Rule of Lawyers: How the ECHR is Hampering Action on Migration

By Jacob Reynolds

Contents

1.Executive summary

Elected governments across Europe have often found their hands tied when it comes to dealing with the explosion in asylum and irregular migration claims.

The bind has been the provisions of human rights laws, detailed and expanded in a network of courts and conventions, including the European Court of Human Rights (ECtHR), the Court of Justice of the European Union (ECJ[1]) and the 1951 Refugee Convention.

These courts operate in tandem – closely following each other's reasoning, and all invoking provisions of inter-connected conventions. This makes disentangling the effects of particular legal provisions, courts, and conventions tortuous. But the net effect is clear.

The effect is that the Courts have stretched their tentacles ever further into national migration policy, narrowing the democratic space for governments to police borders, remove those with no right to stay, and test deterrence policies.

The result is strategic paralysis: ministers are elected to control migration yet find core tools neutralised by evolving legal doctrines and last-minute injunctions.

A deeper look at the role of the ECtHR is revealing in that we can pinpoint four legal avenues which have expanded the role of the Court and narrowed the scope of democratic action to control migration:

- First, extraterritorial reach – cases like *Hirsi Jamaa* made high-seas operations justiciable, effectively outlawing pushbacks without individual assessment.
- Second, hard-edged non-refoulement – *M.S.S.*, *Tarakhel* and *Paposhvili* raised bars on removals, converting policy judgments into litigation magnets.
- Third, Rule 39 interim measures – urgent orders that can freeze entire programmes, as with the UK's Rwanda flight.
- Fourth, the expansion of key provisions in the ECHR, most importantly Article 8 "right to a family life" has expanded, from *Üner* onwards, into a catch-all provision frustrating the deportation of illegal immigrants,

The ECHR itself is however only the tip of the iceberg. Under the influence of its principles, and in transposing its precedents into national law, national courts have often gone further. Margaret Thatcher once replied that her greatest success was Tony Blair. Likewise, the success of the ECtHR jurisprudence can be measured in the effect it has had on the member-states.

Whatever its intentions, the ECtHR is undermining national sovereignty on migration – not only through judgments, but via doctrines and procedures that make elected policy unworkable in real time.

Reform is feasible and necessary; absent that, states will legislate around Strasbourg or openly resist, with all the constitutional and diplomatic friction that entails.

2.Introduction

In May 2025, nine European leaders signed a joint letter questioning whether the European Court of Human Rights (ECtHR) had extended its reach beyond the original intent of the Convention—particularly in relation to illegal migration. The response from European institutions was swift and dismissive. Council of Europe (which oversees the Court) Secretary General Alain Berset rejected not only the argument but the premise that elected governments should question the Court at all, insisting that “no judicial body should be subject to political pressure.”

The swift reply of the court was telling. For the Council of Europe, the ECtHR sits, by definition, above democratically elected leaders. There can be no question of “political pressure”, which means there can be no political oversight of this august chamber.

Such a stance may be acceptable in theory, where the ECtHR functions as a purely neutral body, determining the application of already-agreed-upon principles; the “human rights” detailed in the European Convention of Human Rights, which member-states signed up to when joining. But as is easily demonstrable, the ECtHR functions as an increasingly political body – reserving for itself the right to decide what “human rights” mean and to progressively increase the scope of their application. As such, the Court has gone far beyond what any of the signatories agreed to when joining.

This briefing sets out the key ways in which the court has progressively expanded the meaning of the rights which are to apply to member-states of the Council of Europe. We offer four examples of areas where the court has progressively expanded its reach, and a number of country-specific case studies of how this has frustrated democratically elected governments in their mission to fulfil their public mandate of controlling illegal migration.

It is important to note that the Court does not work in isolation. Instead, the cases, and legal reasoning, are carefully watched by the network of other courts across Europe, and beyond. The effect is that the principles developed by the ECtHR are drawn on by other courts, such as the Court of Justice of the European Union (ECJ), local and national courts within and outside of the EU, and by the network of “human rights” organisations/NGOs which influence policymakers. As such, the progressive expansion of the scope of the ECHR provisions by the Court has a tremendous knock-on effect across the continent. Indeed, this is precisely the point.

3. Expansive principles

Here we look at a number of legal innovations the ECtHR has made, progressively expanding both the role of the court and the protections offered to asylum seekers and migrants. We introduce a number of legal terms, which, in characteristic fashion, are not immediately comprehensible to those not versed in the Court's terminology. As with most EU legalese, is hard not to suspect that this obfuscatory function is one of the purposes of the terminology.

In the spirit of demystifying the Court, we offer the below "cheat sheet" which certainly would outrage legal professionals but provides a rough and ready understanding of the legal innovations of the Court.

Cheat sheet:

- *Extraterritorial reach* – Court demands legal protection for those outside of Europe (they should be treated as if they resided on the territory of an ECHR country)
- *Non-refoulement* – Court insists you cannot return individuals to their country of origin
- *Rule 39* – Court stops government actions before any court process has been completed through "interim injunctions"
- *Article 8* – The "right to a family life" which effectively means you cannot deport individuals who have formed social bonds on your territory

3.1 Extraterritorial reach

The provisions of the ECHR apply to everyone within the jurisdiction of a state, a notion long read as essentially territorial. Over the years, the ECtHR introduced a new principle: that the Convention can apply outside a State's borders, when the state exercises "effective jurisdiction" [2]. This gives the Court and the ECHR provisions "extraterritorial reach" – reach beyond the territory of the signatory country. Taken together, these rulings were a tangible expansion of the Court's power to police conduct outside a State's home territory.

In the case of migration, the concept of extraterritoriality has been used to prevent countries from turning migrants away on the high seas. In *Hirsi Jamaa*, the Court ruled that Italy could not intercept migrants in the Mediterranean and send them back to Libya – even though the Italian operation happened outside Italy's territory.

The effect of this legal innovation is that the Court has determined for itself that pushbacks – otherwise known as border enforcement – are illegal. The defence of national borders, which must *by necessity* involve, on occasion, the refusal to allow large groups of individuals to enter, is prohibited by the Strasbourg court. The ECtHR effectively demands that *all* potential entrants must be allowed to reach the border and make their claim, no matter the cost to these countries. It not only places enormous burdens on destination countries but also incentivises dangerous practises and people smuggling. Italy, Hungary, and Poland among others, have been taken to task by the court for enforcing their national borders.

3.2 Non-refoulement – M.S.S., Tarakhel and Paposhvili

So-called "non-refoulement" – the doctrine that a state may not return an individual to a country where they face a real risk of serious harm – has become a central tenet of ECtHR jurisprudence. But we should note immediately that non-refoulment is not a provision in the text of the Convention[3]. Instead, this principle is one of the most decisive examples of the progressive expansion of the Convention through the case law of the court.

Through a number of cases, including *Soering*, *Chahal, M.S.S.*, *Tarakhel* and *Paposhvili,* the Court has evolved from protecting individuals at risk of the death penalty or torture, to forbidding returns of individuals even to fellow EU countries simply because of poor provision for the processing of asylum claims. The logic of this position was worked out in the ECJ – which carefully monitors and has drawn explicitly on ECHR case law[4] – in a recent ruling[5] which effectively determined that *no* women can be returned to Afghanistan because of the threat of discrimination (which includes not being allowed to play sport there).

Significantly, the Court has insisted on two disastrous doctrines which have severely hamstrung sovereign government's abilities to control illegal migration and protect their security. The first is the insistence on "individualised assessment", which means that each and every case must be decided on the basis of personalised risk-assessments – there can be no blanket policies, increasing the legal burden on host countries enormously. The second is the total overriding of national security considerations. Even individuals considered major national security risks cannot be deported if they face the prospect of harm.

The effect of this relentless series of expansions is that non-refoulement, a principle adopted in the wake of the Second World War and expressly meant to prevent population transfers such as occurred during the Holocaust, has become a major check on the ability to deport failed asylum seekers and dangerous migrants.

3.3 Rule 39

It is often innocuous-sounding provisions which have an outsized impact. So is the case with so-called rule 39. This *internal* rule governing the conduct of the court has become a powerful weapon to check the activity of member-states. The rule allows the Court to dictate "interim measures" – effectively pre-court judgements such as blocking a deportation – when there is supposedly a risk of harm to rights under the convention. Initially, in *Varas* (1991)[6] the Court judged that such interim measures were not legally binding. The rule was not part of the Convention text, and as such, states had not signed up to such a significant degree of power for the ECtHR. However, a 2005 case suddenly reversed this reasoning: Rule 39 measures were now fully binding. The Court began issuing so many Rule 39 rulings, often dictates from a single judge overturning the actions of democratically elected politicians, that by 2023 it was forced to concede (implicitly) that it had gone too far[7].

One case which focused attention on the working of Rule 39 was the overturning of the United Kingdom's 'Rwanda plan'. The UK developed a plan to fly certain illegal

migrants and asylum seekers to Rwanda for processing and settlement[8]. Just hours before the first flight was due to take off, a single judge at the Court issued a ruling which effectively prevented the flight from taking place. The Rule 39 procedure had stopped a flagship policy of a democratically elected government. The UK example may have been particularly high profile, but it was one of many. A number of cases stopped the UK deporting people[9], actions mirrored in Sweden[10], Switzerland[11], Belgium[12] and France[13], among others.

The jurisprudence of the Court emphasises that these interim measures are part and parcel of the normal functioning of the court, but we should emphasise that this was *not* how the Rule 39 measures were initially conceived, nor were they signed up to by the court. Whatever the merits of legal arguments advanced (which are questionable[14]), it represents an incredible power-grab by the ECtHR – it doesn't just issue rulings on the basis of careful weighing of evidence, but reserves to itself the power to stop governmental actions without proper judicial review.

3.4 Article 8

Arguably the most infamous of the ECHR provisions, the expansion of the meaning of Article 8, "Right to respect for private and family life" provides enough material for a book-length treatment. The Court has found that this small provision covers everything from the right to Gender transition, abortion access and even the right to protection from damage to the environment. It is worth looking at the text of the provision:

> "Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."[15]

Two things are immediately obvious. First, the right is extremely narrow, limited to the idea of "respect" and focused on communications and the home (in line with traditional conceptions of private life[16]). Second, the right is extensively, indeed exhaustively, qualified, by no less than 8 different considerations (the law, interests of democratic society, public safety, economy, crime, protection of health, morals, and the rights of others). It is remarkable then that this should become the lynchpin for a progressive expansion of ECtHR powers and the restriction on how democratic states may handle migration issues.

Time and again, the Court has ruled that deportations must be forbidden where the criminals have established family lives in the country that would deport them. The court has protected drug criminals[17], burglars[18], those using false identities[19], drug traffickers[20], and violent criminals[21] [22]. More than this, it has exercised a chilling effect where governments have felt unable to deport serious criminals for fear of ECtHR, and, via interpolation of the provisions into national law, has expanded the

Article 8 “protections” even further. Undeniably Britain leads the pack here: one man could not be deported because his son had developed a love of McDonalds chicken nuggets[23], a Pakistani paedophile was not deported because it might upset his children[24], and a drug dealer could not be deported because his child was questioning their gender[25].

4. Conclusion: The lie of the "living instrument"

As we can see, the ECtHR has progressively and radically expanded its scope through a variety of legal innovations. Underlying all of them is a radical yet rarely criticised concept which the Court has used to give itself effectively unlimited power to reinterpret the Convention in light of political priorities.

This is the concept of the ECHR as a "living instrument". This means that the Convention can be interpreted not as it was written, nor as it was when countries signed up to it, but interpreted in light of so-called "present day conditions" [26]. This is a codeword for "today's political priorities".

Underlying this is a simple point: it should not be for judges to decide what "present day conditions" mean when it comes to the expansion of rights, especially when the determination of these judges runs directly against the wishes of democratically elected politicians. There is no need for a legal "living instrument", because we already have a living instrument capable of adapting to the changing world: the realm of politics. If Europe is to have an expanded framework of human rights, this should be argued for and won politically, not determined by the dictate of unelected judges.

The evidence is clear: the European Court of Human Rights (ECtHR) has long ceased to function as a purely neutral judicial body and operates today as an increasingly political body, reserving for itself the right to progressively expand the scope and meaning of human rights. Through doctrinal and procedural innovation, the ECtHR has stretched its tentacles ever further into national migration policy, fundamentally narrowing the democratic space for elected governments to control their borders and fulfil their public mandate.

Absent fundamental change, sovereign states will be forced to choose between managing migration effectively by legislating around Strasbourg, or openly resisting its dictates, with all the constitutional crisis that entails. The time for judges to impose expansive new rights not won in the political arena must end.

5. Case studies

Poland

When Belarus began channelling illegal migrants to Poland in late 2021 – largely from Iraq, Syria, and Afghanistan – Poland refused to admin them. The EctHR intervened in real time through Rule 39 orders, ordering Poland not to send back specified groups and to provide aid. Polish authorities argued many of those concerned were beyond the line; in practice, a duty judge's order in Strasbourg reached into a highly sensitive situation.

The longer-term effect was a grinding, lawyer-led stalemate. Interim measures and follow-on litigation reshaped tactics, spawning a pushback law that itself became a litigation magnet. Warsaw's political case – that the Court's approach rewards weaponised migration – collided with Strasbourg's insistence on absolute protections and individualised scrutiny. The border issue became a judicial minefield and a magnet for political pressure and NGO influence. Poland's attempt to protect its borders was hamstrung by rulings far away in Strasbourg. Even when Poland defied some orders, the signal to every other frontline state was clear – the ECHR can direct the tempo of border security. Elected politicians were forced to chose between international censure or their responsibilities to their voters.

United Kingdom

The Rwanda removals policy was designed to change incentives in the Channel – swift transfer to a safe third country rather than open-ended processing in Britain. On 14 June 2022, hours before the first flight, a Rule 39 interim measure from Strasbourg grounded the plane. One order concerning one claimant froze an entire programme that had cleared domestic hurdles to that point. Whatever one's priors, in constitutional terms this was extraordinary – a transnational court imposing a de facto veto on a primary ministerial policy at the very moment of implementation. It transformed a border-control question into a separation-of-powers drama.

Domestic law then compounded the bind. In November 2023 the UK Supreme Court held the scheme unlawful due to real-risk refoulement, relying on principles aligned with Article 3. Parliament responded with the Safety of Rwanda Act 2024 – declaring Rwanda safe in statute and empowering ministers to disregard Strasbourg interim measures – an explicit attempt to unpick the Court's choke-point. Yet until a flight actually leaves and survives the inevitable challenges, the practical lesson holds: Strasbourg's doctrines and procedures can stall a voted-for migration policy for years, forcing ministers to legislate around judges rather than govern. That is sovereignty by permission slip – a politics of workarounds created by a court that insists it is not making policy even as it determines what policy is possible.

Netherlands

The Dutch government has repeatedly found its removal policies clipped by the EctHR when they tried to return failed asylum-seekers. In Said v Netherlands (2005)[27] and Salah Sheekh v Netherlands (2007)[28] the Court held that expulsion to Eritrea and to "relatively safe" areas of Somalia would breach Article 3. The court imposed painstaking individual risk assessment, and effectively overrode the political appetite in The Hague for returns to conflict-torn countries. The Salah Sheekh ruling in particular became a touchstone in Dutch asylum adjudication, paralysing the attempts of elected politicians to implement effective border control.

The Netherlands has also been a hotbed of "family life" claims. One of the most definitive, *Üner*, found that a highly dangerous, repeat offender of Turkish origin could not be deported even after a manslaughter conviction. If some Article 8 cases involve difficult cases involving primary caregivers, this one did not. Simply in virtue of having a family life, the claimant could not be deported. Other cases, such as Tuquabo-Tekle, mandated extreme leniancy when judging cases of family reunification. The total affect was the creation, by the court, of extremely wide entitlements for migrants, and making deportations extremely difficult.

Belgium

Belgium's attempt to use the EU's Dublin system as a burden-sharing tool ran aground at Strasbourg. In M.S.S. v Belgium and Greece (Grand Chamber, 2011)[29] the Court found Belgium violated Articles 3 and 13 by returning an Afghan asylum-seeker to Greece despite notorious reception failings and required individualised assessment before Dublin transfers. This did not merely fault Greek conditions – it directly constrained Brussels' transfer practice, converting what ministers had treated as an administrative conveyor belt into a litigation-heavy exercise. For a small state at the heart of Schengen, the judgment turned a key operational valve into a rights-screen that politicians could not simply reopen by will.

Strasbourg also expanded the grounds to resist removal from Belgian territory. In Paposhvili v Belgium (Grand Chamber, 2016)[30] the Court moved beyond the very high bar in *N v UK*, requiring a rigorous assessment of access to care for seriously ill migrants before expulsion – a doctrinal shift that made medical-risk deportations harder to execute. With this ruling, the court has once again broadened the scope of cases falling under non-refoulement – regardless the assessment of the sovereign elected government.

Then in M.A. v Belgium (2020)[31] the Court condemned Belgium's 2017 cooperation with Sudanese officials and the deportation of a Sudanese man without adequate risk assessment or remedy. Together these rulings boxed in two core levers – Dublin returns and post-refusal removals – forcing Belgian governments to recalibrate policies around Strasbourg's standards rather than political pledges on swift returns – on the premise that the Sudanese man was asked overly general questions.

Hungary

Budapest's answer to the 2015 crisis was unapologetically sovereign – a fence, transit-zones, and a statutory "escort back" power allowing police to return anyone found within 8 km of the line to the external side of the barrier. Strasbourg then rewrote the script in Ilias & Ahmed v Hungary (Grand Chamber, 2019)[32]. Hungary was ordered by the court to pay serious compensation because it 'failed to provide adequate guarantees' in the transit zones on the Serbian border, which served as temporary staging area. According to the court, the precise and current content of these guarantees should have been derived from international legal obligations and EU law – familiar references to vague concepts, aren't they? Not to mention that the transit zone was a newly applied construct in Hungary at the time, originally intended to ensure an administrative, short and quick procedure. The concept was unprecedented in the region. This does not necessarily mean that the level of protection of human rights should be reduced when trying out this new concept, but in this new, ambiguous and unclear situation, the court imposed strict orders and standards on Hungary – its very own, of course, which were in line with the new and prominent decision-making direction of non-refoulement.

Further rulings tightened the vice. In Shahzad v Hungary (2021)[33] the Court found a collective-expulsion violation where police intercepted a group and escorted them through the border gate – undermining a decision of a sovereign state, which had adopted a push-back policy in order to secure and maintain its borders and combat human trafficking. The ECRH ruling made it impossible to apply border protection measures simply and quickly – the way it is meant to be. Not to mention that what the court classified as expulsion, and on which it based its argument in the judgement, was a simple border control measure: thus, it was not legal reality but a political judgment that decided the case.

Meanwhile, cases out of the Röszke transit-zone revealed another choke-point: repeated Rule 39 interim measures ordering Hungary to provide food to rejected applicants pending removal, and R.R. and Others v Hungary (2021)[34] faulting authorities over reception conditions for dependent minors – a steady judicial reach into day-to-day management. The cumulative effect is clear: the ECHR converted hard-edged perimeter tactics into case-by-case risk-management under court supervision. Policy intent – hold the line, remove swiftly – yielded to Strasbourg's process-heavy template.

About the author

Jacob Reynolds, Head of Policy at MCC Brussels, brings a wealth of experience in conceiving, organising, and contributing to fora for debate, research and discussion. His academic background is in philosophy, having obtained the BPhil in Philosophy from St Cross College, Oxford, specialising in the work of Hannah Arendt. After Oxford, Jacob pursued a career in strategy consulting, where he advised major corporations on how to adapt to the challenges of the 21st Century. Jacob then joined a major London think tank and charity to expand their work organising opportunities for rigorous public debate and education. There, he organised the *Battle of Ideas festival*, Europe's largest festival of ideas devoted to free speech and *The Academy*, a residential summer school in the UK for free thinkers who want to understand the historical roots of current issues. He spends his spare time writing, travelling and cooking with his wife, and learning Ukrainian. He is author of *Beyond the Culture Wars,* which looks at how Western societies have become estranged from the basic building blocks of political life. With MCC Brussels, Jacob sees a unique opportunity to break free of the deadening, technocratic discussions that currently dominate the Brussels intellectual scene.

Appendix – key moments of politicisation

2011 – M.S.S. v Belgium & Greece (GC): Dublin returns curtailed where reception is poor; individual guarantees demanded. National transfer policy slowed.

2011 – Al-Skeini (GC): Extraterritorial jurisdiction expanded – precondition for policing high-seas actions.

2012 – Hirsi Jamaa (GC): High-seas pushbacks to Libya unlawful; pushback model effectively ended for states.

2014 – Tarakhel (GC): Family transfers require bespoke assurances; operational friction added to Dublin system.

2016 – Paposhvili (GC): Medical removals threshold lowered; many more deportations contestable.

2019 – Ilias & Ahmed (GC): Hungary condemned for "safe third" removals without robust risk checks; transit-zone approach undermined.

2020 – N.D. & N.T. (GC): Conditional approval of immediate returns after fence-rushes – limited state relief under strict conditions.

2021 – Belarus border crisis: Rule 39 orders direct frontline conduct; Poland contests Strasbourg's authority.

June 2022 – Rwanda flight halted (Rule 39): Strasbourg injunction stops UK deterrence plan mid-implementation.

Nov 2023 – Rule 39 reforms: Court codifies "exceptional circumstances" – an implicit admission the tool had over-reached in practice.

April 2024 – UK Safety of Rwanda Act: Parliament authorises ignoring Rule 39; open constitutional collision course.

May 2025 – Nine-state letter vs CoE response: Open diplomatic fight over Strasbourg's migration line; politicisation out in the open.

Aug 2025 – Italy–Albania offshoring struck in Luxembourg: EU law applies Strasbourg-aligned standards; costly camps idle.

End notes

[1] I am aware that many legal scholars prefer the abbreviation CJEU, but I prefer to reflect common parlance over legalese.

[2] One of the most famous cases is *Al-Skeini*, where the Court determined that ECHR provisions applied to British Armed Forces in Iraq (4,000 miles from the United Kingdom). But the case law was accumulated through a number of cases importantly *Loizidou*, *Banković*, and *Medvedyev*.

[3] The principle is mentioned in the 1951 Refugee Convention, but is explicitly limited to cases where harm would occur "on account of his race, religion, nationality, membership of a particular social group or political opinion" and the principle is expressly disapplied for "a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country". Suffice to say the ECtHR jurisprudence goes much, much further than this.

[4] Indeed, the judgement in question actually cited the ECHR.
See also Victor Davio & Elise Muir, "Introduction – The ECHR in the ECJ's Case-law Post-Charter: A Dual Dialogue"
(2023). https://www.europeanpapers.eu/en/system/files/pdf_version/EP_eJ_2023_1_9_Dialogue_VDavio_EMuir_00653.pdf

[5] Joined Cases C-608/22 & C-609/22; AH and FN v BFA (4-Oct-2024)

[6] European Court of Human Rights, Cruz Varas and Others v. Sweden, Application No. 15576/89, Judgment of 20 March 1991: https://hudoc.echr.coe.int/eng?i=001-57674

[7]https://www.lawsociety.org.uk/contact-or-visit-us/press-office/press-releases/european-court-of-human-rights-clarifies-its-procedure-on-interim-measures

[8] European Court of Human Rights, N.S.K. v. the United Kingdom, Application No. 001-224302, Judgment of 11 April 2023: https://hudoc.echr.coe.int/eng?i=001-224302

[9] ECHR Press Unit, Factsheet on Interim measures: https://www.echr.coe.int/documents/d/echr/fs_interim_measures_eng?

[10]European Court of Human Rights, F.G. v. Sweden, Application No. 43611/11, Judgment of 23 March 2016. https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-161829%22]};

[11] European Court of Human Rights, A.A. v. Switzerland, Application No. 38030/12, Judgment of 15 December 2015: https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-139903%22]}

[12] European Court of Human Rights, Paposhvili v. Belgium, Application No. 41738/10, Judgment of 13 December 2016: https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-169662%22]}

[13] European Court of Human Rights, Nivette v. France, Application No. 50867/99, Judgment of 17 February 2004: https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-23082%22]}

[14] The case against the evolution of the Court in this fashion is straightforward. There is no treaty basis for this operation; the Convention provision cited in favour of the evolution (article 34) protects access to claims at the court, not create a power to bind governments via interim measures; and goes against the Article 46 provision that provides the ECtHR with the power to bind in the case of "final judgements", not interim measures.

[15] Council of Europe, European Convention on Human Rights, Article 8, "Right to respect for private and family life". https://www.echr.coe.int/documents/convention_eng.pdf.

[16] See Tiffany Jenkins, *Strangers and Intimates: The Rise and Fall of Private Life* (Picador, 2025)

[17] European Court of Human Rights, Udeh v. Switzerland, Application No. 12020/09, Judgment of 16 April 2013: https://hudoc.echr.coe.int/eng?i=001-118936

[18] European Court of Human Rights, Boultif v. Switzerland, Application No. 54273/00, Judgment of 2 August 2001: https://hudoc.echr.coe.int/fre?i=001-59621

[19] European Court of Human Rights, Nunez v. Norway, Application No. 55597/09, Judgment of 28 June 2011: https://hudoc.echr.coe.int/eng?i=001-105415

[20]European Court of Human Rights, Mehemi v. France (No. 2.), Application no. 53470/99, Judgement of 10 April 2003: https://hudoc.echr.coe.int/eng?i=001-61026 ; European Court of Human Rights, Mokrani v. France, Application No. 52206/99, Judgment of 15 July 2003, final on 15 October 2003: https://hudoc.echr.coe.int/eng?i=001-65778

[21] European Court of Human Rights, Moustaquim v. Belgium, Application no. 12313/86 , Judgement of 18 February 1991: https://hudoc.echr.coe.int/eng?i=001-57652

[22] European Court of Human Rights, I.M and Others v. Italy, Application no 25426/20., Judgement of 10 November 2022: https://hudoc.echr.coe.int/eng?i=002-13880

[23] https://www.independent.co.uk/news/uk/home-news/albania-deportation-chcken-nuggets-home-office-b2695233.html

[24] https://www.telegraph.co.uk/news/2025/02/10/pakistani-paedophile-escaped-deportation-his-children/

[25] https://www.telegraph.co.uk/news/2025/01/26/jamaican-drug-dealer-deportation-stopped-transgender-child/

[26] As it happens, there is no logical basis for this interpretation. The legal basis relies on the Vienna Convention on the Law of Treaties (1969) which states that Treaties must be interpreted "in good faith in accordance with the ordinary meaning… in the light of its object and purpose". The "object and purpose" of the ECHR is said to be the protection of human rights. But even if this is so, why does this therefore allow the progressive, expansive interpretation of these human rights? Only by assuming that the object of the ECHR was the progressive expansion of rights not mentioned in the treaties (which would run against the Vienna convention's stress on its "ordinary meaning"), can you generate this justification. In other words, the supposed legal basis of the progressive vision of the Convention assumes what it sets out to prove.

[27] Said v. The Netherlands, App. no. 001/69614, European Court of Human Rights, Judgment: 5 July 2005: https://hudoc.echr.coe.int/eng?i=001-69614

[28] Salah Sheekh v. the Netherlands, Application No. 1948/04, European Court of Human Rights, Judgment of 11 January 2007: https://hudoc.echr.coe.int/fre?i=001-78986

[29] M.S.S. v. Belgium and Greece, App. no. 30696/09, European Court of Human Rights, 21 January 2011: https://hudoc.echr.coe.int/fre?i=001-103050

[30] Paposhvili v. Belgium, App. no. 41738/10, European Court of Human Rights, 13 December 2016: https://hudoc.echr.coe.int/fre?i=001-169662

[31] M.A. v. Belgium, App. no. 19656/18, European Court of Human Rights, 27 October 2020: https://hudoc.echr.coe.int/eng-press#{%22itemid%22:[%22003-6837383-9154751%22]}

[32] Ilias and Ahmed v. Hungary, App. No. 47287/15, Grand Chamber Judgment, 21 November 2023 (ECtHR): https://hudoc.echr.coe.int/fre?i=001-198760

[33] Shahzad v. Hungary, App. No. 12625/17, Judgment of 8 July 2021 (ECtHR): https://hudoc.echr.coe.int/fre?i=001-210853

[34] R.R. and Others v. Hungary, App. no. 36037/17, European Court of Human Rights, 2 March 2021. https://hudoc.echr.coe.int/fre?i=001-208406