

Fundamental Rights and the Rule of Law. Rule of Law as Argument for Interference.

Research Project within the Research Program of the Paul Scholten Centre (PSC) ‘the Rule of Law at the Limits’.

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Research Methodology

1. Select the type of judgements
ECtHR judgements of the chamber and the grand chamber as published in HUDOC
(describe the HUDOC database)

2. Determine the corpus of judgements
 - a. Select judgements in HUDOC (describe selection process; set selection date)
 - b. Open each judgement
 - c. Use ‘find’ and search for “rule of law” in the text of each judgement
 - d. Mark “rule of law” in the selected judgement (highlight with yellow)
 - e. Determine if “rule of law” is used only in documents (as in, for instance, legislation) or (also/only) in arguments in each judgement
 - f. Save “rule of law” only in documents judgements in separate folder³
Save “rule of law” also/only in arguments judgements in separate folder

2.1 How to select judgements in HUDOC

- a. Go to HUDOC Case Law database

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³ Save each individual judgement giving it the case name, article number, number of appearance of “rule of law” text and either documents or arguments. For example Pretty vs UK 8-2 2 rol 2 arguments means the case of Pretty versus the United Kingdom (name in de HUDOC database), 8-2 means article 8 paragraph 2, 2 rol means the text “rule of law” appears twice, 2 arguments means the text “rule of law” appears in two times in arguments.

- b. Select Judgements Chamber and Grand Chamber
- c. Use filters
 - i English
 - ii Importance level Case reports and level 1 (describe these importance levels)
 - iii Articles 8-2, 9-2, 10-2, 11-2
- d. Perform on the resulting body of judgements a text search on “rule of law”⁴

This results in a corpus of judgments with references to the text “rule of law”. The selection should be set on the date that the HUDOC database was searched (fixed date).

Only the set of judgments where “rule of law” appears in arguments is used for further analysis of the reasoning process and an analysis of the meaning that is attributed by the court to “rule of law”

3. Analyze reasoning

- a. Give short description of the case content
- b. State the legal question at stake
- c. Give the applicable legal rules
- d. Select text fragment(s) with reference to “rule of law” in the argumentation
- e. Reconstruct the reasoning process (see Fig. 1)

Select legal question

Select conclusion

Fill in reasoning steps (IF THEN)

⁴ Search text with rule of law between “ aanhalingstekens otherwise the search will be carried out on the words rule, of, and law separately.

legal rules	reconstruction of reasoning	relevant facts of the case			
	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td data-bbox="379 371 802 510" style="text-align: center;">conclusion</td> </tr> <tr> <td data-bbox="379 521 802 786" style="text-align: center;"> reasoning IF THEN </td> </tr> <tr> <td data-bbox="379 797 802 920" style="text-align: center;">legal question</td> </tr> </table>	conclusion	reasoning IF THEN	legal question	
conclusion					
reasoning IF THEN					
legal question					

Figure 1: Reconstruction reasoning ECtHR cases

PRETTY v. THE UNITED KINGDOM 8-2 2 rol 2 arguments

SANOMA UITGEVERS B.V. v. THE NETHERLANDS 10-2 2 rol 2 arguments

REFAH PARTİSİ AND OTHERS v. TURKEY 11-2 6 rol 4 arguments

4. Determine meaning of “rule of law”
 - a. Determine if the interference was allowed/not allowed
 - b. Determine key words

5. Administrate results in the Table of Outcomes (see Fig. 2)

case name	article ECHR	rule of law appearance⁵	rule of law concept⁶	interference⁷
Pretty vs UK	8-2	2-2		allowed
Refah vs Turkey	11-2	6-4		allowed
Samona	10-2	2-2		not allowed

Figure 2: Table of Outcomes

⁵ Rule of law appearance is the number of times it is mentioned in the text in total and in argument only.

⁶ Rule of Law concept is described using keywords.

⁷ Interference has two values allowed/not allowed