

The European Court of Human Rights, Amicus Curiae, and Violence against Women

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Are international courts and advocacy group legal mobilization shaping human rights politics? This question poses a theoretical and empirical challenge to state dominated understandings of international litigation. This article theorizes the interaction between advocacy groups and the European Court of Human Rights and the role this participation plays in the enforcement and development of human rights. The analyses examine institutional factors shaping broad trends in mobilization complemented by two in depth studies examining a single mode of participation, amicus curiae and a single area of law, violence against women. The data identify the critical role standing rules, court review powers and group expertise play in transnational rights mobilization and development. The findings bring into question dominant understandings of international law and contribute to a more complex understanding of law in a global age where international courts and societal actors are shaping the direction of rights protection.

Since the 1950s, international courts have incrementally transformed domestic and international governance. Growth in international legal institutions has skyrocketed with international tribunals and courts governing issues as diverse as human rights to trade disputes. Individuals are now increasingly governed by a dense and binding set of international laws and norms—often policies constructed with little or no direct electoral participation by society. While one dominant response characterizes this trend

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as undemocratic (e.g., Dahl 1999; Rubenfeld 2004), I argue that international courts can provide an avenue for enhancing, rather than undermining, participation in processes of human rights governance.

This article theorizes the interaction between advocacy organizations and international courts in the context of the European Court of Human Rights (herein after ECtHR or the Court). There was no direct individual or group access to this international court when it was founded in the 1950s, yet today there is a vibrant legacy of participation by both individuals and organizations (Cichowski 2011, 2006; Madsen 2007; Van den Eynde 2013). Legal activists and advocacy groups are pivotal players at the ECtHR, despite continued opposition by some member states.¹ The analysis examines how and why advocacy participation evolved in this closed legal system, and identifies its role in the enforcement and development of human rights in Europe.

Understanding the interaction between international justice institutions and advocacy organizations is increasingly a challenge for scholars in the fields of law and the social sciences. The research continues a growing fusion between legal scholars and social scientists studying the growth and effects of international legal institutions (e.g., Helfer and Voeten 2013; Shaffer 2014; Sikkink 2011) and it also builds on the work of socio-legal scholars drawing from political science, sociology, and anthropology examining processes of rights mobilization (Barclay, Jones, and Marshall 2011; Marshall 2006; McCann 1994; Merry 2006; Vanhala 2011). I adopt an innovative approach drawing together important theoretical and methodological links between international courts, litigation, and organized interest participation. While litigation has a long history in the United States as an avenue for interest group pressure (Collins 2008) and an influential mode of participation (e.g., Marshall 2006; Zemans 1983), we know far less about a similar legal mobilization trend that is now spreading around the globe (e.g., Anagnostou 2014; Dolidze 2012; Dor and Hofnung 2006; Epp 1998; Lindblom 2005; Yamin and Gloppen 2011).

The article is organized as follows. First, I theorize and develop a framework for understanding the dynamic interaction between interest and advocacy organizations and international

¹ Human rights advocacy groups operating in former Soviet states are particularly active in representing claimants and filing amicus briefs before the ECtHR, including such groups as the Russian Justice Initiative, Memorial Human Rights Centre, and the European Human Rights Centre. Yet, the Russian government continues to scrutinize and constrain these groups, most recently by requiring all NGOs who receive any funding from a foreign source to register as foreign agents, Federal Law No. 121-FZ (Human Rights Watch 2016; van der Vet and Lytikäinen 2014).

courts. The study then utilizes an innovative new database, the *European Court of Human Rights Database* (ECHRdb) (Cichowski and Chrun 2016), to examine how and why advocacy participation evolved and with what effect on the enforcement and development of human rights. Broad trends in the data are examined through two case studies: amicus curiae participation and violence against women (VAW) case law. Together the analyses illuminate patterns and variation within and across participation mode and legal domain. The case studies also present a hard case for international law.

Amicus curiae participation by advocacy groups is on the rise in domestic and international jurisdictions (Kochevar 2013; Squatrito 2012; Van den Eynde 2013). In the European Court of Human rights context, amicus curiae (referred to as third party interveners) are not a party to the dispute and are granted leave to submit written information such as comparative legal research or analysis on human rights principles relevant to the resolution of the dispute. Beyond the US context (Collins 2008; Larsen and Devins) we know very little about amicus curiae patterns and effects, especially in international regimes that are traditionally restrictive to non-state actors. The VAW litigation is equally challenging. Human rights courts are well equipped to adjudicate claims from an individual citing direct harm at the hands of state authorities. Less clear are the cases in which the perpetrators of the violence are non-state actors, a reality that is often at the heart of VAW cases. Despite these challenges, there is a growing precedence for VAW prosecutions under international law, from rape as a war crime to domestic violence as a violation of the right to life—developments that are connected to the actions of legal activists and advocacy groups (Merry 2006; Meyersfeld 2010). Together these hard cases provide a more robust understanding of the role of advocacy groups and international courts in human rights governance.

Conceptual Approach

Dominant theories of international law as well as traditional understandings of international politics begin with the assumption that powerful state executives control the nature and scope of international legal outcomes (e.g., Goldsmith and Posner 2006). Moving beyond this general assumption, I propose a more complex understanding of international law and politics utilizing a process-based model where societal groups, states and international courts play an important role in giving meaning to the law and at times transforming domestic, transnational, and international

governance. This contributes to a growing area of scholarship examining transnational legal orders and the increasing connections between domestic and international legal domains (e.g., Brysk 2009; Cichowski 2007; Darian-Smith 2013; Halliday and Shaffer 2015; Merry 2006; Sikkink 2011; Simmons 2009).

In any given polity or international regime, a complex set of structures and circumstances help to determine whether and how courts are used by societal groups and with what effects on governance. To make matters more complicated, within the same polity or regime the precise mix of factors will vary across time and policy domain. The approach therefore focuses on three theoretically significant institutional factors that help us understand change in interest and advocacy group participation in ECtHR litigation and the subsequent role in human rights enforcement and development.

- *Standing Rules and Rights*: the scope of rules and rights governing individual and group access to international courts.
- *International Court Review Power*: the relative power and jurisdiction of international courts to review the action or acts of elected officials.
- *Interest and Advocacy Group Expertise and Resources*: the degree of organizational strength, expertise and experience supporting interest and advocacy group participation in international legal processes.

Consistent with an historical institutionalist approach, we can expect these factors to be interactive and mutually constitutive. Indeed, judicialization processes are interconnected; a legal claim brought by a group or individual activates the court, whose judicial interpretation can at times change the scope of rights. And it is exactly these rules that in the future feedback on how the law comes to constrain or empower individuals, groups and courts, obstructing or perpetuating the dynamic (Darian-Smith 2013; Cichowski 2007; McCann 1994; Stone Sweet 2000). The following elaborates the theoretical approach.

First, rules and in particular, individual rights serve as structures that encourage and constrain behaviour in any society. Social scientists and legal scholars alike assert that the effective protection of laws is critically linked to their scope and judicial enforceability (Abbott et al. 2000). Formal legal norms provide more certain codes of behaviour that in the presence of independent judicial authority can then be enforced and protected. It is through judicial interpretation that the scope and application of rules can at times change, providing subsequent opportunities for litigation. Increasingly we see this dynamic unfolding across the globe, from historic civil rights litigation in India (Epp 1998), to

disability rights cases in Canada (Vanhala 2011) to sex discrimination claims before the European Court of Justice (Cichowski 2007, 2013).

Standing rules are also critical for advocacy group participation. Scholars observe that expanded public access points, as realized through such avenues as referenda, access to information, policy juries, and legal standing for NGOs, to name just a few, are becoming an increasingly common feature of advanced industrial democracies (e.g., Dalton, Scarrow, and Cain 2003). A similar dynamic is evolving at the international level as civil society and transnational activists are gaining new access to global governance institutions (Bignami 2005; Keck and Sikkink 1998; Simmons 2009; Tallberg et al. 2013; Tarrow 2005). And access for third parties is an increasingly common feature of international courts and tribunals enabling individuals and organizations to submit amicus briefs (Bartholomeusz 2005).

Second, for these rules to enhance participation, they are connected to the judicial review power of international courts. Scholars observe a growing creation and enhancement of judicial review powers at both the domestic and international level (e.g., Alter 2014; Ginsburg 2003; Scheppele 2006; Shapiro 2002; Stone Sweet 2004). This expansion in judicial power goes hand in hand with rights claiming (e.g., Epp 1998; Stone Sweet 2000) and the ability of individuals and groups to utilize courts as enforcement mechanisms (Simmons 2009). Examining the conditions that enhance the rule making power of international courts is important for understanding not only the enforcement and development of rights, but also the potential space for individuals and groups within this process.

States create international courts with independent review powers in an attempt to create this same type of check on executives and legislatures that we see at the domestic level (see Alter 2014). Formal legislative processes are often quite closed, and with the exception of the United States are often dominated by the executive not the legislature. As the purview of government expands, including to the international level, there is a demand for greater transparency and accountability, which judicial review may provide. Thus, courts may at times provide a more responsive governmental venue for reform politics than traditional representative institutions (Graber 1993; Lovell 2003; Zemans 1983)—a reality that not surprisingly deepens long-standing debates over the tenuous relationship between courts (as counter-majoritarian organizations) and representative democracy (e.g., Bickel 1962).

Finally, interest and advocacy group expertise, resources, and experience shapes the extent to which organizations successfully

participate in international legal processes. Rules governing access and judicial review powers are critical for successful reform driven litigation. Yet, the courts would remain silent without the individuals and groups that activate the legal process. There is much to suggest that opening legal institutions to societal actors empowers groups differentially. Scholars observe that litigation strategies are often used most successfully by the “haves,” those who may already be more socially, economically, or politically privileged (Epp 1998; Galanter 1974). Yet, we also know that even with losses in court, litigation can have powerful mobilizing effects for underrepresented individuals and groups (McCann 1994).

Studies on transnational litigation in Europe, both in the European Union (EU) system and the Council of Europe, illustrate that groups with greater legal expertise and experience in transnational activism are more successful at utilizing international litigation for rights protection and policy reform (Cichowski 2011, 2007, 2006; Dolidze 2012; Kelemen 2011; Treves et al. 2005; Van den Eynde 2013; Van der Vet 2012). Women’s rights litigation in the EU often benefits from the highly organized transnational legal expert’s networks that foster the growth of this seemingly individual litigation (Alter and Vargas 2000; Cichowski 2013, 2007). Successful litigation brought against Turkey before the ECtHR in the area of minority rights disproportionately involved well-established groups and legal activists with considerable international litigation experience (Anagnostou 2014; Cichowski 2011). This trend is true of human rights organizations who are repeat players and supporters of the ECtHR (Dolidze 2012; Treves et al. 2005; Van den Eynde 2013; Van der Vet 2012) and other international courts such as the International Criminal Court and the Inter-American Court of Human Rights (Haddad 2012).

Data and Methods

The European Court of Human Rights provides a data rich environment to explore this theory. The Court, a judicial body of the Council of Europe (COE), is located in Strasbourg, France, and was established in 1959 by the then 13 member countries. Today membership in the COE includes 820 million Europeans from 47 countries. The Court rules on alleged violations of the European Convention on Human Rights (hereafter the Convention), an international treaty embodying a set of fundamental political and civil rights, and takes cases not only from COE citizens, but any individual living within a COE country. The ECtHR is one of the oldest and most active international courts, with

over 18,000 judgments since its establishment. Despite this rich history, we have only begun systematic data analyses of this court whose decisions contribute to significant legal and political reforms throughout Europe.² There is also a relative paucity of social science research on the historical and present role of advocacy and interest groups in ECtHR litigation, despite the growing evidence of their presence and role in landmark decisions (see the December 2012 *El-Masri* judgment involving five advocacy groups that may prove to be a cornerstone for future cases seeking justice from the Bush administration's rendition policy).³

The ECHRdb (The European Court of Human Rights Database, Cichowski and Chrun 2016) enables us to examine judgments and patterns of advocacy group participation across time and legal domain. The database compiles judgment and legal mobilization information from primary documents collected at the ECtHR as well as the Court's comprehensive full text online judicial decision database, HUDOC.⁴ The article utilizes two datasets extracted from this larger database. The first dataset includes all ECtHR judgments from the first, 1960 through 2012, a total of 13,817 judgments. Judgment data is coded by respondent state, decision year, decision outcome, convention rights, and significance for legal development. The dataset also identifies participation by organization type and modes of participation (direct victim, legal representative, and amicus/third party intervention).⁵

A second dataset examines VAW (violence against women) ECtHR case law from 1997 to 2014 as identified by the Court's case reports (ECtHR 2014a,b; 2015). There are a total of 54 cases in this dataset covering seven main areas of law: domestic violence, ill treatment in detention, police violence, rape, expulsion cases, trafficking, and violence by private individuals. Admittedly there may be more judgments that provide women some degree of protection against violence, yet the Court's compendium serves

² See Helfer and Voeten (2013) on national policy effects of Court's decisions in the area of LGBT rights; Voeten's analyses of ECtHR judicial behavior (2008); Lupu and Voeten (2011) on citation practices and Hodson (2011) and Van den Eynde (2013) on human rights organization participation.

³ *El-Masri v. Macedonia*, no. 39630/09 ECtHR 2012.

⁴ HUDOC can be accessed at <http://hudoc.echr.coe.int/>. The full text of all cases in this article can be accessed on HUDOC.

⁵ This is a measure of formal participation, as ECtHR records do not document the legal experts, advocates, and organizations that may play a more invisible role in supporting the claimant earlier in the legal process or in initiating the claim. For example, the Committee against Torture (CAT) (or Interregional Committee for the Prevention of Torture) is a Russian NGO that provided legal assistance in one of these cases, the claim of Olga Maslova, but is not formally recognized in the judgment (*CAT 2008*). *Maslova and Nalbandov v. Russia*, no. 839/02 ECtHR 2008

as a representative sample of this case law with a primary focus on VAW cases.

Interviews and archival research carried out at the European Court of Human Rights and the Council of Europe (COE) in Strasbourg, France in June 2015 complement the data analyses. The author interviewed ECtHR judges and senior lawyers and COE lawyers in the Department of Execution of Judgments. Primary source data also includes direct communications and historical documents from organizations participating in ECtHR litigation as third party interventions and historical documents collected at the ECtHR Archive, Press Office, and Library.

The European Court of Human Rights and Legal Mobilization

Today, the European Court of Human Rights is home to a diversity of advocacy organizations demanding state accountability for human rights protection throughout Europe. The enforcement and development of human rights over the last fifty years is inextricably linked to these civil society organizations (Van den Eynde 2013). Their participation as direct victim, legal representation, and *amicus curiae* intervener provides the critical comparative legal research and argumentation that transforms vague human rights into a safeguard against contemporary atrocities and violence.

The following section provides an historical analysis examining how and why standing rules, judicial review powers and legal expertise shaped this opportunity for advocacy group mobilization before the ECtHR. We then turn to a more detailed analysis of this dynamic by examining first a single mode of participation (*amicus curiae* interventions) and then a single legal domain (violence against women). Together the analyses give us a comprehensive understanding of the key institutional factors by systematically examining variation across time and group within participation mode and the effects for human rights enforcement and protection. The VAW data enable us to examine varying modes of participation across time and identify the effects on human rights protection.

Standing Rules, Review Powers, and Legal Expertise

Under the original Convention system, individual petitioners did not have direct access to the Court. Article 25 recognized the right of individuals to file an application, yet it was an optional not compulsory mechanism. Even when a state accepted Article 25, the European Commission of Human Rights served as the

intermediary between the individual and the Court. Prior to 1994, only states and the Commission had standing to bring cases before the Court. In 1994, Protocol 9 amended Articles 44 and 48 extending standing to individuals, non-governmental organizations and groups of individuals. Individual access to the ECtHR underwent further reform in 1998. Protocol 11, which governed the major reforms to the Convention institutions, also amended Article 25 and made individual access compulsory. Following these reforms, individuals and groups were given both formal and practical access to the Court. Today, Article 34 of the Convention (Council of Europe 2010: 20) states:

The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the protocols thereto. The High Contracting parties undertake not to hinder in any way the effective exercise of this right.

These evolving standing rules go hand in hand with the Court's legitimacy and expanding review powers. Serving as a beacon for human rights protection, by the mid-1980s the Court could not handle its growing caseload in an effective and timely manner. The increasing magnitude and scope of claims with the addition of 18 new contracting states (mostly new democracies) in the 1990s made institutional reforms a key priority. The result was massive reform of Convention institutions through Protocol 11 including abolishing the Commission, the Committee of Minister's adjudicative role and shifting final arbitration powers to a newly expanded Court. Prior to 1998, Article 46 was optional giving states the choice to have claims decided by an intergovernmental body rather than this independent court. This expansion in power made the Court's jurisdiction compulsory for any state adopting and ratifying the Convention.

Today, the Court maintains both power and legitimacy as a key institutional site for human rights protection in Europe. Annual number of applications assigned to the Court shows a skyrocketing docket even when controlling for the growing number of contracting states: 22 applications in 1960, 72 in 1990, and 1380 applications in 2012.⁶ The Court's legitimacy may be partially attached to its comparatively high compliance rate, which is

⁶ The reported annual application rate is standardized by number of member states to account for this growth in membership. Data compiled by the author from *The European Court of Human Rights Annual Reports*, multiple years. Registry of the European Court of Human Rights, Strasbourg, France.

in large part due to a comprehensive and effective monitoring system that oversees the domestic execution of ECtHR decisions. The Council of Europe's Committee of Ministers and Department for the Execution of Judgments work with states to ensure the effective execution of the ruling. This can entail individual measures (damages awarded to the victim) and also implementation of general measures that will prevent violations in the future (e.g., legislative and constitutional reforms). By relegating this monitoring responsibility to an intergovernmental body, peer pressure from contracting states, while seldom used, can serve as an effective final insurance method for compliance.

Standing rules and review powers influence the opportunities for individuals and groups to participate in human rights governance. Yet, the most successful organizations are those possessing the experience, expertise, and resources for international litigation. Drawing on the legacy of legal activists who mobilized for the creation of Convention institutions in the 1950s (Madsen 2007), a growing number of advocacy groups today possess the legal resources and experience to serve as repeat players before the ECtHR. Their participation includes serving as legal representation for applicants, submitting third party interventions and in some cases bringing claims as direct victim. Judges welcome the legal expertise provided by this participation bringing comparative analysis and domestic legal knowledge to the relevant human rights principles (Van den Eynde 2013).⁷ Groups with resources and extensive international litigation expertise and experience, such as Liberty and Open Society Foundation, also play a role in educating individuals and groups about European rights and litigation strategies.⁸

While the Convention today provides the legal basis for organizations to bring complaints, the standing requirements are still restrictive. Legal experience and expertise can help ensure innovative argumentation that successfully passes the Court's high bar for organizations proving direct harm.⁹ The data reveal the diversity of organizations and entities that have successfully

⁷ Interview with European Court of Humans Rights judge, June 2015.

⁸ Liberty provides a human rights advice service providing legal expertise and in some instances serving as legal representation (<https://www.liberty-human-rights.org.uk/get-advice>). Open Society Foundations regularly offers a program training legal professionals to litigate before regional and international courts (<https://www.opensocietyfoundations.org/grants/call-applications-summer-school-human-rights-litigation>).

⁹ For example, see *Ěskomoravsk v. Czech Republic*, no. 33091/96, ECtHR 1999; *ARSEC and Others v. Spain*, no. 42916/98, ECtHR 1999; *Association of Polish Teachers v. Poland*, no. 42049/98, ECtHR 1998; *VgT v. Switzerland*, no. 24699/94, ECtHR 2000; and in two other cases the ECtHR dismissed the claims of the NGO in the case on grounds of not being able to claim direct harm, *Eonka v. Belgium*, no. 51564/99 ECtHR 2001 and *Asselbourg and Others*, no. 29121/95 ECtHR 1999.

brought claims as the applicant, including church associations,¹⁰ media groups,¹¹ trade unions,¹² human rights groups,¹³ and many companies.¹⁴ Disproportionately, the repeat players at the Court are organizations with the expertise, experience and resources to litigate, such as Liberty who appear in the ECHRdb data as either direct victim, legal counsel or as a third party 45 times and Amnesty International at 18 times.

Legal expertise also enables individuals and groups to play a role in widening the space for organizations to participate. Persons who are close relatives and have a valid personal interest in having the violation confirmed may bring a case. This indirect victim approach was developed through the *Aksoy v. Turkey* judgment.¹⁵ The case was brought by the victim's father along with assistance of the Kurdish Human Rights project, a London based international organization specializing in strategic human rights litigation.¹⁶ This type of indirect representation is differentiated from a third party representing a direct victim or the continuation of proceedings by a relative. Another example, is *Karner v. Austria*, in which the Court allowed the claimant's legal representative (nonrelative) to continue the proceedings after the applicant's death.¹⁷ In a recent case, the ECtHR expanded this indirect victim standing to an NGO, the Centre for Legal Resources, enabling the organization to file a claim on behalf of a deceased man—justice that would not otherwise be served.¹⁸ In light of this case law, we may see a growing role for advocacy organizations serving as applicants alongside victims.

Evolving Amicus Curiae Participation

Together, these three institutional factors standing rules, judicial review powers, and organizational expertise influenced the

¹⁰ For example, *Johannische Kirche and Peters v. Germany*, no. 41754/98, ECtHR 2001; *Christian Federation of Jehovah's Witness v. France*, no. 53430/99 ECtHR 2001.

¹¹ For example, *Verdens Gang and Aase v. Norway*, no. 45710/99 ECtHR 2001; *Pasalaris and Foundation de Presse v. Greece*, no. 60916/00 ECtHR 2002; *Independent News and Media plc v. Ireland*, no. 55120/00 ECtHR 2003.

¹² For example, *Unison v. UK*, no. 53574/99, ECtHR 2002; *Federation of Offshore Workers' Trade Unions v. Norway*, no. 38190/97 ECtHR 2002.

¹³ *Women on Waves & Others v. Portugal* (no. 31276/05 ECtHR 2009) involved three NGOs, one Dutch and two Portuguese, successfully won their claim that the Portuguese government had violated their Art 10 (freedom of expression) rights when it prevented the organizations from disseminating information about reproductive rights and abortion.

¹⁴ For example, *Comingersoll v. Portugal*, no. 35382/97, ECtHR 2000; *Eielectric Srl v. Italy*, no. 36811/97, ECtHR 2000.

¹⁵ *Aksoy v. Turkey*, no. 21987/93 ECtHR 1996.

¹⁶ Kurdish Human Rights Project (<http://www.khrp.org/litigation-advocacy.html>).

¹⁷ *Karner v. Austria*, no. 40016/98 ECtHR 2000.

¹⁸ *Câmpeanu v. Romania*, no. 47848/08 ECtHR 2014.

role of advocacy group participation in ECtHR litigation. In this section, we turn to a single area of legal mobilization to examine this participation dynamic in greater detail. Third party interventions, or amicus briefs, may function to share legal expertise, factual information, a measure of due process, or represent public interest considerations. The original Convention made no mention of third party participation, but instead it evolved over time as a dynamic interaction between advocacy organizations, the ECtHR and states.

The first request by a third party came in 1978 when the National Council for Civil Liberties requested to intervene in a case they represented earlier in the legal process.¹⁹ The Court denied the request. The following year, the UK Government asked to intervene in the *Winterwerp* case against the Netherlands on the grounds it had a series of similar pending cases.²⁰ The UK Government admitted it had no standing to submit a brief but inquired whether Rule 38(1) of the Rules of the Court might provide the basis: “*the Chamber may, at the request of a Party or of Delegates of the Commission or proprio motu, decide to hear... in any other capacity any person whose evidence or statements seem likely to assist it in the carrying out of its task.*” The Chamber granted the UK leave to submit the brief. Interest organizations took notice and quickly followed suit with new requests. In 1981, the Court allowed the same third party participation to a trade union, the Trades Union Congress (TUC).²¹ The Court further expanded access not only accepting the written intervention, but also allowing the TUC representative to participate in oral proceedings. The TUC brief would later be cited directly in the Court’s final decision finding a violation of Article 11.²²

Following this case law, the ECtHR expanded the scope of Article 37(2) of the Rules of the Court in 1983 to allow third party participation both by states or any other person. Figure 1 depicts all amicus briefs filed in ECtHR judgments from the first in 1979 through 2012. The figure includes aggregate annual numbers in order to identify the real growth in amicus participation and the Court’s growing engagement with third party interveners. Standardized numbers were calculated to verify these trends, and they identify a steady 20 percent average annual

¹⁹ *Tyner v. UK*, no. 5856/72 ECtHR 1978. The National Council for Civil Liberties was founded in 1934 and continues today under the name Liberty. The advocacy group remains a highly successful repeat player in ECtHR litigation.

²⁰ *Winterwerp v. Netherlands*, no. 6301/73 ECtHR 1979.

²¹ *Young, James & Webster v. UK*, no. 7601/76, no. 7806/77 ECtHR 1981.

²² Paragraphs 31 and 64.

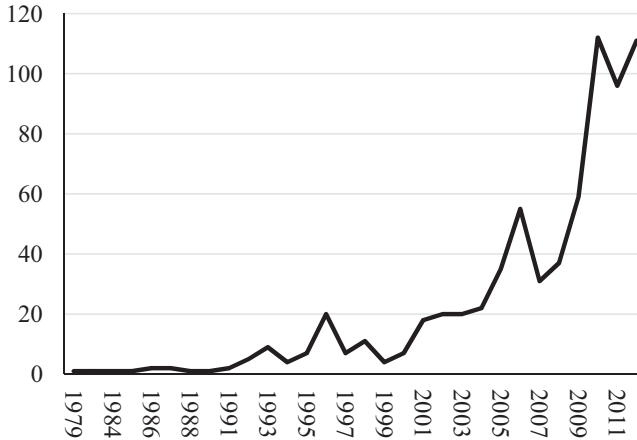


Figure 1. Annual Number of Amicus Briefs Filed in ECtHR Judgments, 1979–2012. N = 702 amicus briefs.

Note: The figure includes aggregate annual numbers in order to identify the real growth in amicus participation and the Court’s growing engagement with third party interveners. Standardized numbers are not included, but show a steady 20 percent average annual increase in amicus briefs.

Source: Data compiled by the author from the *European Court of Human Rights Database* (Cichowski and Chrun 2016).

increase in amicus briefs while controlling for skyrocketing judgment rate.

During this time period, the Court grants 702 requests for third party interventions.²³ From the mid-1990s advocacy groups increasingly utilized this new access point to participate in the Court’s law making processes. And by 1998, states codified this access through the major institutional reforms adopted through Protocol 11. Today, Article 36§2 of the Convention provides the President of the Court the discretionary power to allow third party intervention:

The President of the Court may, in the interest of the proper administration of justice, invite any High Contracting Party which is not a party to the proceedings or any person concerned who is not the applicant to submit written comments or take part in hearings.

Likewise, Rule 44§2 from the Rules of the Court governs similar provisions on third party participation.

²³ The presiding president of the Court makes the decision to either accept or refuse a request for a third party intervention. At this time, systematic data on refusals is unavailable. The database in this analysis coded for refusals whenever they appear in the Court’s judicial proceedings. There were 30 refusals in this time period spread across a variety of organizations and individuals such as human rights groups, professional organizations, and state authorities.

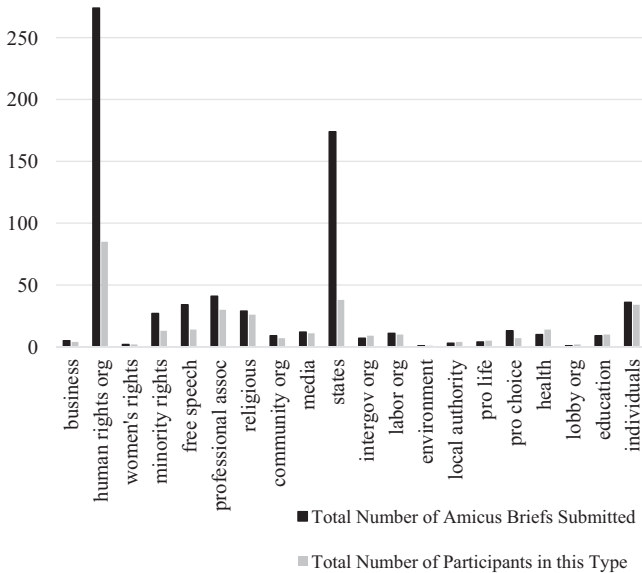


Figure 2. Total Number of Amicus Briefs Filed in ECtHR Judgments by Organization Type, 1979–2012. N = 702 amicus briefs.

N = 326 different participants (individuals, states, and organizations).

Source: Data compiled by the author from the *European Court of Human Rights Database* (Cichowski and Chrun 2016).

The data reflect these changes in participation. As mentioned earlier, the 1990s brought many changes to the Court with rapid expansion in membership and institutional reforms strengthening the Court's ability to handle the growing magnitude and scope of human rights claims. The pressure for greater third party access began in the late 1970s. The pre-2000 period depicts the amicus participation taking hold, with a low of 1 or 2 amicus briefs a year to a high of 19 briefs accepted in 1996, still at a time when the annual judgment rate is comparatively low. However, the real trend in third party participation is revealed in the post-Protocol 11 years, with a steady increase in the number of amicus briefs. Between 2000 and 2012, there are 603 third party interventions granted (12 refusals), or 86 percent of the total amicus briefs and standardized numbers also show a steady 20 percent average annual increase in amicus participation.²⁴ As the historical analysis identified, this growing legal mobilization was critically linked to the expanding network of NGOs sharing legal knowledge and experience on using litigation strategies in Strasbourg. Equally important was the Court's expanding powers and willingness to include third parties.

²⁴ Standardized numbers were calculated by dividing annual number of amicus briefs by annual number of judgments.

The data also give us a picture of the types of groups utilizing these new opportunities and with what frequency. Figure 2 details the number of amicus briefs filed in ECtHR judgments by organization type from 1979 to 2012. General human rights organizations make up the largest type of interveners with 85 different rights groups participating, filing a total of 274 amicus briefs. Repeat players are active amongst this organization type. The ECHRdb data identify the British groups Interights and Liberty intervened in 28 and 20 cases, respectively, and the Warsaw-based Helsinki Foundation for Human Rights intervened in 25 cases. These are highly organized groups with a clearly defined litigation campaign in which the ECtHR is one of many courts they target to push for rights reform and enforcement.²⁵ States also participate as a third party on the grounds that a similar case is pending in their own legal system (38 different countries intervened with 174 amicus briefs).

Individuals are the next highest category with 34 different parties successfully intervening with 36 amicus brief. These individuals include family members, legal experts,²⁶ religious leaders,²⁷ and politicians.²⁸ Other interests include 30 different professional associations submitting 41 amicus briefs. One case in the shipping and maritime industry includes 11 third party interventions all from professional associations.²⁹ Specific rights organizations actively participate, including minority rights (13 organizations submitting 27 briefs) and free speech rights (14 organizations submitting 34 briefs). Similar to the pattern found in other legal jurisdictions (e.g., the US, see Collins 2008), these organizations maximise their participation by intervening in cases with the potential to lead to significant developments in both

²⁵ For example, Liberty actively pursues litigation alongside its lobbying campaigns. They have provided legal advice and support for key cases since their founding in 1934 (<https://www.liberty-human-rights.org.uk/who-we-are/our-work/legal-work>). Helsinki Foundation's legal work includes strategic litigation, legal education programs, and monitoring legislative processes (<http://www.hfhr.pl/en/actions/law-programs/>). Interights, or the International Centre for the Legal Protection of Human Rights, had a robust agenda pursuing strategic litigation at the regional and international levels and transnational legal training programs. Despite the success of its actions, the organization closed its office in London in 2014 due to funding deficits (for background on Interights see Stroup 2012).

²⁶ Professor Geraldine Van Beuren, Director of the Programme on International Rights of the Child, University of London was granted leave in *T.P. and K.M. v. UK*, no. 28945/95 ECtHR 2001 and also *Z and Others v. UK*, no. 29392/95 ECtHR 2001.

²⁷ Mr. J. Sitruk, Chief Rabbi of France, submitted comments in *Tsedek v. France*, no. 27417/95 ECtHR 2000.

²⁸ Thirty-three Members of the European Parliament were granted leave to file comments in *Lautsi and Others v. Italy*, no. 30814/06 ECtHR 2011. Ms. Kathy Sinnott, Member of the European Parliament filed a comment in *A, B, C v. Ireland*, no. 25579/05 ECtHR 2010.

²⁹ Thirteen different professional organizations were granted leave as third party interveners in *Mangouras v. Spain*, no. 12050/04 ECtHR 2010.

European and domestic human rights law.³⁰ Judges recognize that this participation can serve as a legitimacy tool by including alternate perspectives to the dispute.³¹ The briefs also may provide valuable domestic and comparative legal research relevant to the human rights principles invoked in the case.³²

The following cases elaborate the roles amicus briefs can play in ECtHR decision making. In the *Soering* case,³³ the Court's opinion referenced an Amnesty International amicus brief and the ECtHR's violation decision subsequently prevented an individual accused of a capital offense in the UK from being extradited to the United States.³⁴ The group Article 19's (defending freedom of expression rights) amicus briefs played a role in the Court's violation decisions and also in the dissenting opinion.³⁵ The European Roma Rights Centre, Interights and Justice Initiative all filed amicus briefs in the *Nachova* case.³⁶ The briefs supported the ECtHR's innovative decision by providing research supporting an expansive reading of Article 14 (prohibition of

³⁰ See Collins (2008) for amicus participation before the U.S. Supreme Court. In the European context, Liberty, a London based human rights organization states, "As third-party interveners we submit expert evidence to the court in our own name to assist it in deciding on a case. Interventions are an increasingly important route by which we can seek to influence the development of the law" (<https://www.liberty-human-rights.org.uk/who-we-are/our-work/legal-work>). See also Liberty (2014) for examples of intervention activity.

³¹ Interview with ECtHR judge, Strasbourg, France, June 2015. ECtHR judges cite parental custody cases as an example of the importance of third party interveners in the legitimacy of the legal proceedings to make sure all perspectives are included. The applicant in parental custody cases may only represent one side of the parental perspective. For example, in *Anayo v. Germany* (no. 20578/07 ECtHR 2011), the biological father was the applicant and the third party interveners included the biological mother and her husband who were raising the children.

³² Interview with ECtHR judge, Strasbourg, France, June 2015. One ECtHR judge noted the third party interventions from the Human Rights Centre (HRC) at Ghent University in Belgium as being particularly useful for court decision making by providing comparative legal research. The HRC has successfully filed nine amicus briefs before the ECtHR (<http://www.hrc.ugent.be/third-party-interventions-before-ecthr/>). The judge also cited the occasion where a third party intervention is referenced in the dissenting opinion only, and then is utilized in the majority opinion in a future case.

³³ *Soering v. UK*, no. 14038/88 ECtHR 1989.

³⁴ The ECtHR stated in para. 102: "This 'virtual consensus in Western European legal systems that the death penalty is, under current circumstances, no longer consistent with regional standards of justice', to use the words of Amnesty International, is reflected in Protocol No 6 to the Convention, which provides for the abolition of the death penalty in time of peace."

³⁵ *Observer & Guardian v. UK*, no. 13585/88 ECtHR 1991. The Court stated in paragraph 60: "For the avoidance of doubt, and having in mind the written comments that were submitted in this case by 'Article 19'... the Court would only add to the foregoing that Article 10 of the Convention does not in terms prohibit the imposition of prior restraints on publication, as such." And Article 19 is also referenced in the partially dissenting opinion. Article 19's amicus brief is also cited in the majority opinion in *Sunday Times v. UK*, no. 13166/87 ECtHR 1991, paragraph 51.

³⁶ *Nachova & Others v. Bulgaria*, no. 43577/98, no. 43579/98 ECtHR 2005.

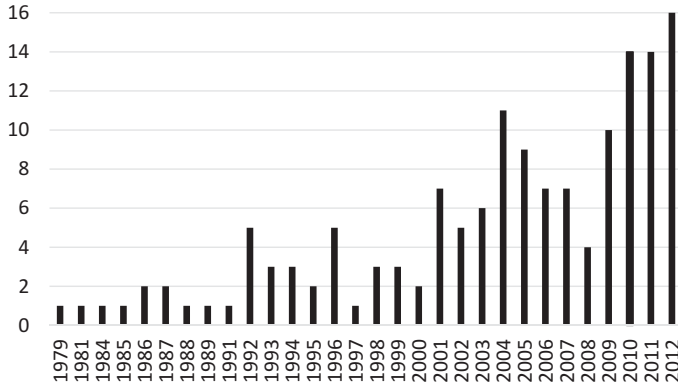


Figure 3. Annual Number of Amicus Participant Types in ECtHR Judgments, 1979–2012.

N = 20 different types of amicus participants.

Source: Data compiled by the author from the *European Court of Human Rights Database* (Cichowski and Chrun 2016).

discrimination) to include a procedural element (obligation of the authorities to investigate possible racist motives). By 2012, these three groups successfully submitted 51 third party interventions to the ECtHR.

In addition to an increase in numbers, the types of organizations is also changing. Figure 3 details the annual number of amicus participant types in ECtHR judgments from 1979 to 2012. The number fluctuates and remains low in the early years and overtime there is a steady increase in the diversity of third party intervener types. From 2010 to 2012, the variation in types (14–16 different types of interveners) was double that of most years up to that time. During the first 10 years of amicus participation, the parties were largely rights organizations, some labour unions and professional associations. By the end of the 1990s and 2000s we see states, a diversity of individuals and an assortment of interest and advocacy groups actively participating in this human rights litigation. And at the end of the time period there are 20 different intervener types: business, human rights, women's rights, minority rights, freedom of expression, professional associations, religious, community organizations, media, intergovernmental organizations, labor unions, environmental, state authorities, pro-life, pro-choice, health, lobbying groups, political organizations, legal aid, education/academic experts, individuals, and states.

In sum, changes in standing rules, the Court's power, and the legal expertise and resources of advocacy organizations influence legal mobilization opportunities in the Council of Europe system.

Clearly, these access points do not create an open flood gate for participation, but instead illustrate the persistence of groups to challenge constraints on the accessibility of the system and the power of the Court to increase participation over time—a decision that took place before states codified broad access. Public interest organizations are rarely a litigant before the ECtHR, given direct victim standing requirements, yet as the analyses illustrate they are increasingly playing a critical supporting role by providing valuable research through third party interventions.

Violence against Women (VAW): Expanding Protection and Advocacy Mobilization

This section examines the legal mobilization dynamic in a single area of human rights protection. The case law covers a range of issues including sexual, physical and emotional violence—from rape to domestic servitude. I explore how ECtHR decisions influence protections against violence and the role of advocacy organizations in the litigation. The data identify a shift in the balance of power as states are asked to upgrade their policies to ensure greater protection and enforceability of these rights. The case law also changes the subjects of international law by clarifying state responsibility for the actions of non-state actors. Over the last twenty years, there is a growing web of international laws governing VAW, and ECtHR litigation is prominent in this expansion.³⁷ The legal mobilization surrounding the ECtHR case law builds on an increasingly dense network of women's rights activists working to connect the domestic, transnational, and international protections provided for women throughout Europe (Fábíán 2010; Montoya 2009)

Table 1 details the European Convention articles invoked in ECtHR VAW cases by total number of claims and the violation rate between 1997 and 2014. There are 54 key VAW judgments and decisions made during this time period.³⁸ A single case may include multiple claims and Table 1 details the 71 claims invoked in these cases. Article 3 (prohibition of torture and inhumane treatment) is invoked in 31 claims and a violation is found in 83

³⁷ See United Nations (2010) for an overview of sexual violence case law from the international criminal tribunals. See the discussion below regarding the ECtHR *Aydın* decision establishing rape as a form of torture which was cited a year later by the ICTY as it established the basis for a similar finding under international criminal law.

³⁸ The data includes 42 cases that are rendered in a judgment (either violation or no violation) and 12 are resolved through a decision (to strike the case out or declared inadmissible). Decisions can result from domestic action or inaction, such as refugee status being granted since the original claim, or insufficient exhaustion of domestic legal remedies.

Table 1. Overview of ECtHR Violence Against Women Judgments and Decisions by Convention Articles Invoked, 1997–2014

Convention Articles	Total # Claims	% Violation Found
Art 2 Right to Life	5	80
Art 3 Prohibition of Torture and Inhumane Treatment	31	83
Art 4 Prohibition of Slavery	1	100
Art 5 Right to Liberty and Security	2	100
Art 6 Right to a Fair Trial	4	50
Art 8 Right to Privacy and Family Life	15	93
Art 11 Right to Freedom of Assembly	1	100
Art 13 Right to Effective Remedy	4	75
Art 14 Prohibition of Discrimination	7	71
PIA1 Right to Property	1	0

N = 54 decisions and judgments including 71 claims.

Source: Data compiled by the author from the *European Court of Human Rights Database* (Cichowski and Chrun 2016) and the European Court of Human Rights (2015; 2014b).

percent. One notable Article 3 claim develops the legal basis for rape as a form of torture (see *Aydin v. Turkey* case³⁹ discussion below). Article 8 (right to privacy and family life) is invoked in 15 claims and a violation is found in 93 percent of these cases. Article 8 is used both by litigants and the Court to impose positive obligations on the state requiring action to prevent non-state behavior that is particularly adverse to women (e.g., domestic violence case law including the *Hajduova v. Slovakia* case⁴⁰).

Table 2 details ECtHR VAW judgments and decisions by subfield and provides information on violation rate and percentages of cases developing human rights law. The analysis utilizes the ECHRdb significance coding which categorizes each judgment by significance in developing human rights law.⁴¹ There are seven main subfields. Domestic violence and rape and sexual abuse make up two thirds of the case law. The scope of expulsion cases includes female genital cutting, honor crimes, trafficking, and social exclusion. Seventy-eight percent of the VAW cases ended in a violation and 67 percent either went beyond just applying the case law or made significant contributions to the development, clarification, or modification of the case law. In 1985, the ECtHR establishes rape as a violation of Art 8 (right to privacy) in the *X and Y v. Netherlands* case,⁴² and places a positive obligation on the state to ensure practical and effective protection that

³⁹ *Aydin v. Turkey*, no. 23178/94 ECtHR 1997.

⁴⁰ *Hajduova v. Slovakia*, no. 2660/03, ECtHR 2010.

⁴¹ The ECHRdb adopts the ECtHR categorization of significance as: low (little legal interest, simply applying the case law), medium (while not making a significant contribution to the case law, it nevertheless goes beyond just applying the case law) and high (making a significant contribution to the development, clarification, or modification of the case law).

⁴² *X and Y v. the Netherlands*, no. 8978/80, ECtHR 1985.

Table 2. Overview of ECtHR Violence against Women Judgments and Decisions by Subfield, 1997–2014

Subfield	# of Judgments and Decisions
Domestic Violence	22
Ill Treatment in Detention	1
Police Violence	6
Rape and Sexual Abuse	12
Risk of Ill Treatment in Case of Expulsion	
- Female Genital Cutting	3
- Honor Crime	1
- Risk of Trafficking or Re-trafficked	4
- Social Exclusion	2
Trafficking in Human Beings	1
Violence by Private Individuals	2
Totals	
Number of judgments & decisions	54
Percentage finding a violation	78%
Percentage developing the law	67%

N = 54 judgments and decisions.

Source: Data compiled by the author from the *European Court of Human Rights Database* (Cichowski and Chrun 2016) and the European Court of Human Rights (2015; 2014b).

includes the possibility of criminal prosecution. In 2007, the Court expands the scope of Article 3 and declares that “female genital mutilation amounts to ill-treatment contrary to Article 3 of the Convention” in the *Collins and Akaziebie v. Sweden* case,⁴³ despite deciding the asylum case was inadmissible on grounds that the claimant lacked evidence of a real and concrete risk of being subjected to FGM if returned to Nigeria.

Table 3 provides an overview of interest and advocacy group participation in ECtHR VAW judgments from 1997 to 2014 and details the organization name, type and the mode of participation (submitting an amicus brief or serving as the legal representation for the applicant). There are 15 cases that involve advocacy participation including 12 amicus briefs and 10 instances of interest organizations and advocates representing the applicants. Organizational types include academics, health, human rights groups, and legal aid. Human rights organizations were responsible for the 12 amicus briefs. Two prominent repeat players include the AIRE Centre (Advice on Individual Rights in Europe) contributing two briefs and Interights intervening in three cases in this legal domain. Each of these UK-based organizations has a long history of litigation before the ECtHR (AIRE involved in at least 40 cases and Interights in 34 cases as identified in the ECHRdb data) and they possess the legal expertise and experience to include international litigation strategies in their reform

⁴³ *Collins and Akaziebie v. Sweden*, no. 23944/05 ECtHR 2007.

Table 3. Overview of ECtHR Violence Against Women Judgments by Advocate and Organization Participation, 1997–2014

Organization	Type of Participation	
	# of Briefs Submitted	# of Cases Representing the Applicant
Academics		
- F. Hampson	0	1
- K. Boyle	0	1
Health		
- Red Cross	0	1
Human Rights		
- European Social Research	1	0
- HR Monitoring Institute	0	1
- Civil Assoc. Reg. Future	0	1
- Irish HR Commission	1	0
- Euro. Centre for Law and Justice	1	0
- Justice	1	0
- AIRE	2	2
- Equal Rights Trust	2	0
- Interights	3	0
- Amnesty Int'l	1	0
- Center for Reproductive Rights	0	1
Legal Aid		
-Hammersmith and Fulham Community Law Centre	0	1
-No. Kensington Law Centre	0	1
Totals		
Participating as an amicus	12	
Participating as legal representation	10	
Percentage finding a violation	80%	
Percentage developing the law	73%	

N = 15 judgments.

Source: Data compiled by the author from the *European Court of Human Rights Database* (Cichowski and Chrun 2016) and the European Court of Human Rights (2015; 2014b).

campaigns.⁴⁴ Human rights groups, health organizations, legal aid offices, and academic lawyers served as the legal representation in these cases, assisting claims that might not otherwise reach Strasbourg.

Table 3 also details the percentage of judgments ending in a violation and those that expand and develop human rights. Eighty percent found a state party in violation of the Convention, a percentage that is similar to the Court's overall violation rate of 83 percent (ECtHR 2014). Seventy-three percent of the judgments involve the Court going beyond merely applying the case

⁴⁴ AIRE Centre focuses on EU and ECHR litigation (AIRE 2015). Interights was involved in litigation before regional and international bodies in Europe, Africa, the Middle East and South Asia. It served as legal counsel and in the ECtHR jurisdiction was active in submitting third party interventions "advising the Court on particular international and comparative practices on which it should draw inspiration in its adjudication of cases." (<http://www.interights.org/our-work/index.html>). Yet the financial sustainability of these campaigns can be fragile, as earlier mentioned, Interights closed its doors in 2014.

law but instead make either a significant or incremental contribution to the development, clarification, or modification of the case law. Interviews conducted with ECtHR judges suggest this participation plays a beneficial role in complex decisions by providing legal research and comparative perspectives to the dispute.⁴⁵ Van den Eynde (2013) examines 294 amicus briefs from human rights organizations and found similar evidence for increased numbers and repeat players in the more complex cases before the ECtHR Grand Chamber. Her research finds the integral role NGOs can play in providing facts that enable the Court to hold states responsible for fundamental human rights violations.

To elaborate these VAW data, I turn to the case law. The *Aydin v. Turkey* ruling⁴⁶ is an example of legal activists collaborating with human rights organizations to expand the scope of protection. The *Aydin* case involved a 16-year-old Kurdish girl claiming ill treatment and rape while in police custody. The applicant was represented by two human rights lawyers that are repeat players before the ECtHR. Kevin Boyle and Françoise Hampson were professors of law and fellows at the Human Rights Centre at Essex University and had active careers in defending human rights.⁴⁷ Although not formally in the court records, the case received support from the Kurdish Human Rights Project, a non-governmental human rights organization based in London working for Kurdish rights around the globe (KHRP 1994). Amnesty International intervened in the case providing comparative international jurisprudence on the legal basis for rape as a form of torture. This included citing the Inter-American Commission on Human Rights, the UN Special Rapporteur on Torture and the International Criminal Tribunal for the Former Yugoslavia (APT and CEJIL 2008). Importantly, the applicant's legal argument and the amicus brief were integral to the Court expanding the scope and meaning of Article 3 and its prohibition of torture. The judgment establishes rape as a form of torture within the European Convention. Prior to this ruling, rape was often categorized as a private criminal act, under-appreciating its potential systematic use by authorities in times of war and conflict. This ECtHR case law aided by advocacy group participation expands Convention rights and goes on to be cited and play a role in the international criminal trials prosecuting rape in the Former Yugoslavia.⁴⁸

⁴⁵ Interviews conducted by the author June 2015 Strasbourg, France.

⁴⁶ *Aydin v. Turkey*, no. 23178/94 ECtHR 1997.

⁴⁷ Kevin Boyle passed away in 2011 for a brief bio see <http://www.theguardian.com/law/2011/jan/02/kevin-boyle-obituary> and for Françoise Hampson see here <https://www.essex.ac.uk/law/staff/profile.aspx?ID=823>

⁴⁸ *Prosecutor v. Delalić and Others*, Case No. IT-96-21, ICTY Trial Chamber II, 1998; *Prosecutor v. Furundžija*, Case No. IT-95-17/1, ICTY Trial Chamber II, 1998.

The *Eremia & Others v. Moldova* case⁴⁹ is another example of strategic legal mobilization. The case involved three applicants, a woman and her two daughters, who were filing a complaint against the Moldovan authorities for failure to protect from the domestic violence and abusive behavior of their husband and father. The ruling was innovative in expanding the scope of state responsibility in domestic violence cases. The Court held there was a violation of Article 3 (prohibition of torture and inhumane treatment) for the authority's failure to provide effective protection despite knowledge of the domestic violence. It also found a violation of Article 8 (right to respect for private and family life) in respect to the daughters who witnessed the violence and were not effectively protected by local authorities from the psychological harm. The Court also expands the scope of Article 14 (prohibition of discrimination) finding that the case was not just a failure to prevent violence but the inaction by Moldovan authorities amounted to repeatedly condoning such violence, which reflects a discriminatory attitude toward the woman.

An amicus brief from the Equal Rights Trust (ERT) would prove integral to this innovative decision. The ERT is a London based non-governmental organization with a history of involvement in ECtHR and international litigation (ERT 2015). The ERT's 10-page brief argues for the recognition of domestic violence as a form of discrimination (Equal Rights Trust 2011). The brief elaborates the legal precedent for this argument drawing from the Inter-American Court of Human Rights and the United Nation's Committee on the Elimination of Discrimination against Women. Quoting the UN Special Rapporteur on Violence against Women, the ERT argues that domestic violence requires a particular state response recognizing the "discriminatory causes and consequences of this phenomenon" (Equal Rights Trust 2011:2). The ECtHR's finding of an Article 14 violation cites the ERT submission providing the basis for treating domestic violence as a form of discrimination (paragraphs 84–89, 37). The ERT directly assists the Court in this innovative expansion in human rights law. Together this case law identifies the ways advocacy group participation is critical to the enforcement and development of human rights by the European Court of Human Rights.

Conclusions

Today landmark human rights innovations and a growing network of advocacy and interest organizations characterize the

⁴⁹ *Eremia and Others v. the Republic of Moldova*, no. 3564/11 ECtHR 2013.

Council of Europe's history. The analyses elaborate a set of institutional mechanisms that are critical to this process. Strategic legal action and ECtHR initiated and state codified Protocol 11 reforms led to changes in standing rules and the Court's power. This transformation opened the door to advocacy and interest group participation as direct claimants, legal representation, and third party interveners. The data and case law analyses identifies that advocacy group participation before the ECtHR is characterized by organizations with the expertise, experience, and resources for international litigation.⁵⁰ There is clear evidence that this activism is both collective and highly networked across human rights organizations. Liberty, the Open Society Foundation, the Russian Justice Initiative, AIRE and Interrights all offer advice, training, and workshops to build the capacity of civil society, human rights activists, lawyers, and judges to enforce and develop human rights in Europe.⁵¹

Legal mobilization also plays an integral role in the ECtHR's decision making. The *amicus curiae* data reveal a growing diversity of groups—from rights organizations to professional associations—playing a direct role in the development of human rights law by providing research on human rights principles. The VAW analysis demonstrates the ways this mattered for ECtHR decision making and expanded the protections provided to women under Article 3, 8, and 14 of the European Convention. The total number of cases involving groups remains small compared to the universe of ECtHR decisions, yet the significance of the case is often high. Advocates and organizations strategically bring or participate in cases that exhibit the potential and often lead to significant contributions in the case law. Domestic level research reveals the impact ECtHR rulings can have on national policies widening the reach of this international court (Anagnostou 2014; Keller and Stone Sweet 2008). Future research might examine the VAW ECtHR case law in relation to changes in domestic prosecution rates similar to research on hate crime legal mobilization in the U.S. context (e.g., Jenness and Grattet 2004).

⁵⁰ The ECHRdb data identify at least 20 human rights organizations who each are involved in 14 or more ECtHR cases in the database. Human Rights Watch is the lowest of these active defenders at 14 and the Russian Justice Initiative is involved in the greatest number of cases at 131.

⁵¹ See footnote 7. See training workshops at the Russian Justice Initiative <http://www.srji.org/en/about/contribute/>; See targeted human rights training at Interrights when it was still in operation <http://www.interights.org/our-work/index.html>; and see legal training and advice for human rights defenders and individuals at the AIRE Centre <http://www.aire-centre.org/index.php>. An interview with a lawyer activist working with human rights organizations in Russia stated that there is collaboration even among quite competitive Russian NGOs to discuss taking cases to the ECtHR. Interview by the author May 2016.

The findings also suggest a set of broader questions. The Council of Europe is exceptional in many ways given its vibrant human rights legacy, court with a large case law, historical network of legal advocacy support, and general compliance amongst member states. Yet, it continues to be challenged with a growing caseload. Thousands of claims are turned away each year on admissibility grounds with critics pointing to the inability of the institution to handle the real number of violations that exist. While reforms such as the Pilot-Judgment Procedure begin to rectify this challenge, effective implementation still remains fragile given the power of states to block a system that would ensure greater constraints on national sovereignty (Greer 2006; Mowbray 2009).⁵² Clearly, the legitimacy of this dynamic process remains a fine balance between societal inclusion and domestic government support.

Looking to other global legal regimes that include a court or tribunal one can observe a gradual spread in advocacy group participation. Individuals and groups are now granted access via amicus curiae procedures to the international criminal tribunals (ICTY, ICTR) and the International Criminal Court (Bartholomeusz 2005). Similarly, international dispute resolution and arbitration bodies are developing amicus curiae mechanisms, including the World Trade Organization's (WTO), Appellate Body and the tribunals of the North American Free Trade Agreement (NAFTA), and International Centre for Settlement of Investment Disputes (ICSID) (Squatraro 2012). And many of the older international courts, including the Court of Justice of the European Union and the Intra-American Court of Human Rights, have long histories of civil society participation and continue to see reforms in access (Cichowski 2007). These trends present a theoretical and empirical challenge for future research. By expanding participation to those parties affected by international court decisions, we may enhance the accountability, legitimacy and transparency of legal institutions. Whether this intention becomes reality, remains a pressing question of our time and will be critically connected not only to state commitments, but to the mobilized groups and international courts that come to define these legal spaces.

⁵² The Pilot-Judgment Procedure is a technique that was first applied in 2004 and was developed to identify and remedy systematic structural problems at the root of repetitive cases with the intent of speeding up redress and enabling the ECtHR to more efficiently manage its caseload. For more information go to: http://www.echr.coe.int/Documents/FS_Pilot_judgments_ENG.pdf

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