishes.

3. Any interpretation has retroactive effect by law

- (5) The Council of Europe publishes that the Convention entered into force on 3 September 1953. It has remained unchanged since then, meaning that the implied rights also entered into force on 3 September 1953. So, on whatever date a pseudo-new interpretation is made, it is impossibly without retroactive effect. At the same time, it proves poorly done work in previous years.

4. Human rights concerns one court: that of the first instance.

- (6) Article 6, §1, prescribes an independent and impartial tribunal. This describes not tribunals, in plural, and is aimed at only one (1) tribunal. The European Court only ruled in the case of *De Cubber v. Belgium*, 26 October 1984, in §32: (quote) "Article 6 para. 1 (art. 6-1) primarily concerns courts of first instance;".
- (7) **The guarantee**
The ECHR is the guarantee (Article 1) that one (1) tribunal is sufficient. The guarantee establishes the impossibility of a "higher" tribunal that will be better or fairer. Nor does the Convention prescribe at which tribunal layer a private individual will be provided with the only true and only correct tribunal. Nor does the ECHR prescribe at which tribunal layer the private individual 'gets' the only true human rights justly.

5. The Convention is a regular contract

- (8) Article 1 of the Convention confirms the contract between the Contracting Parties on the one hand and anyone on the other.
- (9) The legal effects and consequences of contract and breach of contract are according to the agreements rights of the country where the events take place.

6. Each appeal (appeal) is a regular notice of default

(10) Given the fact that the Convention is a regular contract (§8 and §9 above) and the Convention concerns only one court, that of first instance (§6 and §7 above), which also makes unjust. From out of each point of view than there is a right for the guarantee provider (the Contract State) that only commences with a notice of default: the appeal. The purpose of any appeal (appeal) is the State's ability to set things right. Quote: "(...) the Court is satisfied that, (...), a further appeal is in principle an 'effective' remedy for the purposes of Article 35, §1 of the Convention." (*case of A.M. vs. the Netherlands*, 5 July 2016, §94).

(11) Then going further: (quote) "The Court therefore finds that the applicant did not provide the national judicial authorities with the opportunity which is in principle intended to be afforded to Contracting States under Article 35 of the Convention, namely the opportunity to prevent or put right Convention violations through their own legal system" (*case of A.M. vs. the Netherlands*, 5 July 2016, §95).

REMARK that the national judicial authority ought to be provided and not the Contracting State.

ATTENTION: a possibility to prevent or rectify is a legal contract requirement and this is a consequence of "Fair Play" (Rule 4 in document "Inventory of identifiers" [* 1]). An appeal is nothing more and nothing less than a regular notice.

7. the Convention obligates also the European Court and any national court, tribunal, judge or judiciary

(12) Article 19 institutes the European Court. There is clearly one (1) European Court and it is not a State as referred to in Article 17, but it is indisputably a group, it is settled in Europe and consists of Europeans. Article 17 thus also reflects on the European Court.

(13) The European Court does not guarantee the protection (of human rights and fundamental freedoms), but its goal is to ensure that the commitments entered into by a Contracting State are respected (Article 19 ECHR).

(a) The measures and measuring by the European Court must comply with the rules of "fair play". The rules of "fair play" are identified in the document "Inventory of identifiers" [*1].

(b) The insurance by the European Court results in the same as the guarantees by a Contract State, namely the enjoyment of the protection for everyone (of the human rights).

(c) A fair measurement of the commitments obliges the same fair process and the same fair treatment in these proceedings as the fair process for establishing citizens' rights.

NOTE: Civil rights include human rights, but human rights do not include civil rights.

(14) So, the Convention radiates just as much to the guarantees as to the insurance. So, both to the European Court and to every Contracting State. In parallel, every Contract State experiences the fair trial of the European Court as everyone experiences the fair trial from every Contracting State.

(15) Just as any law or regulation must comply and be in harmony with the Convention (sub-paragraph f, document "Interpretation of Articles of the Convention (ECHR)" [*1]), so ought the "Rules of Court" of the European Court also comply and be in harmony with the Convention.

8. Good faith is absent by default

- (16) Good faith is perhaps the most important legal principle, as it underlies many international legal rules (International Court of Justice, Rep. 253, Nuclear Tests Case (Australia/France), 1974).
- (17) Good faith is a principle in international law and means (the literal "means") that it is assumed without proof that "it" is true **and** according to the law. So, good faith is always absent in the case of doubt, either beforehand or afterwards, and regardless of what causes the doubt. The second element ("it" is according to the law) means (the literal meaning) good faith is absent as the person whose integrity is assumed (here afterwards) knew the facts or the law (which are good faith concerns). After all, in knowing there is no assumption. So that with good faith, then, everything is true and legal beforehand, so that, then, the sincere or serious scrutiny of a court decision impossibly can exist. Furthermore, it is indisputable that every judge knew and knows the facts and law to which good faith relates.

9. Justice must also be seen done

- (18) On November 9, 1923, the United Kingdom's Lord Chief Justice, Lord Hewart, delivered its verdict in the capacity of President of the King's Bench (the United Kingdom's Supreme Court). The decision stated (the dictum) "Justice should not only be done; but should manifestly and undoubtedly be seen to be done.". By this the court referred (in that case) to the participation of the registrar in the seclusion of the jury in the chambers, which created suspicions of participation in the deliberation. This dictum is very often the (legal) ground for a consideration worldwide.
- (19) The European Cour states in the case Delcourt vs. Belgium, January 17, 1970, in §31: (quote) "When someone refers to the dictum" Justice must not only be done; it must also be seen to be done (...) ". The last part of the expression focuses on the sincere appearance in the seen, heard or take-able reality.

10. Any violation or misconduct by a judge is perjury

- (20) Article 6, §1, prescribes an independent and impartial tribunal. This implies a staffing with at least one legal sworn judge. Also for every judge of the European Court (Rule 3, "Rules of Court" that applies because of Article 25, sub d, Convention).
- (21) **The guarantee**
Each judge is sworn in, before taking up office, and solely to guarantee that the person is (at least) independent, impartial and faithful to the law. Perjury is non-independent and non-impartial at the same time. Because perjury, whether or not by lying, cheating or misleading is always to favor (more) or otherwise to disadvantage (more) a party. As stated by this party in the claims or refutings. Being available or being open to perjury is always personal.

Note:

This document is inseparable a unit with the documents "Interpretation of Articles of the Convention (ECHR)" and "Inventory of the identifiers" [* 1].

[* 1]: these documents are available on this site www.publicscrutiny.nl in the chapter "The Manual for Public Scrutiny (...) and more documents".