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### PROJECT

## The European Court of Human Rights as Antidote against Authoritarian Populism

The European Convention on Human Rights and its Court were set up after World War Two to help states uphold democracy and the rule of law against backsliding. How can the Court perform these tasks in the face of two apparently conflicting challenges?

The Court is now required to serve a subsidiary, deferential role granting states a discretionary “margin of appreciation.” The Court also faces a rise of authoritarian populist movements and governments that are reluctant to delegate authority, in particular to elitist international human rights courts staffed with foreigners, who constrain democratic majorities in favor of minorities that threaten their traditions and values – such as criminals, refugees, and religious, ethnic, sexual, or other minorities.

The project reviews and builds on recent contributions in political science, law, and political theory to provide 1) a more careful analysis of the sorts of reactions and pushback the Court faces; 2) a working definition of authoritarian populism; 3) the peculiar design challenges for an independent yet accountable ECtHR; 4) critical and constructive engagement with authoritarian populism to identify aspects that merit respect and accommodation; and 5) some strategies available to the ECtHR to render it more resilient and helpful against authoritarian populism – without treaty change.

– Since the application was written, there have been several insightful contributions to these topics, and the project may change due to them.

### Recommended Reading

Føllesdal, Andreas (1998). “Survey Article: Subsidiarity.” *Journal of Political Philosophy* 6 (2): 190–218.

<https://doi.org/10.1111/1467-9760.00052>.

Føllesdal, Andreas, and Simon Hix (2006). “Why There Is a Democratic Deficit in the EU: A Response to Majone and Moravcsik.” *Journal of Common Market Studies* 44 (3): 533–562. <https://doi.org/10.1111/j.1468-5965.2006.00650.x>.

Føllesdal, Andreas (2020). “Survey Article: The Legitimacy of International Courts.” *Journal of Political Philosophy* 28 (4): 476–499. <https://doi.org/10.1111/jopp.12213>.

# The European Court of Human Rights as a Better Vaccine Against Authoritarian Populism

After the Second World War, European governments committed themselves to constrain any future backsliding into totalitarianism. They therefore agreed to bind themselves – and their successor governments – to the European Convention on Human Rights (ECHR) and to be reviewed by its Court (ECtHR).

Several populist and authoritarian practices and governments in Europe over the last 20 years lead us to question whether the ECtHR is well-enough designed. In particular, how can it be improved as a vaccine against current movements against the rule of law, democracy, and human rights?

My presentation 1) identifies some features of authoritarian populism of particular relevance to this question, and some possible causes: those practices and governments that are anti-elite, denying the human rights of some minorities, anti-constitutional, and anti-democratic. They are often the result of (cultivated) fears of perceived deprivation among segments of the populations: losing their relative economic, social, cultural, or political status.

2) For such practices, the ECtHR seems to be a particularly bad solution, as seen by looking closer at what that court is and how it operates, as an international court that primarily adjudicates cases brought by individuals against their own state, by interpreting and impartial application of the ECHR to the case.

3) The final part of the presentation starts to explore some possible responses by the ECtHR consistent with its "judicial function":

- We should look closer at its "subsidiary" roles toward the states and their peoples, downplaying claims that it is the "conscience of Europe";
- it should acknowledge the value of unique national values and traditions – within limits;
- its judgment should be crafted better as strategic responses to populist authoritarian criticisms that the ECtHR is anti-majoritarian etc.;
- and its judgement should mobilize domestic human rights promoters including courts, opposition parties, media, and civil society organizations.

Føllesdal, Andreas (Hoboken, NJ,2021)

How many women judges are enough on international courts?

<https://kxp.k1oplus.de/DB=9.663/PPNSET?PPN=1853599204>

Føllesdal, Andreas (Oxford,2020)

Survey Article : the legitimacy of international courts

<https://kxp.k1oplus.de/DB=9.663/PPNSET?PPN=1853037648>

Føllesdal, Andreas (Cambridge, United Kingdom,2018)

Legitimacy and international courts

<https://kxp.k1oplus.de/DB=9.663/PPNSET?PPN=895986337>

Studies on international courts and tribunals

<https://kxp.k1oplus.de/DB=9.663/PPNSET?PPN=895986337>

Føllesdal, Andreas (London,2015)

Kantian theory and human rights

<https://kxp.k1oplus.de/DB=9.663/PPNSET?PPN=1624912281>

Routledge innovations in political theory ; 56

<https://kxp.k1oplus.de/DB=9.663/PPNSET?PPN=1624912281>

Føllesdal, Andreas (Cambridge [u.a.],2013)

Constituting Europe : the European Court of Human Rights in a national, European and global context

<https://kxp.k1oplus.de/DB=9.663/PPNSET?PPN=74723647X>

Studies on human rights conventions

<https://kxp.k1oplus.de/DB=9.663/PPNSET?PPN=74723647X>

Føllesdal, Andreas (Oxford,2006)

Why there is a democratic deficit in the EU : a response to Majone and Moravcsik

<https://kxp.k1oplus.de/DB=9.663/PPNSET?PPN=1853038652>

Føllesdal, Andreas (Oxford,2002)

Survey article : subsidiarity

<https://kxp.k1oplus.de/DB=9.663/PPNSET?PPN=185304136X>