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PROCESS-BASED FUNDAMENTAL RIGHTS REVIEW

Practice, Concept, and Theory

Leonie M. Huijbers
ACKNOWLEDGMENTS

In 2014, I was busy writing my master’s thesis on freedom of religion and belief in the ECHR system, not knowing where life had in store. In mid-August, in an e-mail, my law supervisor Janneke posed an unexpected question: ‘would you be interested in writing a PhD under my supervision?’ A bit flabbergasted, but very honoured, I said I would think about. The project Janneke had in mind was called ‘Improving supranational adjudication in fundamental rights cases: towards a procedural approach for the European Court of Human Rights’. As I had never heard of procedural review – or process-based review as it is called in this book – nor read anything of John Hart Ely, I basically had no idea what I was getting myself into. But with any great journey, perhaps it is best to have no idea where the road will take you. After all, Frodo never let Bilbo’s cautionary words, ‘It’s a dangerous business, Frodo, going out your door. You step onto the road, and if you don’t keep your feet, there’s no knowing where you might be swept off to’, stop him from his grand adventure. So, why should it stop me?

I happily accepted and I took off on my big adventure. The academic journey of writing a PhD was an exciting and inspiring time. Not only because it gave me the chance to be part of academia, which allowed me to mull over a topic and then spit out my ideas in the shape of articles, blogs, presentations, and finally a dissertation, but also because of the wonderful people I met along the way. It is therefore with great pleasure that I take this opportunity to thank all those inspiring, cheerful, and precious people in my life without whom I never would have finished this book, nor started it for that matter.

So first, the one who sent me on my quest. My Gandalf, as it were. Janneke, since the days you supervised my master’s thesis you have been a mentor to me and I would not have been able to finish my dissertation without you. You are a source of inspiration, a cradle of kindness, and a beacon of knowledge. You truly deserved the ‘Best Supervisor of the Year 2018’ award you received, even though I still think it should have been the ‘Best Supervisor Ever’ award. And Paulien, my second supervisor, you joined at quite an advanced stage of the dissertation writing, yet were able to grasp the topic in no time at all. As a copromotor you provided me with valuable new insights and raised questions that helped me to critically reflect on my writing. As my office buddy you provided me with companionship at work and acted even as my roomie in the winter months in room 3.01 at ASP. Merci pour tes conseils et ton humour!
Acknowledgments

Speaking of roommates, I wish to thank my ‘official’ roommates who made our room the most fun – I mean hardworking – room at ASP, and later on at Newtonlaan. Thank you all – Hilke, Catherine, Xia, Erie, Sanne, Jesse, Heqing, Niels, Erin, and Lisa – for the wonderful times, the pour-your-heart-out Thursdays, the laughter, and the endless discussions. Special thanks go out to Erin and Lisa, as my paranymph and secret paranymph, respectively. Both of you have been my work-based support system in the last couple of years. You gave me the much-needed endurance for my quest of slaying the ‘many-headed monster’ – also known as my dissertation – and our get-togethers provided much needed distraction from our PhD life crises. Cheers to you!

My gratitude also extends to my other wonderful colleagues and former colleagues at Utrecht University. As there are so many of you, and I am sure I will forget names if I list them here (‘I am old, Gandalf … like butter that has been scraped over too much bread’), I would like to say thanks to all of my colleagues at the Montaigne Centre, at the Netherlands Institute for Human Rights (SIM), and at the department of Constitutional Law, Administrative Law, and Legal Theory. You have been a true inspiration to me, each in your own way. You shared your ideas and thoughts on philosophical writing, on methodology, on fundamental rights, and on courts’ institutional position, but also on all sorts of work-related issues and not-so-work-related-yet-surely-very-urgent-and-existential matters. Thank you for all the amazing insights, laughter, and critical reflections during the many seminars, lectures, and conferences, and for the many coffee (tea!) breaks and hallway bump-ins, drinks and fika’s, brown bag and regular lunches, bezinningsdagen and leesclubjes, feel good chats and brainstorm sessions. My thanks also extend to the editors, international members, and executive assistants of the Netherlands Quarterly of Human Rights. I am especially grateful to Antoine with whom I worked closely and who showed me the reigns of academia as well as of the editorial business. In addition, I am grateful to Laura for setting up the Research Brokers project with me and to the students who participated in the pilot. I am sure, albeit in a different way, this project will continue – in the end, it is wonderful when students’ human rights research contributes to the work of human rights organisations.

Although Utrecht is the place where I spent most of my time as a PhD, my PhD journey started in a different city to the East. A small and kind place, surrounded by hills, called Nijmegen. For my first steps outside student life and into the land of ‘academic adults’ – as I used to call them – I found my first fellowship at Radboud University Nijmegen. My colleagues at the International and European Law department made me feel welcome and provided me with opportunities to develop my teaching and research skills. My colleagues at the Constitutional Law department provided me a place to work as well as some essential constitutional law lessons. I am glad we still see each other now and again at PhD defences and conferences. Special thanks goes out to the Jonge Gaerde for the fun activities, including bowling, pub quizzes, and juggling, and for the friendships that have resulted from it.
All these people were essential to the part of writing a dissertation. But five wise men and women were ultimately left to decide whether my PhD quest was completed or whether some more battles had to be fought and won. I express my sincere gratitude to Ittai Bar-Siman-Tov, Eva Brems, Patricia Popelier, Robert Spano, and Jerfi Uzman, for reading my dissertation, providing valuable comments, and offering their critical reflections. I also thank you for your academic writing, which formed an important source of inspiration for this book. My gratitude also goes out to Elaine Mak and Antoine Buyse, who were willing to reflect on my work and to take part in the opposition during the defence.

With the approval of the reading committee, my PhD quest has now come to an end. It is therefore time to embark on a new mission. One that allows me to explore a new land. I am therefore happy to have been given the opportunity to set sail to the land of fundamental rights practice. Although I am not saying goodbye to academia forever – unlike the divides of Middle-earth, there is no unbridgeable divide between the lands of practice and theory – the possibility to contribute to the promotion and protection of fundamental rights in the Netherlands is a new adventure that I am excited to begin. Or rather, to continue. Through the years, as part of the Public Interest Litigation Project (PILP), I have worked with fundamental rights in practice. From this work I’ve seen that, if the time is right and if enough effort is put in by many organisations and people, it is possible to change policies for the better. I am truly grateful to have gotten the opportunity to act as an expert on housing policies for travellers, and have worked closely with the inspiring Jelle. In my new position as policy advisor at the Netherlands Institute for Human Rights (College voor de Rechten van de Mens) I will continue these efforts in different areas. To my new colleagues, I would like to express some words of gratitude. Thank you for allowing me to embark on this ship with you, for your patience with me figuring out how to do this job, and for your support in the final stages of completing this book. I look forward starting this new venture with all of you.

As I leave the shores of academia, I find myself reflecting more broadly on the ones dearest to me and how each and every one of them was essential for the completion of my quest. I greatly appreciate my friends for their willingness – seemingly voluntarily – to be my companions. Through unthinkably funny and awkward moments as well as through inconsolable moments of sadness, we have seen each other through. As true Eärendils, all of you have made my life brighter and less heavy. I believe friendship was the only reason why Frodo’s quest succeeded, as did mine.

As I will not be able to mention all of you, I just want to highlight some of my most beloved stars. My oldest friend, Gabin, thank you for sticking around, for the amusing chats, and for keeping it real, Brabant-style. My buddies from Dea Dia, Hong-Ha, Jeske, Kathelijn, Leonie (Do), and Simone, although we see each other on a regular-though-not-really-regular-basis these days and have definitely shrunken in size (pun intended!), thank you for the wonderful and unforgettable times. To Bianca, ‘my besty’, your courage has remained a source of inspiration, and I thank you for your friendship.
and your wisdom. This book is dedicated to you. To my friends from my sorority, Marleen and Moniek, thanks for the serious reflections on life and for goating – I mean joking – around with me. To my many tennis mates – serving as friends and foes – you kept me on my feet and gave me the much-needed physical distraction from writing a PhD. Lastly, Leonie, my paranymph, and the best listener and dancer in the whole wide world, your creativity is amazing, you are true to your word, and you are unbelievably kind. Thank you for it all!

I am most indebted to my personal Shire folk: my family. My mum and dad, and I’ll say this in Dutch, dank jullie wel voor jullie aanmoedigingen, jullie vertrouwen en jullie liefde. Jullie hebben mij een solide basis gegeven om van daaruit de wereld te ontdekken. Dit boek is daarvan het resultaat. To my granny, thank you for your wit and lessons about kindness. Sanne, Maartje, and Dorien, my dear sisters and my closest friends, even though we never phrase it like that, thank you for all the conversations, phone calls, birthdays, zusjesdagen, weekends, and babysitting opportunities. You are the strongest, loveliest, and most annoying people in my life – and I love you for all of it. My niece and nephews – Julie, Cas, Joris, Olivier, and Sep – you are tante Lola’s cutest little hobbits and best distractions from work-life. My thanks also go out to Ivo, Paul, and Dries for the great wines and beers, and the horrible puns. I am also grateful to my family-in-law, Truedy, Wie Djin, and Laurens, for your kindness and understanding. Thank you for opening up your lives and wholeheartedly welcoming me into your family.

Now that the journey is getting close to its end and the contours of the new land start to take shape, I think of all the places my PhD quest has brought me. After all, a serious quest requires you to travel beyond your own comfortable realm into the unknown. Amongst other places, my PhD took me to a co-organised expert seminar with Janneke and Kasey McCall-Smith in Edinburgh and a summer school organised by the Venice Academy of Human Rights and Democanisation in Venice, and to smaller and larger conferences in Barcelona, Cambridge, Copenhagen, and Granada. These events made me grow as a scholar and I am grateful for the opportunities I have had to share my research and for the useful feedback I received. I am also thankful for the chance I got to visit the library of the European Court of Human Rights, to consult the case files of several cases, and to meet with several ECtHR judges and Registry members to talk about process-based review. It was great to be back in Strasbourg – the place where I spent a year as an Erasmus student – and it was truly valuable to talk to the people who make such a significant contribution to the protection of fundamental rights in Europe.

My time in Strasbourg was even more enjoyable as I was not on my own – this time I was there with the Sam to my Frodo, my greatest companion of all. Floris was a visiting ECtHR scholar at the time, and he made my stay in Strasbourg triple (Karmeliet) the fun. You are the person who perhaps suffered the most of my journey, as you were often my sounding board even when you were tired and really needed to sleep. Thank you for your support and for the funny, sarcastic, and painfully bad jokes. Thank you for your love,
your inspiration, and your friendship. I am so happy that we have accompanied each other in our journeys as PhDs. Above all, I am happy that unlike my dissertation, our story will not end in a cover on the shelf, but will continue long after the final sentence of this book has been written.

Thank you all!

Leonie
La Blaisotterie, August 2019
CONTENTS

Acknowledgments ................................................. v
List of Abbreviations ........................................... xix

INTRODUCTION

Chapter 1
Introduction ....................................................... 3
1.1 The rise and controversy of process-based fundamental rights review ........ 3
1.2 The book’s objectives and questions ........................................ 10
1.3 Scope of the book and terminology ........................................ 12
1.4 Methodology and methods .............................................. 13
1.5 Roadmap .............................................................. 15

PART I
THE PRACTICE OF PROCESS-BASED FUNDAMENTAL RIGHTS REVIEW

Introduction to Part I ............................................. 21
Process-based review in the practice of fundamental rights adjudication .......... 21
Methodology and methods of Part I: case selection ................................. 22
Roadmap to Part I ...................................................... 25

Chapter 2
Process-based Fundamental Rights Review of Legislative Procedures ............ 27
2.1 Introduction ........................................................... 27
2.2 Examples of review of the legislative process .................................... 28
  2.2.1 US Supreme Court: Carolene Products and Fullilove ....................... 28
  2.2.2 Supreme Court of Hawaii: Taomae .............................................. 29
  2.2.3 New Zealand, United Kingdom, and Finland .................................. 30
  2.2.4 German Federal Constitutional Court: Hartz IV ............................... 31
  2.2.5 South African Constitutional Court: Doctors for Life International .... 33
  2.2.6 Colombian Constitutional Court: ‘General Foresting Law case’ and ‘Consultation of Ethnic Communities case’ ........................................... 35
  2.2.7 European Court of Justice: Volker und Markus Schecke .................. 37
Chapter 3
Process-based Fundamental Rights Review of Administrative Procedures

Chapter 4
Process-based Fundamental Rights Review of Judicial Procedures

Reflection on Part I

PART II
THE CONCEPT OF PROCESS-BASED FUNDAMENTAL RIGHTS REVIEW

Introduction to Part II
Chapter 5
Conceptualising Process-based Fundamental Rights Review

5.1 Introduction
5.2 Defining process-based fundamental rights review
   5.2.1 Definitions of process-based fundamental rights review in the literature
   5.2.2 Elements of process-based fundamental rights review in practice
   5.2.3 Common definitions of process-based fundamental rights review
5.3 Process-based fundamental rights review as a method of review
   5.3.1 Levels of case-law analysis: micro-, meso-, and macro-levels
   5.3.2 Fundamental rights review: from substance-based to process-based
      A. On the substance-procedure distinction
      B. Spectrum of fundamental rights review
5.4 Conclusion

Chapter 6
Operationalising of Process-based Fundamental Rights Review

6.1 Introduction
6.2 Reviewer, subject and object of review
6.3 Diverse applications of process-based fundamental rights review
   6.3.1 Intensity of process-based review
   6.3.2 Burden of proof
   6.3.3 Standards for review
      A. Authority responsible for procedural standards
      B. Types of procedural standards
         I. Certainty standards
         II. Rationality standards
         III. Fairness standards
      C. Other categories of standards
6.3.4 Result of procedural considerations
6.3.5 Location of review
      A. Preliminary tests: intensity of justification review
         I. Process-based review as an indicator for the intensity of review: justification strategy
         II. Process-based review as a consequence of the intensity of review: avoidance, compensation, and intensification strategies
      B. Legitimate aim or proper purpose
      C. Suitability
      D. Necessity
      E. Proportionality in the strict sense
6.3.6 Importance of procedural considerations ............................... 161
6.3.7 Conclusion of procedural reasoning ................................. 165
6.3.8 Résumé and macro-level impact ..................................... 167
6.4 Conclusion ............................................................................. 170

Reflection on Part II ................................................................. 171

PART III
THE THEORY ON PROCESS-BASED FUNDAMENTAL RIGHTS REVIEW

Introduction to Part III ............................................................... 177

The controversy of process-based fundamental rights review: set-up of Part III ...... 177
Methodology and methods of Part III ........................................ 179
Roadmap to Part III ................................................................. 181

Chapter 7
Debates Concerning Process-based Review and the Rule of Law, Deliberative Democracy, and Institutional Judicial Restraint ................................. 183

7.1 Introduction ............................................................................. 183
7.2 Process-based review and rule of law .................................... 184
  7.2.1 Courts as authorities of rule of law compliance ...................... 185
    A. ‘Procedural rule of law’ ..................................................... 185
    B. Rule of law and process-based review ............................... 186
  7.2.2 Courts as imperfect protectors of the rule of law .................... 190
  7.2.3 Résumé ............................................................................. 193
7.3 Process-based review and deliberative democratic theory .................... 193
  7.3.1 Courts as guardians and promoters of deliberative processes .... 194
    A. ‘Deliberative democracy’ and ‘deliberative procedures’ ........... 194
    B. Process-based review to guard the political process ............. 196
    C. Process-based review to promote deliberative procedures ....... 198
  7.3.2 Courts as part of the deliberative democratic enterprise ......... 202
    A. Courts as public reasoners ................................................ 203
    B. Courts as interlocutors ..................................................... 204
    C. Courts as deliberators ...................................................... 206
  7.3.3 A limited role for courts and process-based review in democratic theory ................................................................. 209
    A. Courts as dangers to the deliberative enterprise .................. 209
    B. Courts are not part of the deliberative enterprise ............... 211
  7.3.4 Résumé ............................................................................. 211
7.4 Process-based review and judicial restraint or activism ...................... 212
  7.4.1 Courts as restrained or self-restraining institutions ............... 213
7.4.2 Courts as procedural activists .................................................. 215
7.4.3 Résumé ................................................................................... 219
7.5 Reflections and connections ...................................................... 219
  7.5.1 Intertwinement of views on process-based review with core constitutional principles .................................................. 220
  7.5.2 Context of process-based review ............................................... 223
    A. Historical context ..................................................................... 224
    B. Institutional context ................................................................. 226
  7.5.3 Intrusiveness of process-based review ....................................... 228
7.6 Conclusion .................................................................................. 229

Chapter 8
Debates Concerning Process-based Review and Procedural Mandates, Judicial Standard-setting, and Fundamental Rights Protection .................................................. 231
8.1 Introduction .................................................................................. 231
8.2 Process-based review and the judicial function of protecting procedural standards .................................................................................................................. 232
  8.2.1 Courts’ procedural mandate ...................................................... 233
  8.2.2 Courts and the definition and application of procedural standards ................................................................. 235
    A. Originalism, living instruments, and the role of courts ............. 236
    B. Temporal aspects of standard-setting: consequences of new procedural standards .................................................. 239
    C. Substantive aspects of standard-setting: level of detail of procedural standards .................................................. 242
  8.2.3 Résumé ................................................................................... 245
8.3 Process-based review and the judicial function of protecting fundamental rights .......................................................................................................................... 245
  8.3.1 Courts offering protection of fundamental rights through process-based review .................................................. 246
    A. Minimum protection of fundamental rights ............................ 246
      I. Intrinsic approaches to the value of procedures for fundamental rights protection ............................................. 247
      II. Instrumental approaches to the value of procedures for fundamental rights protection ............................. 250
    B. Enhanced protection of fundamental rights ............................ 254
      I. Enhanced procedural fundamental rights protection ............. 254
      II. Enhanced substantive fundamental rights protection ........... 256
    C. Extending courts’ jurisdiction through (procedural) positive obligations ................................................................. 259
      I. Enforcing fundamental rights in horizontal disputes ............ 260
      II. Enforcing socio-economic rights ......................................... 262
    D. Résumé ................................................................................... 264
<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>8.3.2 Courts failing to protect fundamental rights by applying process-</td>
<td>264</td>
</tr>
<tr>
<td>based review</td>
<td></td>
</tr>
<tr>
<td>A. Unsuccessful protection of fundamental rights</td>
<td>265</td>
</tr>
<tr>
<td>I. Inadequate protection of fundamental rights</td>
<td>265</td>
</tr>
<tr>
<td>II. Reduced protection of fundamental rights</td>
<td>268</td>
</tr>
<tr>
<td>B. Weakened judicial protection of fundamental rights</td>
<td>271</td>
</tr>
<tr>
<td>C. Résumé</td>
<td>273</td>
</tr>
<tr>
<td>8.4 Reflections and connections</td>
<td>273</td>
</tr>
<tr>
<td>8.4.1 A standard review loop</td>
<td>274</td>
</tr>
<tr>
<td>8.4.2 Primacy of procedural or substantive fundamental rights protection</td>
<td>275</td>
</tr>
<tr>
<td>8.4.3 Concrete and generic impact of procedural approaches</td>
<td>278</td>
</tr>
<tr>
<td>8.4.4 Context-dependent effectiveness of process-based fundamental</td>
<td>281</td>
</tr>
<tr>
<td>rights review</td>
<td></td>
</tr>
<tr>
<td>8.5 Conclusion</td>
<td>283</td>
</tr>
</tbody>
</table>

Chapter 9
Debates Concerning Process-based Review and Neutrality, Hard Cases,
Judicial Expertise, and Epistemic Uncertainties

9.1 Introduction                                                       | 285  |
9.2 Process-based review and normative difficulties in adjudication   | 286  |
9.2.1 Normativity or neutrality of procedures and procedural reasoning | 286  |
A. John Hart Ely's process-oriented system of review and neutrality    | 288  |
B. Normativity of procedures and process-based review                  | 290  |
C. Neutral enforcement of (legislative) entrenched substantive values  | 293  |
D. Procedural reasoning limiting substantive decision-making          | 296  |
E. Neutrality in degrees: more and less value-laden review             | 299  |
F. Transparency and risks of corruption, dishonesty, and inconsistency  | 300  |
G. Résumé                                                             | 302  |
9.2.2 Avoiding morally sensitive or 'hard' cases                       | 303  |
A. ‘Hard cases’                                                        | 303  |
B. Normative avoidance strategies                                      | 305  |
C. Process-based review as an avoidance strategy                        | 308  |
D. Nuancing process-based review’s potential                           | 312  |
E. Résumé                                                             | 314  |
9.3 Process-based review, judicial expertise and epistemic uncertainties | 315  |
9.3.1 Judicial expertise on decision-making procedures                 | 315  |
A. Judicial expertise on matters of process and process-based review   | 316  |
B. Limitations on judicial expertise                                   | 319  |
C. Résumé                                                             | 325  |
9.3.2 Epistemic uncertainties and decision-making procedures 326
   A. Epistemic uncertainties and empirical reasoning 326
   B. Courts and empirical reasoning 328
   C. Process-based review as epistemic avoidance strategy 331
   D. Evidence-based decision-making and procedural reasoning 337
   E. Problems with process-based review of empirical reasoning 341
   F. Résumé 345

9.4 Reflections and connections 346
   9.4.1 Law, morality, empiricism, and process-based review 347
      A. Relationships between law and morality, and law and empiricism 347
      B. Moral, empirical, and procedural reasoning 348
   9.4.2 Neutrality, normativity, factuality, and process-based review 350
      A. Neutrality–normativity tension and procedural reasoning 351
      B. Empirical reasoning to resolve the neutrality–normative tension? 353
   9.4.3 Normativity in degrees 356

9.5 Conclusion 357

Reflection on Part III 359

Overlap and conflicts between debates on process-based review 359
Conclusion: process-based review is not a one-size-fits-all approach 361

CONCLUSION

Chapter 10
Conclusion 365

10.1 Introduction 365
10.2 Building blocks for process-based fundamental rights review 367
   10.2.1 Intensity of process-based review 368
   10.2.2 Burden of proof 370
   10.2.3 Standards for review 372
      A. Authority responsible for setting procedural standards 372
      B. Types of procedural standards 374
      C. Other categories of standards 376
   10.2.4 Result of procedural considerations 378
   10.2.5 Location of review 380
      A. Preliminary tests: intensity of justification review 382
      B. Justification tests: legitimate aim, suitability, necessity, and proportionality 384
   10.2.6 Importance of procedural considerations 386
   10.2.7 Conclusion of procedural reasoning 390
   10.2.8 Résumé 392
10.3 Conclusion 395
Addendum: Questions for ECtHR Judges ............................................. 397
Summary ......................................................................................... 401
Samenvatting ................................................................................ 409
Bibliography .................................................................................. 419
Official Documents ........................................................................ 447
Case-Law (by Jurisdiction) ............................................................... 449
Case-Law (by Name) ....................................................................... 453
Curriculum vitae ............................................................................ 457
Index ............................................................................................. 459
# LIST OF ABBREVIATIONS

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
</tr>
</thead>
<tbody>
<tr>
<td>AHC</td>
<td>Australian High Court</td>
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<td>ACHR</td>
<td>American Convention on Human Rights</td>
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<td>BCC</td>
<td>Belgian Constitutional Court</td>
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<tr>
<td>Canadian Charter</td>
<td>Canadian Charter of Fundamental Rights and Freedoms</td>
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<td>CCC</td>
<td>Colombian Constitutional Court</td>
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<td>CCRF</td>
<td>Constitutional Court of the Russian Federation</td>
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<td>CESCR</td>
<td>UN Committee on Economic, Social, and Cultural Rights</td>
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<td>CJEU</td>
<td>Court of Justice of the European Union (encompassing the ECJ, the General Court and EU specialised courts)</td>
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<td>CoATH</td>
<td>Court of Appeal of The Hague of the Netherlands</td>
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<tr>
<td>CRPD</td>
<td>UN Committee on the Rights of Persons with Disabilities</td>
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<td>CSC</td>
<td>Canadian Supreme Court</td>
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<td>DSC</td>
<td>Danish Supreme Court</td>
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<td>DCTH</td>
<td>District Court of The Hague of the Netherlands</td>
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<td>EAW</td>
<td>European Arrest Warrant</td>
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<td>ECJ</td>
<td>European Court of Justice</td>
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<td>ECHR</td>
<td>European Convention for Human Rights (formally the Convention for the Protection of Human Rights and Fundamental Freedoms)</td>
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<td>ECtHR</td>
<td>European Court of Human Rights</td>
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<td>EU</td>
<td>European Union</td>
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<td>EU Charter</td>
<td>Charter of Fundamental Rights and Freedoms of the European Union</td>
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<tr>
<td>FAC</td>
<td>French Administrative Court</td>
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<td>FCFCA</td>
<td>Full Court of the Federal Court of Australia</td>
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<td>Framework Decision</td>
<td>EU Framework Decision on the European Arrest Warrant</td>
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<td>GFCC</td>
<td>German Federal Constitutional Court</td>
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<tr>
<td>GHRC</td>
<td>German Higher Regional Court</td>
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<td>GLoK</td>
<td>German Landgericht of Koblenz</td>
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<td>HCA</td>
<td>High Court of Argentina</td>
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<td>HRA</td>
<td>Human Rights Act of 1998</td>
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<tr>
<td>IACtHR</td>
<td>Inter-American Court of Human Rights</td>
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<tr>
<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights</td>
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<td>ICC</td>
<td>International Criminal Court</td>
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<tr>
<td>ICESCR</td>
<td>International Covenant on Economic, Social and Cultural Rights</td>
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<td>ISC</td>
<td>Irish Supreme Court</td>
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<tr>
<td>NCOP</td>
<td>National Council of Provinces</td>
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<td>NZBORA</td>
<td>New Zealand Bill of Rights Act of 1990</td>
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<tr>
<td>OECD</td>
<td>Organisation for Economic Co-operation and Development</td>
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<td>OHCHR</td>
<td>UN Office of the High Commissioner for Human Rights</td>
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<td>SACC</td>
<td>South African Constitutional Court</td>
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