

Francis Burt Law Education Programme

The Law Society of Western Australia

Human Rights in Australia and Beyond Politics and Law Teacher Professional Learning Day: 4 December 2015

Session title: The Ways Human Rights are Protected in One Other Country
(Suggestion to teachers: frame the focus on Germany and the ways human rights are protected in Germany and then extend those protections to the European Union.)

Presenter: Professor Jürgen Bröhmer
School of Law, Murdoch University



Beyond = Europe



Human Rights Protection in Europe

**European
Convention of
Human Rights**

**Bill of Rights
Basic Law of
Germany
(=Constitution)**

**Charter of
Fundamental Rights
of the European
Union**

European Court of Human Rights



Instructive Video (General Info): <http://youtu.be/YlgEbKWuvxc>

The Geographical Scope of the ECHR

47 Member States
États membres

800 million Europeans
millions d'Européens



Council of Europe
Conseil de l'Europe

www.coe.int



* The former Yugoslav Republic of Macedonia
* La République yougoslave de Macédoine

Organization of Eur. Court of HR

Plenary

Elects President, VP and Chancellor;
organizes the Court into sections,
responsible for rules of the Court

5 Sections

Organisational unit; 5 sections (R 25 I);
every judge belongs to a section

Grand Chamber (17 J)

Art. 31: Appeals or references by
chamber under Art. 31

Chamber (7 J)

Admissibility of proceedings by member states
against member states; decisions on the merits

Committees (3 J)

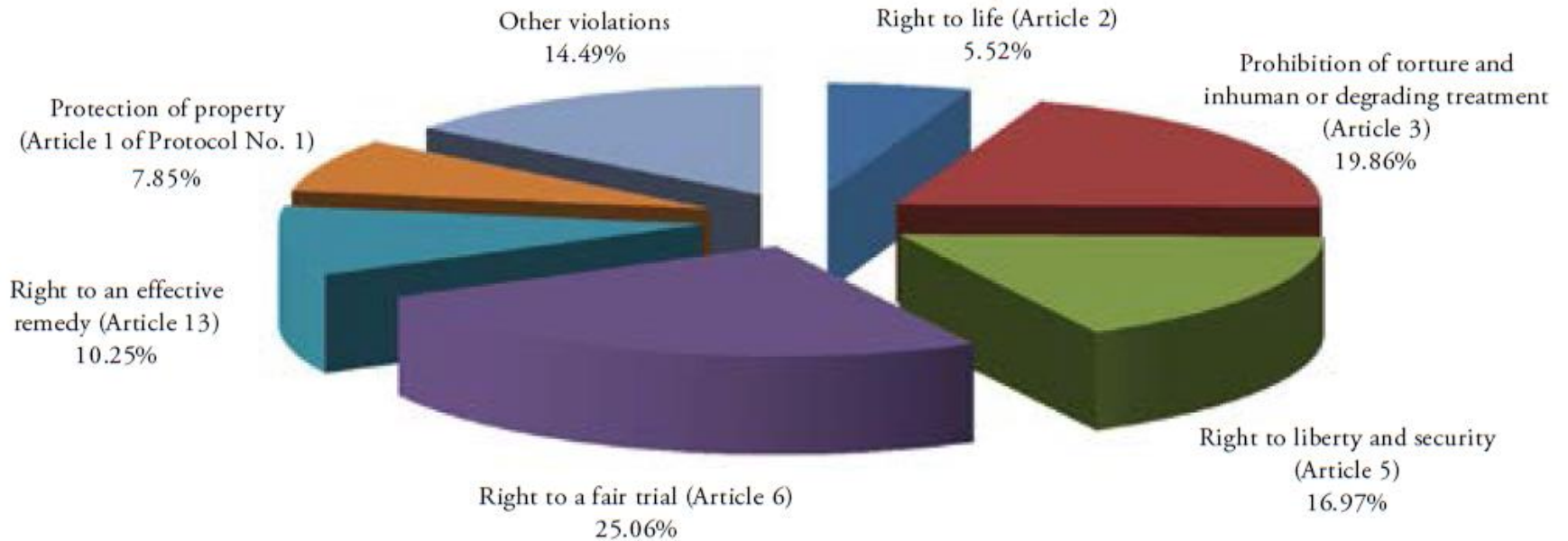
Admissibility of individual complaints

Single Judge Formation since 1/7/2009

Admissibility of individual complaints

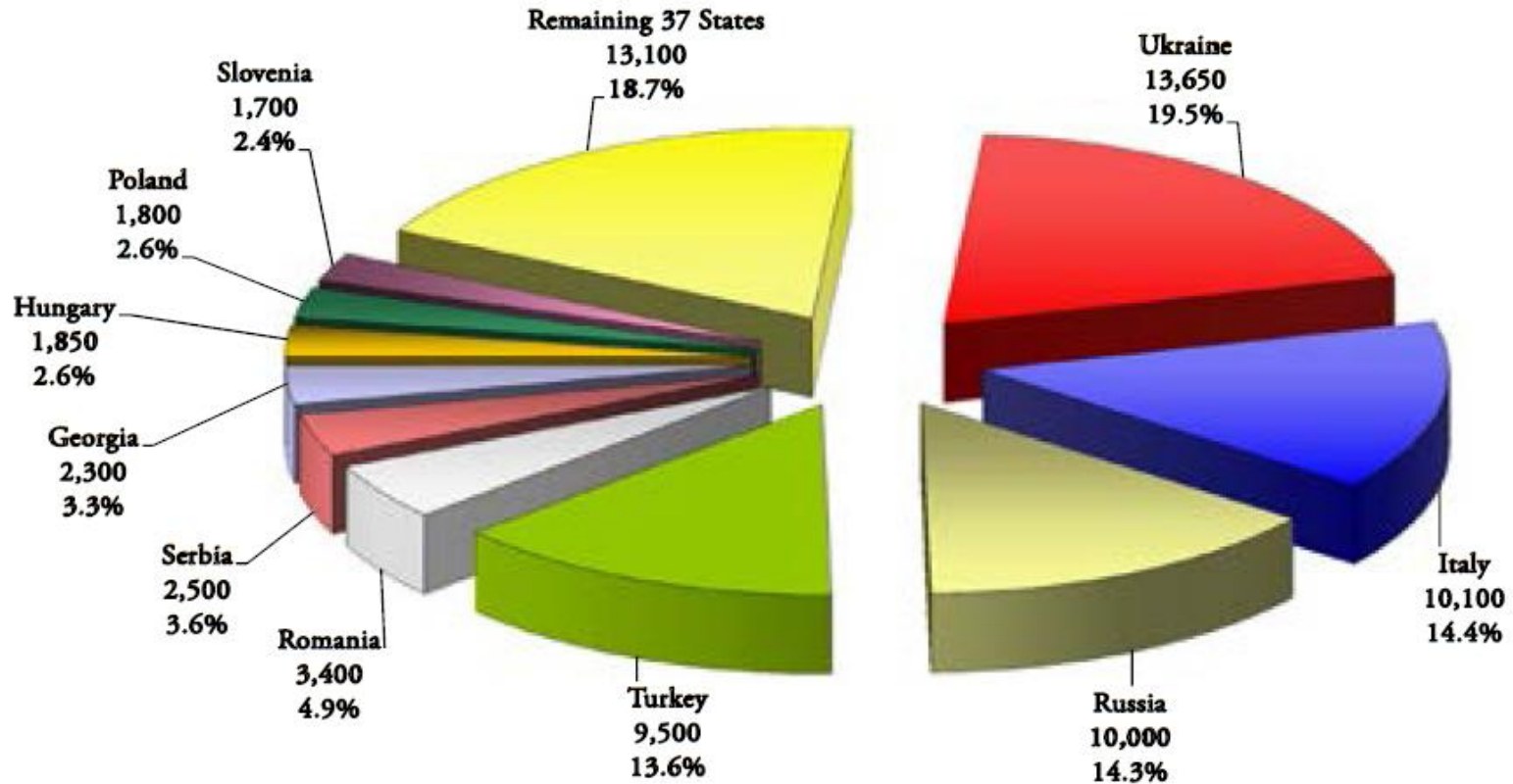
HR Violations by Subject Matter

Violations by subject matter at 31 December 2014



Docket Tsunami

Pending cases allocated to a judicial formation at 31 December 2014 (main respondent States)

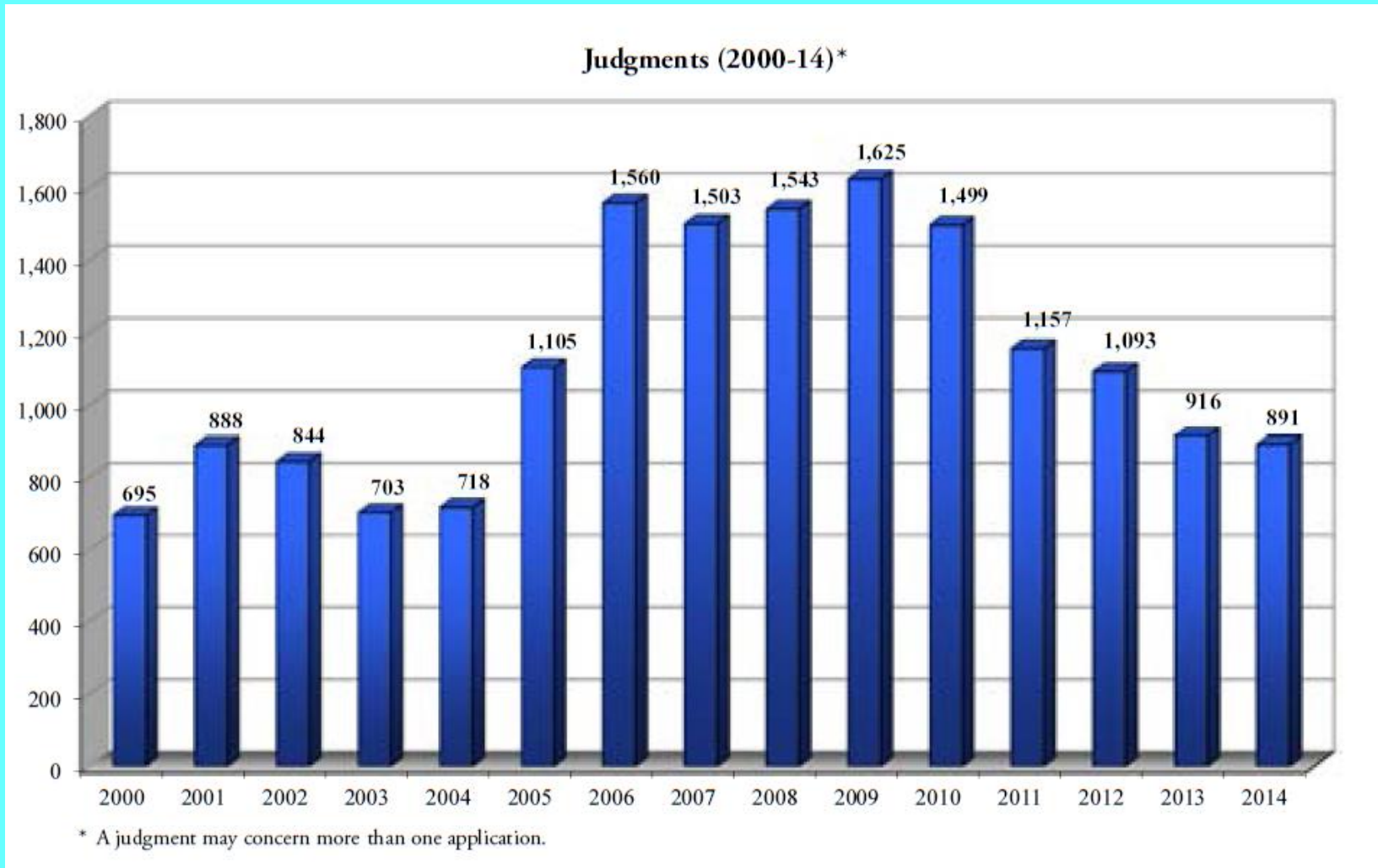


Total number of pending applications: 69,900
(round figures [50])

The Court's Output

ECHR-Statistics

<http://www.echr.coe.int/ECHR/EN/Header/Reports+and+Statistics/Statistics/Statistical+information+by+year/>



Art. 46 ECHR

Binding Force and Execution of Judgments

(1) The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are the parties.

(2) The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.

Practical Effect of Judgments

Speech given by Mr Dean Spielmann, President of the European Court of Human Rights, on the occasion of the opening of the judicial year, 31 January 2014

This is neither the time nor the place to enumerate all the Supreme Court decisions based on our case-law. [...] I would refer to just one example of a national decision which is part of a broader picture. It is the non-judicial decision delivered on 27 June 2013 by the **plenary bench of the Supreme Court of the Russian Federation, reminding all Russian courts of their obligation to follow the Strasbourg case-law and observing that, to ensure the effective protection of human rights and freedoms, they had to take into account the judgments of our Court, including those against other States Parties to the Convention.** That decision thus enshrines the principle of the **erga-omnes** value of our case-law.

Human Rights Protection in Europe

**European Court
of Human Rights
(Strasbourg,
France)**

**Federal
Constitutional Court
of Germany
(Karlsruhe, Germany)
[and its counterparts in other
EU/CoE member states]**

**Court of Justice of
the European Union
(Luxembourg)**

Procedural Hurdles: Admissibility



Local Remedies

**Time limit
6 month**

No forum shopping

Why 3 layers?

CJEU
watches over
EU
(not MS)

ECHR
ECtHR
watches over MS

Member States
Const. Courts watch over
Exercise of power at home
(executive, judicial and
legislative branch)

Discussion

[BBC Background Piece with David Cameron](#)

http://youtu.be/7B_etkC7re8

[UK-Criticisms of ECtHR \(Part I\)](#): http://youtu.be/OgnhvAHnV_Q

[UK-Criticisms of ECtHR \(Part II\)](#): <http://youtu.be/wpuLYbOvFg8>

See also:

[Hirst v UK](#),
[Frodl v Austria](#),
[Scoppola v Italy](#)

Questions?

- Where are the limits of an institution such as the ECtHR?
- What about parliament and the national/domestic democratic process?
- What is the difference between the ECtHR and a domestic constitutional/supreme court adjudicating on human rights?
- What comes to **YOUR minds** now that you are confronted with this discourse?

Populist:

<http://www.dailymail.co.uk/news/article-1355403/Prisoners-vote-EU-human-rights-court-mockery-UK-justice.html>

Not Populist:

<http://www.guardian.co.uk/society/2011/feb/10/prisoners-right-vote-european-court> and
<http://www.guardian.co.uk/politics/2012/may/22/prisoners-right-to-vote-echr>



That's all Folks!

Thank you for your attention!

I hope you “enjoyed” it at least a tiny little bit...