

## **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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### **1. Research Subject and Problem Statement**

The subject of research is the relation between fundamental rights and the rule of law. Court judgments in which ‘rule of law’ is used as an argument for justifying interference in a fundamental right as guaranteed in the European Convention on Human Rights (ECHR) will be examined.

We suppose that interference of fundamental rights as guaranteed in the ECHR is justified using ‘rule of law’ as argument. This may be a problem because the major principle within the rule of law is the guarantee of fundamental rights.

Our hypothesis is that in European Court of Human Rights (ECtHR) judgments appeals are made on ‘rule of law’, where this appeal appears as argument for justifying interference in a fundamental right as guaranteed in the ECHR.

Our plan is to find out if ECtHR judgments use ‘rule of law’ as argument to justify interference in the fundamental rights guaranteed in the articles 8 to 11 of the ECHR.

### **2. Research Questions**

Is ‘rule of law’ used as argument in ECtHR judgments in articles 8 to 11 ECHR cases?

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Is ‘rule of law’ used to justify interference in the fundamental rights guaranteed in the articles 8 to 11 of the ECHR?

What meaning is given to the concept ‘rule of law’ in cases where the fundamental rights guaranteed in articles 8 to 11 ECHR are interfered with an appeal on ‘rule of law’?

According to the judgments of the ECtHR what is the relation between fundamental rights and the rule of law?

How is this viewpoint of the ECtHR related to the standard point of view in the literature on the relation between fundamental rights and rule of law?

### **3. Methodology**

To be able to answer our research questions we perform a meta-analysis of court judgments and a literature survey on the subject of the relation between the rule of law and fundamental rights.

The following activities will be carried out:

1. Select type of judgments
2. Determine corpus of judgments

This results in a corpus of judgments with references to the text ‘rule of law’. 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. Analyse reasoning process
4. Determine meaning of ‘rule of law’

5. Discuss the viewpoint of the ECtHR on the relation between fundamental rights and the rule of law
6. Discuss the state of the art in the literature on the relation between fundamental rights and the rule of law
7. Relate both viewpoints on the relation between fundamental rights and the rule of law

#### **4. Contribution of our Research to the PSC Research Program**

Our research will contribute to more insight in (the definition of) the concept ‘rule of law’ in an international, more specific a European, context.

The research is concerned with limits to law and rule of law where it is focused on interference in fundamental rights.

Our research focus is on the relation between fundamental rights and the rule of law. The main question in our research is in what way the ECtHR uses ‘rule of law’ as an argument to justify interference in fundamental rights.

This research may result in new insights in the concept ‘rule of law’ (what meaning is attributed to the concept in the court judgments) as well as in the relation between fundamental rights and the rule of law.

## 5. Research Planning April – September 2013

Phase 1	Activity:	Design and plan the research
	Period:	April 2013
	Outcome:	Research Plan
Phase 2	Activity:	Perform research
	Period:	August – November 2013
	Outcome:	Research results
Phase 3	Activity:	Describe research and results
	Period:	December 2014 – January 2014
	Outcome:	Research Report Article
Phase 4	Activity:	Present research

## 6. Preliminary References

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Research Plan 02 December 2013

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