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ARTICLE

How conservative groups fight liberal values and try to 'moralize' the European Court of Human Rights

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Abstract
This paper analyses the growing litigation before the European Court of Human Rights (ECtHR) by conservative European Non-governmental Organizations (NGOs) who exploit legal opportunities and other advocacy tactics. These actors oppose the liberal insistence on permissive individual freedom, minority rights and mandatory vaccination. Instead, they promote the sanctity of life, traditional values and harsh terrorism penalties. In this study we show that conservative legal mobilisation is not only related to litigation but also covers the execution of certain ECtHR judgments and the nomination of some European judges. We analyse their tactics using legal and sociolegal methodology (interviews, analysis of legal documents and jurisprudence and network analysis) to characterise their influence on the European human rights system and the reactions of the Council of Europe. We reflect on the moral values claimed by conservative NGOs and their liberal counterparts by analysing how powerful private actors, driven by material and moral interests, take creative initiatives that shape or reshape case law and its politicisation through alliances with so-called 'illiberal' and 'populist' states.

Keywords: conservative litigation; European Court of Human Rights; legal mobilisation; sociolegal movements; Council of Europe

1 Introduction

In recent years, we have observed increased activity of private interest groups (including private foundations acting under philanthropic groups) using legal opportunities, including advocacy tactics and strategic litigation, to influence legal outputs. Although there have been studies on the subject in the United States (McCrudden 2015), this phenomenon has not been described in such depth in Europe, even though it is increasingly visible (see Southworth 2024). Contrary to what we could expect, European conservative private litigation groups act primarily in fields that are not directly religious but are influenced by religious and moral values. We assume that conservative Christian groups present counter-movements that promote the following: the protection of sacred life against abortion and euthanasia, traditional heterosexual family over LGBTQ+ rights, counter-terrorism policies for the revocation of rights of "'foreign terrorists and drug dealers' and freedom from the statutory duty of vaccination in pandemic times. What are the characteristics of strategic litigation applied by conservatives and its impacts on the ECtHR case law and national states (notably in terms of facilitating domestic legal and social changes)? Strategic litigation involves NGOs selecting and bringing cases to the courts through either direct representation and/or third-party intervention to create broader changes in society (see notably Galanter 1974; Hacker 2005; Hollis-Brusky and Wilson 2020; Sarat and Scheingold 2006; Southworth 2008). Compared to this bulk of literature on sociolegal movements, we state that there is a cognitive,

moral and procedural influence on European human rights justice by conservative Christian private interest groups that counteract liberal movements promoting individual freedom, minority rights and open society.

In orienting their efforts to enhance such backlashes, conservative movements ally with so-called 'populist and right-wing governments' (Hungary, Poland and Russia) while being funded and influenced by American parent conservative organizations and right-wing movements. In particular, conservative interest groups try to shape the rights orientation of European case law by lodging complaints and making third-party interventions regularly (Kocemba and Stambulski 2024). These interventions are aimed at politicising European judgments so that they are compliant with their values and standards as well as influencing the courts' rules and judicial nominations. In this article, we present a macro study of a subset of conservative groups focused on Christian issues. The study of a subset of liberal groups is not fully neglected, however, as it helps enhance our understanding of the positions and strategies of conservative groups. Hence, the primary purpose of this article is to analyse the litigation initiated and made by private conservative groups before the ECtHR.

We demonstrate that these private conservative influences on European justice are channeled in the short term, at least through procedural strategies that (1) refer to the way private actors use European judicial procedures by intervening in procedures (not initiating cases) to thwart applications brought by their opponents and through sources of expertise and information and that are (2) collected, made and submitted by these private actors to the ECtHR. We highlight how specific sources of expertise and European judgments are either emphasised and publicised or ignored by liberal and conservative groups. We also emphasise the legal and cognitive arguments that are (3) raised by these conservative groups within their judicial strategies and compare them with the legal arguments applied by the ECtHR to measure their influence.

Consequently, this study analyses the moral and religious values underpinning the procedural, informational and legal arguments covering conservative interest groups' judicial and political influences. In this way, we focus on how these private interest groups translate moral and religious values into procedural, informational and legal arguments. Conversely, this article emphasises how these arguments reflect specific moral values and how they influence the ECtHR (notably its legal reasoning). Consequently, the main strength of our analysis lies in the sociolegal approach to the Strasbourg Court.

Accordingly, our article applies a legal and a sociolegal methodology to determine and characterise the influence of conservative interest groups on the European human rights justice system and how the ECtHR has responded to such litigation efforts. First, we rely on legal and historical methodology to analyse judicial inputs. These inputs include European litigation complaints and third-party interventions submitted by conservative and liberal interest groups. In this respect, we consulted the judicial archives of the ECtHR in Strasbourg to collect complaints (as representatives, $N = 32$) and third-party interventions made by private interest groups that were not available online or identified ($N = 72$). Consequently, 104 ECtHR judgments through direct and third-party interventions were analysed. Because a purely quantitative approach limits the scope of our study and lacks context, we included some landmark judgments (including chamber judgments) that consolidated or significantly reoriented the former jurisprudence and posited new principles, followed by new rulings. As many third-party intervention briefs are not freely accessible, we obtained them by asking the various NGOs directly and the ECtHR registry. Although some NGOs did not respond, the registry was willing to provide us with the requested documents. Second, the article is based on an empirical study with a sociological methodology. In this respect, we analysed past and current documents published (notably online) by interest groups on the cases in which they were involved (to know whether lawyers are litigating personally or as members of a private organisation), their strategic litigation and the moral values underpinning their efforts. We also conducted semi-structured interviews with the leading private sector players in the field of human rights (e.g. heads of legal departments in private interest

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groups, barristers, and lawyers who act for NGOs and private interest groups or are at least connected to them [$N = 35$, 17 with conservative organization representatives and 18 with liberal ones] and some European judges [$N = 10$]) to understand how private interest groups use litigation to achieve their judicial, moral and ideological aims.

In Section 2, we present a subset of conservative and liberal groups in Europe. In Section 3, we determine the litigation strategies (including their legal and procedural arguments) applied by conservative interest groups and the nature, content and scope of influence that conservative interest groups exert on European human rights justice in the fields of life, family, sexuality and counter-terrorism. We show that such an influence is not only related to litigation but also covers the execution of certain ECtHR judgments litigated by conservative interest groups and the nomination of some European judges.

2 Description of conservative litigation and engaged right-wing legal mobilization groups

In Europe in recent years, there has been an expansion in the access to courts and availability of directly enforceable individual rights through European Union ('E.U.') law, the European Charter of Fundamental Rights and the European Convention on Human Rights (ECHR). This has led to court litigation becoming more prominent and to an increase in the use of the courts as venues for political conflict (Cichowski 2007; Conant 2017; Hofmann and Naurin 2021; Kelemen 2011; Madsen 2020) and religious conflicts (Fokas 2016). In this regard, the judges use various interpretative methods that reflect their fundamental objectives and contextual constraints (Torres Pérez 2009). In Europe, as new legal opportunities have substantially increased the ability of private and civil society actors to influence public policy (Anagnostou and Claes 2014; Cliquennois 2020), analysing litigation as an advocacy tactic is increasingly significant. In this regard, it is noticed that European interest groups use legal opportunities to bolster social change, particularly in the gender and environmental realms (Hodson, 2011; Vanhala 2011). In this way, NGO litigations before international (Lohne 2019), regional (Ahmed 2011; Hitoshi Mayer 2011) and criminal courts (Lohne 2019) have begun to be studied by sociolegal scholars (Mertus 1999). The influence of NGOs over court agendas (Glasius 2006; Lohne 2019) and their impact on judicial and political changes (Lohne 2019; Sundstrom 2014; Vajic 2005), notably through *amicus curiae* (Bürli 2017; Collins 2008, 2018; Van den Eynde 2013), has been demonstrated in the academic literature.

The influence of social movements and defence lawyers has been notably identified, which is essential to understanding the development of human rights jurisprudence (Sarat and Scheingold 1998, 2001, 2006). The ability of these groups to impact the human rights implementation of courts depends on the legal culture (symbols, values, etc.) in each country. It relies on the formal procedures and opportunity structures (Vanhala 2011) that entail the international instruments, legislation and case law that are recognized and on whether they enshrine a more significant or a smaller number of human rights. There also needs to be ample judicial precedent for bold action, support from legislative and executive branches and little opposition from civil society (Cummings and Rhode 2009; Rosenberg 1991).

In particular, the greater the importance of civil and uncivil (close to 'populist' parties) society litigation in spurring institutional change and supranational governance (Blokker 2024), the more significant are the links between civil society (through NGOs) and the construction of a European judicial space (Cichowski 2007). Similarly, NGOs are the appropriate organisations to impact ECtHR case law by arguing that their organisations contradict the main official objective of litigation, which is meant to achieve justice for specific individuals (Hodson 2011). In the same way, the influence of broad private foundation support on litigating NGOs is supposed to be significant (Haddad and Sundstrom 2023). Nonetheless, differences in NGO participatory roles, frequency and impact on the ECtHR, the Inter-American Human Rights System and the International Criminal Court exist (Haddad 2018). These courts can strategically choose to

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increase their functionality by allowing NGOs to provide information, expertise and services, as well as to shame states for non-cooperation. Through their intense participation, NGOs can profoundly shape the international human rights justice system, but in doing so, they may consolidate civil society representation and relinquish their roles as external monitors (Haddad 2018). According to Bürli (2017), with regard to the ECtHR, three different types of third-party interventions play a role in the administration of the European human rights justice system: the first is *amicus curiae* interventions by NGOs interested in the case, which are particularly significant as they solidify the ECtHR's legitimacy. Second, third-party interventions submitted by Member States reinforce state sovereignty. Third, there are third-party interventions by citizens involved in cases trying to protect their legal interests (Bürli 2017). However, the judicial and political roles and influences exerted by conservative Christian movements are still embryonic (Annicchino 2018; Chelini-Pont et al 2019; Harms 2022; Mancini and Stoeckl 2018; NeJaime and Siegel 2015, 2018) and need to be analysed more deeply.

In terms of a definition, we consider that a subset of conservative NGOs in relation to 'right-wing legal mobilization' (see the definition[1] proposed by Kocemba and Stambulski 2024) has the following characteristics: first, they receive a relevant part of their funding from Christian organizations and foundations, which are largely funded by small donations given by Christians. According to Johnson et al (2015), each US Christian adult gives $367 per year to all Christian causes. Conservative NGOs are also able to rely on the greater propensity of religious people for individual charitable giving (Bekkers and Wiepking 2011; Brooks 2004). Second, they tend to label themselves as politically conservative (Johnson et al 1989; Lewis 2017; Penning 1994; Sekulow 2015) and as Christian conservatives (Avery and McLaughlin 2013; Bennett 2017; Dulk and Kevin 2006; Fitzpatrick 2020; Wilson and Hollis-Brusky 2018). Third, their approach has strong ideological roots in the natural law of Aquinas (Rice 1999), the primacy of the spiritual (Hughes 2010) and, broadly speaking, Christian belief covering the Catholic, Protestant and Orthodox churches, contrary to the US, where Protestants and Evangelists are particularly dominant (Decker, 2016; Dulk and Kevin 2006). Fourth, nationalists tend to defend the national states against globalism and liberalism (Gorski et al 2022; Mancini and Palazzo 2021). Hence, our inquiry includes the prominent Christian and Evangelical groups that regularly litigate the ECtHR: the European Center for Law and Justice (ECLJ) (which is equivalent to the American Centre for Law and Justice on which it depends), Ordo Iuris (a Polish NGO), the Federation of Catholic Family Associations and the bulk of American NGOs such as the Alliance Defending Freedom (ADF), the Family Research Council, Americans United for Life and Family and Demography Foundation, all of which promote conservative Christian values. Compared with other conservative organizations, the ECLJ is distinctive in its composition, which gathers Roman Catholics, Orthodox Christians, and Evangelicals for litigation purposes.

In opposition to conservative movements, a subset of liberal NGOs has the following four characteristics: first, their extensive collaboration among the resource-providing elites who fund them through grants from private foundations (Cliquennois and Champetier 2016; Feldman 2007; Kohl-Arenas 2015; Roelofs 2003). Second, the source of this funding is 'liberal private foundations' that define themselves as liberal, in opposition to conservatism (Raphael, 2018; Rich 2005). Third, their activity is centred around the claims of individuals – particularly minorities – demanding recognition for their distinct properties (Bhabha et al 2017; Craig and Eckert, 1986; Duffy 2018; Frank and Meyer 2002; Goldberg-Hiller 2002; Siegel 2017). Fourth, and in opposition to conservatives, they have – in terms of identity – an outlook that reinforces cosmopolitan citizenship (Mouffe 1997, 1998; Parmar, 2012) over the nationalist identity of the location in which the NGO is operating (Spring 2014).

[1]Right-wing legal mobilisation refers to 'the organized efforts, resources, and strategies employed by individuals, groups, or organizations with conservative or right-leaning ideologies to embody their values in positive law and its interpretation' (Kocemba and Stambulski 2024, 1).

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No systematic comparative research has been conducted on European litigation by conservative groups (Fokas 2016), their alliance with the right-wing (Bob 2019) and their fight against liberal interests. While the influence of Christianity on human rights (Zuber 2017) and its potential weaponisation (Bob 2019) has been acknowledged, our study is the first research on global strategic litigation undertaken by such conservative organisations in areas which are not directly considered as religious and its impact on the ECtHR through the values these groups spread through legal arguments and procedures.

Thus, we assess the influence of conservative groups on European judges by accessing (1) their main legal, procedural and social arguments; (2) their sources of expertise (including former European judgments); (3) their evidence (notably based on pre-litigation reports); (4) moral values raised by conservative interest groups (and their closeness and differences); and (5) the amount of legal influence that the values have had on European jurisprudence since 1998 (the year in which most conservative NGOs started their litigation activities) and by examining the extent to which European judges use and adopt these conservatives arguments, expertise, evidence and moral values in their judgments.

3 Analysis of the influence and tactics applied by conservative groups in the European human rights justice system

Conservative Christian groups have elaborated on and applied a mix of litigation and political strategies to maximise their impact on the ECtHR. Their litigation activities cover procedural, moral and political dimensions.

The intellectual background of right-wing mobilisation and litigation relies on the fragments of natural law and originalism (Southworth 2024). Based on natural, Aristotelian and Thomistic views of law, conservative groups fight before European judges in cases related to the protection of (sacred) life, family and sexuality and counter-terrorism policies mainly through third-party interventions. In contrast to liberal groups, conservatives rarely provide legal counsel or make direct representation. In this regard, the main impact of third-party interventions submitted by Christian conservative groups is to thwart or at least delay the direct litigation results and successes obtained by liberal organizations in these domains. The conflict between the groups before the court and the influence exerted on the judge varies with the litigation area.

As regular players, and contrary to conservative groups that rely on a defensive strategic litigation, liberal groups apply strategic long-term litigation before the Strasbourg Court. The first step is to pass judicial admissibility, the second is to obtain a final judgment that rejects their application and the third is to obtain a judgment with a dissident opinion in favor of their claims. The fourth step is to obtain a judgment that partly recognises the legitimacy of their application and approach to human rights (through, for instance, the recognition of procedural obligations); the fifth step is to obtain a favourable judgment that leads to a shift in jurisprudence; and the sixth and last step is to obtain a landmark judgment. This strategy has been mainly used by liberal groups in the realm of euthanasia[2] and in realm of the rights of the LGBTQ+ community[3] to become parents or to obtain a new identity.[4] Strategic litigation responses from conservative groups thwart this progressive strategy at each stage and step.[5] To quote a lawyer working for Amnesty International: 'Litigation efforts and success requires and rewards patience. A long-term

[2]*Haas v. Switzerland* (2011); *Koch v. Germany* (2012); *Gross v. Switzerland* (2014).

[3]Polish Helsinki Committee, ILGA-Europe, Third-Party Brief in *Segev Schlittner-Hay and Matan Schlittner-Hay v. Poland* (2021), §7 and *S.W. v. Austria* (2022). For an insight into the evolving and step-by-step strategic litigation applied by ILGA-Europe and other liberal NGOs, see *Fretté v. France* (2002); *E. B. v. France* (2008); *Gas and Dubois v. France* (2012); *X and Others v. Austria* (2013); *A.D.-K. and Others v. Poland* (2019) (communicated case).

[4]AI, ILGA-Europe and TGEU, Third-Party Brief in *A.P., Garçon and Nicot v. France* (2017).

[5]Ibid., with litigation opposition and third-party intervention submitted by ADF in the same case.

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strategy is often set up and consists of small steps forward and sometimes steps back that should not discourage litigants. In this way, our litigation strategy can progressively be implemented through admissibility (first step), dissident opinions (second step), positive judgments (third step), landmark judgments (fourth step) that operate a shift in the case law (towards its liberalization), very significant turning point in the jurisprudence, and so forth.' Following the logic that is respectful of state sovereignty, conservative groups generally raise, on a substantive level, an argument intended to thwart these progressive steps targeted by liberal groups is the absence of finding a consensus likely to legitimise jurisprudential evolution. These conservative groups do so by emphasising the disagreement of many states regarding such changes. From the conservative perspective, a jurisprudential evolution on a morally sensitive question would also amount to considering only Western tendencies, thus ignoring the fundamental principles of natural law[6] and the specific culture of the Eastern States.[7]

In addition, following the same objective of hindering the long-term strategy pursued by liberals, respect for the primacy of state sovereignty may have led certain conservative groups to attempt to influence the European judge by inviting them to adopt a historical reading (as a standard method of legal interpretation, which involves looking at the intention of the legislature) of the ECHR and sticking to the preparatory works of this text.[8]

4 The protection of life

The jurisprudential fight for the most sacred right, the right to life, reveals the intensity of the struggles between conservatives and liberals.

Concerning the end of life, conservative Christian groups request a ban on euthanasia,[9] which they believe, to a certain extent, includes assisting in suicide and breaching the right to life (under Article 2 ECHR) in terms of both positive and negative obligations.[10] In contrast, their liberal opponents, including the NGO Dignitas, emphasize the rights to dignity and to maintaining a private life (through bodily and psychological suffering avoidance) for individuals who freely want to end their lives.[11] In more recent cases, the ECtHR has overturned its jurisprudence by being more sensitive to arguments on the right to private life and the right to dignity (which should prevent a painful end of life) and autonomy raised by liberal organizations.[12] According to the conservative views (expressed in both representation[13] and third-party interventions), there is no right to euthanasia[14] and there have been 'systematic errors in the supervision of the practice of euthanasia that have led to abuses'[15] in light of material (protection of the life of vulnerable people who are not in possession of full freedom of consent and decision-making) and of procedural obligations (ineffectiveness of the institution entrusted with verifying that all euthanasia practices respect legal conditions and procedure) under Article 2 ECHR. In opposition to this approach, the ECtHR has followed, notably in *Mortier v. Belgium*, the liberal interpretation by establishing the new principle that 'the right to life [. . .] cannot be interpreted as in itself prohibiting the

[6]ECLJ, Third-Party Brief in *Gross v. Switzerland* (2014) §8; *A.D.-K. a.o. v. Poland* (2019) (communicated case), §32.

[7]See Ordo Iuris, Third-Party Brief in *Buhuceanu and Ciobotaru v. Romania and 12 other applications* (2023).

[8]ECLJ, Third-Party Brief in *P. and S. v. Poland* (2012), p. 4; *A.K. v. Latvia* (2014), §7; *Orlandi and Others v. Italy* (2017), p. 10; *O.H. and G.H. v. Germany* (2023), p. 6.

[9]See, for instance, *Mortier v. Belgium* (2022), *Gross v. Switzerland* (2014).

[10]ECLJ, Written observations submitted to the ECtHR in *A. and Others v. France* (2024).

[11]*Mortier v. Belgium*, §§106–108.

[12]*Pretty v. UK* (2002) ; *Haas v. Switzerland* (2011).

[13]In *Mortier*, the litigant was represented by a lawyer working for ADF international.

[14]Relying on the ECtHR jurisprudence in the cases of *Pretty v. UK* (2002) and *Lings v. Denmark* (2022).

[15]ECLJ, Written observations submitted to the ECtHR in *Mortier v. Belgium* (2019), p. 2.

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conditional decriminalization of euthanasia'.[16] However, several dissident opinions that are close to the conservative positions concerning the specific aspects of euthanasia that are expressed by a minority of judges highlight the impossibility of euthanasia for individuals with mental disorders,[17] the necessity to protect vulnerable people, and even the incompatibility of euthanasia with the right to life.[18]

Following a similar process, conservative movements rely on the recognition of an unborn fetus's right to life. In particular, Christian conservative groups concentrate their efforts on restricting abortion[19] ('pro-life'). They aim to limit the legal right to abortion ('pro-choice') promoted by liberal organizations. The only country in the EU to resist free abortion is Poland, with Latvia, Romania, Moldova and Ireland having all recently decriminalised abortion. Beyond the procedural arguments that conservative groups raise against any potential liberalisation and enlargement of the scope of abortion, their legal arguments are mainly based on the right to dignity, the right to the physical and mental health of women who would be threatened following abortion,[20] and the respect for early life after conception.[21] In this regard, conservative groups have long sought to oppose attempts by liberal NGOs to favor abortion in the case of a disabled foetus.[22]

Strategically, conservative and liberal groups regularly rely on procedural arguments to counteract the litigation strategies used by their opponent groups and to prevent judgment on substantive aspects. Hence, conservative groups rely on procedural arguments by emphasising in their third-party interventions the inadmissibility of complaints *in abstracto* (*actio popularis*)[23] and the non-exhaustion of domestic remedies[24] by liberal groups. In particular and while, to a certain extent, the margin of appreciation could sometimes be used to expand liberal approaches (as in *Mortier v. Belgium*), conservative groups generally insist on the national margin of appreciation enjoyed by national states to thwart liberal litigation that relies on a wider and evolutionary interpretation of the convention conceived as a 'living instrument' (Andenas and Fairgrieve 2015; Bjorge 2015; Mahoney 2014). This argument is of particular interest to some national states, such as 'populist' regimes that support the conservative view that encourages the European judge to defer to national authorities on matters relating to domestic sociocultural realities. These procedural arguments have been raised by conservative movements in their third-party submissions not only against abortion[25] and pro–women's choice but also against medically assisted procreation and the disposal of the embryo.[26] The argument of the inadmissibility of the requests gained importance during the period of intensification of pro-abortion requests in Poland, which were, in particular, impelled by the action of the Polish Helsinki Committee: the inadmissibility of liberal applications is today (in accordance with the first intervention in this field and since the case of *A.K. v. Latvia*[27]) a weapon systematically and invariably used by the

[16]*Mortier v. Belgium* (2022), §138.

[17]*Mortier v. Belgium* (2022), dissident opinion expressed by Judge Elosegui, who cited some legal statements and data provided by conservative organisations.

[18]Mortier *v.* Belgium (2022), dissident opinion expressed by Judge Sorghides.

[19]See, for instance, *P. and S. v. Poland* (2012); *Tysiąc v. Poland* (2007); *A, B. and C. v. Ireland* (2010).

[20]This argument has not been used by the ECLJ since *P. and S. v. Poland* (2012).

[21]ECLJ, Third-party Brief in *A.K. v. Latvia* (2014); *M. P. and other v. Romania* (2014); *B. B. v. Poland* (2022); *G. M. v. Moldavia* (2022); *M. L. v. Poland* (2021) (communicated case).

[22]*K.C. v. Poland and 3 other applications* (2021) (communicated case); *B. B. v. Poland* (2020) (communicated case); *M. P. and other v. Romania* (2014).

[23]See ECLJ, Third-Party Brief in *Costa and Pavan v. Italy* (2012), §5; *Vallianatos a.o. v. Greece* (2013), pp. 3 s.; *K.C. a.o. v. Poland* (2021), p. 2.

[24]For the first case, see *A, B. and C. v. Ireland* (2010).

[25]ECLJ, Third-Party Brief in *A., B. and C. v. Ireland* (2010) §§18–19 and 46; *P. and S. v. Poland* (2012), p. 5; *M.P. and others v. Romania* (2014), pp. 3 and 10; *A.K. v. Latvia* (2014), §8 ; *K.C. a.o. v. Poland* (2021) (communicated case), p. 6.

[26]See ECLJ, Third-Party Brief in *Segev Schlittner-Hay And Matan Schlittner-Hay v. Poland*, (2021), §22; *Valérie Dalleau v. France*, §31; *R.F. and others v. Germany*, (2017), §§17 s.

[27]*A.K. v. Latvia* (2014).

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conservative organisations in their briefs to oppose the consecration of the right to abortion requested by the applicants.

This proceduralist approach applied by conservatives is undoubtedly linked to limited opportunities for more robust doctrinal development. Therefore, it appears to be a short-term strategy that is related to a longer-term strategy of creating opportunities for more expansive structural opportunities (see 4.) and more room for conservative rulings. In this way, the ECLJ more recently reversed the logic of admissibility in its third-party submissions using a substantive argument to conclude from the outset that the applicant's request was inappropriate.[28] In this regard, the ECLJ considered that such applications are in breach of the Convention *rationae materiae* because the Convention bans the termination of the life of an unborn child considered a person.[29] However, this conservative strategy failed in the case of *M.L. v. Poland* since the ECtHR ruled in December 2023 that there had been a violation of the right to respect for private and family life in the case of a ban on access to the legal abortion of a foetus diagnosed with trisomy 21.[30]

While they have been successful in Poland in the past, conservative movements have lost ground in countries that are more favorable towards abortions. Conservative movements have nonetheless managed to convince the Court not to impose the recognition of the right to choose for women and a general right to abortion in all European countries.[31] The Court allows for diverging national systems and, therefore, does not include abortion in the protected core of the right to private life because of the lack of European consensus stressed by conservatives. Dissenting opinions expressed by a minority of judges have relayed this conservative position[32] with, for instance, the dissenting opinions communicated by Judge de Gaetano in *R.R. v. Poland* (2011) and *P. and S. v. Poland* (2012).

More generally, conservative third-party interventions in Poland can be explained by the fact that private interest groups exert influence either by lodging complaints on a regular and repetitive basis with the ECtHR or by regularly submitting *amici curiae* (third-party interventions) to the Strasbourg Court. While the rules of the ECtHR implicitly prohibit complaining and submitting third-party interventions[33] in the same case, liberal and conservative interest groups regularly do both to optimize their influence on European case law:[34]

'In certain cases, we both take cases to the ECtHR in acting as indirect legal counsellor and submit third-party interventions to reinforce our influence on the European jurisprudence' (Director of the ECLJ). This legal tactic implies that interest groups indirectly lodge complaints without their names appearing as litigants, as the rules of the ECtHR prohibit them from cumulating third-party interventions and representatives of the litigant(s).[35] Both submitting third-party interventions and filing suits using their lawyers will help the applicant allow private interest groups to maximize their litigation impacts.

In addition, both conservative and liberal groups engage in mostly informal talks with their NGOs regarding pre-litigation strategies for the ECtHR. These pre-litigation talks and

[28]ECLJ, Third-Party intervention in *M.L. v. Poland* (2021) (communicated case), §§8–22.

[29]See note 23.

[30]ECtHR, *M.L. v. Poland* (2023).

[31]See, for instance, *A.K. v. Latvia* (2014).

[32]Conservative views were notably expressed by several judges in their dissenting opinions regarding abortion more particularly. For instance, in the case of Tysiac v. Poland (no. 5410/03, 20 March 2007), judge Borrego Borrego issued his dissenting opinion by insisting on the risks of "abortion on demand" and on the fact that the Strasbourg 'Court is neither a charity institution nor the substitute for a national parliament' and that 'the Court neglects the debate concerning abortion in Poland'.

[33]See Article 44 of the Rules of the ECtHR (2023), which holds that the President of the Chamber may, as provided in Article 36§2 of the Convention, invite, or grant leave to, any Contracting Party that is not a party to the proceedings or to any person concerned who is not the applicant to submit written comments.

[34]See, for instance, case *P. and S. v. Poland* (2012).

[35]See, for instance, ECLJ, third-party brief in *Asociación De Abogados Cristianos v. Spain* (2019) (communicated case). See also Bulgarian Helsinki Committee, third-party brief in*Neshkov a.o. v. Bulgaria* (2015).

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cooperation generally result in the submission of collective and mutual third-party interventions[36] to maximize their impact on European judges:

> 'We have talks with other NGOs that share the same values before taking our case to the Strasbourg Court. These talks can lead our organizations to decide on mutual interventions and submission to the Court with a view to reinforcing our efficacy and our litigation impacts.' (Director of the ECLJ)

All the collected briefs enabled us to observe that this strategy was so frequently used by liberal NGOs that it was almost systematic. On the other side, not only do conservative groups seldom engage in this practice, but if they do, the formed coalition generally includes a few NGOs participating explicitly in the submission of the brief.

On some occasions, this mutual cooperation can include states on the liberal side (Cliquennois 2020) and so-called "populist" states (those that insist on the margin of appreciation enjoyed by national states) on the conservative side[37] to mutualize the influence exerted on the ECtHR and even to politicise their litigation activities. This process involves an alliance between conservatives and populist states through legal arguments raised by conservatives that have right-wing interests. In this way, certain states (or representatives of states) do not hesitate to intervene before the Court (beyond their position as defendants) in support of certain arguments put forward by NGOs.[38] This alliance between populist and liberal states can result in the politicisation of some European judgments that are litigated by these private interest groups, as these judgments can then be relayed by political institutions.[39]

Concerning the moral dimensions of litigation, conservative organizations elaborate and apply strategic litigation that is twofold: it is first based on a change of religious values (prohibitions of murder and suicide, the marriage between only men and women, natural procreation) into moral values (which partly correspond to current rules) and, secondly, based on the human rights (the right to life, the right to family, the protection of children, etc.) that reflect these moral aspects. 'Religious values and morality are underlying laws, particularly natural laws. Conversely, law reflects the moral dimensions that we underline in our strategic litigation, contrary to our liberal opponents,' states the Director of the ECLJ.

These moral dimensions of litigation contrast with the material and real aspects of situations (a child raised by homosexual parents, for instance) that liberal groups emphasize to claim legal recognition of these facts in their legal arguments.[40] In insisting on such real situations, liberal groups do not evoke the morality, legitimacy or economic dimensions of measures such as medically assisted reproduction[41] that generate profits for companies.

[36]See, for instance, *K.C. a.o. v. Poland* (2021) (communicated case), in which nine liberal NGOs intervened jointly. For an example of joint intervention by conservative groups, see *Travaš v. Croatia* (2016), in which ECLJ and ADF intervened jointly.

[37]See *B.B. v. Poland* (2022) and *Zawadzka v. Poland* (2021) (communicated case) and the close ties between Poland and the ECLJ. See also *Parrillo v. Italy* (2013) and the close relationships between Italy and the ECLJ.

[38]For an example of joint intervention by conservative groups, see *Costa and Pavan v. Italia* (2012), in which ECLJ, the association Movimento per la vita and fifty-two Italian members of parliament intervened jointly. See also *B.B. v. Poland* (2022) and *Zawadzka v. Poland* (2021) (communicated case) and the close ties between Poland and the ECLJ.

[39]See *Catan and others v. Moldova and Russia* (2012). Sanctions were thus decided by the Parliamentary Assembly of the Council of Europe 52015, 'Challenge, on substantive grounds, of the still unratified credentials of the delegation of the Russian Federation', Resolution 2034 (2015), 28 January 2015, and Resolution 1990 (2014), available at http://assembly.coe.int/nw/xml/XRef/XrefXML2HTML-en.asp?fileid=21538&lang=en.

[40]See, for instance, Polish Helsinki Foundation, ILGA-Europe, Third-Party Brief in *Segev Schlittner-Hay and Matan Schlittner-Hay v. Poland*, §7. See also ILGA-Europe, FIDH, NELFA and ECSOL, Third-Party Brief in *Buhuceanu and Ciobotaru v. Romania and 12 other applications* (2023), §6.

[41]Nowadays, this dispute is much more the subject of liberal third-party interventions than before, see: *Charron and Merle-Montet v. France* (2018); *Schlittner-Hay v. Poland and 1 other application* (2021).

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Second, both transformations give rise to a clash of rights, as the ECHR is a living instrument in which human rights are subjected to an evolving interpretation by the ECtHR[42] (see above). For instance, the right to life of unborn children and people with disabilities (already born, whose parents seek compensation for the loss of opportunity due to non-abortion)[43] is widely mobilised by conservative movements through third-party interventions. In doing so, they fight the complaints brought by liberal NGOs based on the right of parents to a private life and respect for women wishing to have an abortion.[44]

The number of abortion cases indicates that procreation seems to be one of the primary realms litigated by conservative groups. As previously mentioned, conservative NGOs rely heavily on the national margin of appreciation in this field. Such deference to the national law of the respondent state is explained by an ideological reason, according to which Christians admit the prevalence of the state's role in organising society. According to this idea, the state is the most suitable institution for enforcing natural order on the scale of society, which explains why most lawyers representing conservative groups have studied and are still acting in their country of origin or residence.[45]

Suppose the representatives of Christian conservative groups are, therefore, somewhat nationalistic regarding their academic background and professional activities. In that case, the fact remains that they promote the values shared by most conservative Christians. For this reason, they refer to the sanctity of life and reaffirm the traditional role played by women in the family.

5 Family and sexuality

In line with their approach to abortion, Christian conservative groups promote a traditional approach to family and marriage by supporting heterosexual marriage[46] and the traditional nuclear family (their real spearhead)[47] to the detriment of gay marriage and single- or same-sex parenthood.[48] In this field, conservative movements have recently been unsuccessful, given that the Strasbourg Court, under the influence of liberal groups,[49] has continued to recognize the right of the LGBTQ+ communities to marry and become parents.[50] However, as in the cases previously analysed, some judges do not share the Court's majority opinion and consider that the right to marry is not a guaranteed right of the ECHR. In this respect, Judges Wojtyczek and Harutyunyan recently considered *Buhuceanu a. o. v. Romania* entirely in line with the conservative NGO Ordo Iuris's argument that the State Parties should enjoy a wide margin of appreciation in this area.[51] Following the same reasoning, the dissenting judges first admitted that although the legal recognition of same-sex unions could be part of Article 8 of the Convention, the determination of its form and the content of the protection to be granted to such couples should be left to the states.[52] The judges, as did the conservative group (but based on another source),[53] noted in this

[42]As a recent example, see ILGA-Europe, FIDH, *PSAL, NELFA and ECSOL,* Third-Party Brief in *A.D.-K. a.o. v. Poland* (2019) (communicated case), §12.

[43]ECLJ, Third party Brief in *M.P. a.o. v. Romania* (2014).

[44]*K.C. v. Poland and 3 other applications* (2021), (communicated case); *B. B. v. Poland* (2022).

[45]This finding may evolve in the years to come regarding the careers of the youngest conservative actors, like Nicolas Bauer (ECLJ representative), who held the position of research assistant at the Ave Maria School of Law, Naples, Florida, for four months.

[46]*Orlandi and Others v. Italy* (2017); *Oliari v. Italy* (2005).

[47]See, for instance, *Taddeucci and McCall v. Italy* (2016).

[48]*X. v. Poland* (2021); *Schlittner-Hay v. Poland and 1 other application* (2021); *X and others v. Austria* (2013).

[49]Ibid.

[50]Ibid.

[51]See case *Buhuceanu a.o. v. Romania* (2023), §§70–71 and the joint dissenting opinion of Judges Wojtyczek and Harutyunyan.

[52]Similar reasoning was applied in the joint dissenting opinion of Judges Pejchal and Wojtyczek in *Orlandi and Others v. Italy* (2017), following the observations of ECLJ (§§186–190).

[53]Ordo Iuris referred to the comparative report of the Pew Research Center, "Eastern and Western Europeans Differ on Importance of Religion, Views of Minorities, and Key Social Issues', pewresearch.org, dated 29 October 2018, whereas judges

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regard the diversity of positions on the issue among the States Parties, also noting the existence of a 'climate of opposition to LGBT human rights' in some European states.[54]

Some conservative groups also claim that only natural conception[55] is legitimate and oppose medically assisted fertility treatment.[56] Some conservatives condemn the artificial nature of this procreation because it does not adhere to a biological reality or divinely appointed roles. This moral argument results in hesitation and doubt among certain European judges.[57]

As an additional litigation tactic, conservative groups cite their judicial successes (which are close to conservative interests and arguments) and the former decisions[58] that they successfully litigated and obtained from the ECtHR to convince European judges. Given their expertise, liberal and conservative groups make pre-litigation reports and use them to persuade European judges to apply these reports as evidence and fact findings. Moreover, conservative groups do not hesitate to use the reports and documents of liberal NGOs to obtain factual information (particularly in the case of the expulsion of Christians from Middle Eastern countries)[59] but also to draw opposite conclusions from the cited source document (notably in the area of LGBTIQ+ rights).[60]

The field of sexuality, which is, clearly, an implicit concern within the litigation of homosexual rights, is also of concern to conservative groups and is given a similar moral dimension. There is a straightforward anti-censorship approach towards pornography within the liberal ideology (Dworkin, 2006; Dyzenhaus 1994). Moreover, the principle of human rights, rooted in the idea of property rights, presupposes that individuals have the liberty to utilize their resources for communication, regardless of whether their chosen method may offend others. On the contrary, conservative groups are proponents of a ban or regulation of pornography in their third-party submissions,[61] insisting on the dignity of women (as do certain feminist groups), the protection of morals and the harmful effects of pornography on consumers in terms of addiction, mental health, gender stereotypes and sexual violence against women and children. While the ECtHR considers the arguments of public interests raised by some conservative organizations, notions of privacy and intimacy were raised under Article 8 of the European Convention, especially for vulnerable people such as prisoners.[62] Similar to the other disputes studied, we notice that beyond the majority decision made by the ECtHR, the dissenting position is particularly close to the arguments underlined by conservative groups. More precisely, in the case of *Chocholáč v. Czech Republic* (2020), the dissenting opinion of Judge Wojtyczek seems to have been influenced by the third-party submission of the ECLJ. Following the arguments raised by the conservative group, the judge referred to several instruments of international law on dignity. However, the majority did

referred to the CDDH Report on the Implementation of Recommendation CM/Rec(2010)5 of the Committee of Ministers to Member States on measures to combat discrimination on the grounds of sexual orientation or gender identity, which was adopted by the CDDH at its 92nd meeting (26–29 November 2019).

[54]Case *Buhuceanu a.o v. Romania* (aforesaid), joint dissenting opinion of Judges Wojtyczek and Harutyunyan, §6.

[55]*Parillo v. Italy* (2015); *Paradiso and Campanelli v. Italy* (2017); *Mennesson v. France* (2014).

[56]*Charron and Merle-Montet v. France* (2018); *S.-H. v. Poland* (2021); *Gas and Dubois v. France* (2012).

[57]*Pejřilová v. Czech Republic* (2022), §§5–60 (refusal to recognise the right to post-mortem (artificial insemination).

[58]*Koch v. Germany* (2012), with a third-party intervention submitted by Dignitas and citing the case of *Haas v. Switzerland* (2011), in which Dignitas submitted a successful third-party intervention. See also FIDH, AIRE-Centre, ILGA-Europe, third-party brief in *Schalk et Kopf v. Austria* (2010), §§8 seq., referring to cases *Karner v. Austria*, no. 40016/98 (24 July 2003), ECtHR (third-party intervention of ILGA-Europe, Liberty and Stonewall) and *E.B. v. France* (2008) (third-party intervention of FIDH, ILGA-EUROPE, BAAF and APGL). As an example of conservative third-party interventions, see ECLJ, third-party brief in *A.K. v. Latvia* (2014), §40 (referring to his own briefs in cases *Costa and Pavan v. Italia* (2012) and *S.H. v. Austria* (2011).

[59]See ECLJ, third-party brief in *A. R. M. v. Bosnia-Herzegovina* (2013), p. 2; *W.K. and M.F. v. Sweden* (2017), §13, referring to HRW documents.

[60]See, for example, ECLJ, third-party brief, in *S.W. v. Austria* (2022), §24; *R.F. and others v. Germany*, (2017) (communicated case), §13; *Charron and Merle-Montet v. France* (2018), page 8, referring to ILGA documents.

[61]*Chocholáč v. Slovakia* (2022).

[62]Ibid.

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not choose to carry out such an analysis.[63] This approach not only suggests that the dissenting judge intends to find that there is no right of access to pornography (similar to the brief presented by the ECLJ), but that it is also possible to note that the conclusions drawn from the dissenting opinion expressed by the judge, as well as the sources used to support those conclusions, have many similarities to the brief issued by the conservative group.[64] This brief influenced his choice of legal and scientific arguments underpinning his position in the case. It is also notable that beyond the study of international legal standards, the dissenting judge implicitly refers to several scientific studies that demonstrate the harmful aspects of pornography. If the dissenting judge does not mention any scientific study explicitly, his arguments echo such scientific studies that are exclusively cited in the ECLJ brief.[65]

6 Counter-terrorism policies

The third major concern of conservative groups before the ECtHR was counter-terrorism policies. Unlike liberal NGOs,[66] conservative groups apply a harsh and coercive approach to foreign terrorists and crime through the promotion of nationality deprivation and deportation[67] without any real legal limits to tackling foreign terrorism. This stance contrasts sharply with the position of liberal groups, which, although not very active in this area before the ECtHR,[68] condemn harsh counter-terrorism measures and instead advocate softer measures, particularly in the context of the War on Terror (Luban 2007) and Russian actions in the North Caucasus, but also more generally with the Council of Europe's Committee of Experts on Terrorism (CODEXTER).[69]

Hence, in a recent case, the ECLJ adhered to the arguments put forward by the Danish government, finding in its third-party intervention that the decisions to revoke the applicant's citizenship (a Muslim accused of and condemned for terrorism) and to expel him were compliant with Article 8 of the Convention. The ECLJ also invited the ECtHR to add the following two criteria to its assessment of the revocation of citizenship under Article 8 of the Convention: first, the stability of society in the host country – in particular, its capacity to incorporate the applicant into its social, economic and cultural life – and second, the degree of difficulty that the host country is likely to encounter in removing the applicant from the environment that led him to commit the crimes in question.[70] Through the interventions submitted by the conservative NGO, it appears that its commitment to freedom of conscience and religion is limited to the defended religion, the latter decrying the way of life of Muslims and inviting the ECtHR to expel Muslim extremists.

In the absence of a genuine liberal opposition, the ECtHR has adhered to this nationalist view (i.e. the view that is applied to migrants[71] and to Muslims[72] in particular) supported by conservative movements by considering that the deprivation of the applicant's Danish nationality is not a disproportionate sanction, as the revocation has not been arbitrary. In particular, the ECtHR has considered the fact 'that the applicant was convicted of serious terrorist offences,

[63]See Ibid., dissenting opinion of Judge Wojtyczek, §§3–5.

[64]Ibid. See also ECLJ, third-party brief for this case, §§41–45.

[65]ECLJ, third-party brief for this case, §§10–16.

[66]See *Ramzy v. Netherlands* (2010), third-party intervention of AIRE, Interights, REDRESS, AI, the Association for the Prevention of Torture, HRW and ICJ.

[67]See *Johansen v. Denmark* (2022) and *Isam Al-Bayati v. Germany* (2022).

[68]See *Ramzy v. Netherlands* (2010), third-party intervention of AIRE, Interights, REDRESS, AI, the Association for the Prevention of Torture, HRW and ICJ.

[69]Submission of AI and ICJ to the Council of Europe Committee of Experts on Terrorism (CODEXTER), 2015. *Draft Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism*. IOR 60/1393/2015. https://www.amnesty.org/en/documents/ior60/1393/2015/en/.

[70]*Johansen v. Denmark* (2022), §§42–43.

[71]Puppinck, Gregor. 2021. 'LA CEDH verse dans le militantisme idéologique '. *L'Incorrect*, 3 November 2021.

[72]*E.S. v. Austria* (2018), §38.

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which constituted a serious threat to human rights and, to a large extent, showed his lack of attachment to Denmark and its values'.[73]

7 A strong blow against liberal NGOs

In reaction to these mixed results in the field of the protection of life, family and sexuality and on behalf of several former European judges, one conservative organisation has decided to denounce the significant influence exerted by liberal groups on the ECtHR and on the nomination of certain European judges, with a view to limit this liberal influence. Hence, the ECLJ has recently issued two public reports that denounce the close ties existing between some European judges and some liberal interest groups, including the AIRE Centre, A.I., ICJ, Helsinki Committees, HRW, Interights and the OSF.[74] In particular, the first report asserts that over the last ten years (2009–2019), 22 of the 100 permanent judges at the Court came from or worked closely with seven NGOs active in the ECtHR. Eighteen of these judges also sat in eighty-eight cases involving NGOs to which they were linked, and thirty-three of these eighty-eight cases of conflicts of interest relate to Grand Chamber decisions.[75] According to the ECLJ, these conflicts of interests have persisted from 2020 to 2022 to such an extent that the ECtHR (including its registry) would not meet the standards of impartiality that it imposes on national courts: 'there have been at least 54 such cases over the last three years in which there is a conflict of interest among 34 judgments or decisions. There were 18 conflicts of interest in the 7 judgments of the Grand Chamber.'[76] In the ECLJ's view, these conflicts, which are reinforced by the absence of a recusal procedure for judges who do not publish declarations of interest and by the opacity of handling cases, would endure given the lack of scrutiny by any judicial body that could monitor the ECtHR and identify its shortcomings.[77]

However, the ECLJ does not reflect on its own influence on the ECtHR, which consists of allying with some European judges who are sensitive to their values. Hence, conservatives, like liberals, make and release pre-litigation reports that are quoted by the same groups in their litigation activities (complaints and third-party interventions), by the ECtHR and by some European judges (some of whom are former university professors) in their dissenting opinions,[78] publications (Spano 2021) and presentations.[79] This tactic, which is used by both conservative and liberal groups, also involves inviting former European judges to participate in third-party interventions submitted to the ECtHR with a view to legitimizing their submissions. For instance, a recent third-party intervention submitted by the ECLJ to the Court in the case of *K.C. v. Poland*,[80] a case on abortion versus pro-life,[81] is indeed supported by several former European judges, including Bonello (1998–2010), Borrego (2003–2008), De Gaetano (2010–2019) and Boštjan Zupančič (1998–2016).[82]

Despite its own influence, the ECLJ reports recommend that the ECtHR comply with the ethical rules of the ECtHR and revise the recruitment process of European judges to ensure their

[73] *Johansen v. Denmark* (2022), §§68–70.

[74] ECLJ report (2020), 'NGOs and the judges of the ECHR', available at https://eclj.org/ngos-and-the-judges-of-the-echr?lng=en; report (2023), 'The impartiality of the ECtHR. Concerns and recommendations', p. 17, available at https://eclj.org/echr-impartiality-concerns-and-recommendations?lng=en.

[75] ECLJ report (2020), p. 7.

[76] ECLJ report (2023), p. 8.

[77] Ibid., p. 4.

[78] de Albuquerque, P. 2020. Concurring opinions of Judges Yudivska and Motoc. *Droits de l'Homme, Les Opinions Séparées Vues par la Doctrine*. Paris: LexisNexis; *Carvhalo Pinto de Sousa Morais v. Portugal* (2017).

[79] See, for instance, Raimondi, G. 2018. 'La Déclaration Universelle des Droits de l'Homme et la Convention Européenne des Droits de l'Homme', conference organised by the Holy See at the ECtHR. Strasbourg: Council of Europe, 10 September 2018.

[80] ECLJ, third-party brief in *K.C. v. Poland and 3 other applications* (2021) (communicated case).

[81] This case was largely based on the success of this vision before the US Supreme Court in the now-inescapable judgment *Dobbs v. Jackson Women's Health Organization*, 945 F. 3d 265 (24 June 2022).

[82] ECLJ, third-party brief in *K.C. a.o. v. Poland and 3 other applications* (2021).

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impartiality and independence from liberal private foundations and NGOs.[83] On behalf of the ECLJ, two petitions were launched to call for an end to conflicts of interest in the ECtHR.[84] A proposed resolution was submitted by some conservative and 'populist' parties from fourteen Member States to solve the conflict of interests at the ECtHR,[85] following some written questions asked of the Committee of Ministers.

In reaction, the 'drafting group on issues relating to judges of the European Court of Human Rights,[86] was created by the Committee of Ministers of the Council of Europe and the Committee of Experts on the Reform of the ECtHR, where the ECLJ director sits as observer for the Holy See. This reform aims to enhance the independence[87] and legitimacy of the ECtHR,[88] as well as the transparency of the NGOs' work. The ECtHR has also recently adopted a resolution on judicial ethics of the European judges prescribing their integrity, impartiality and independence from any 'organization' and 'private entity.'[89] It also amended Rule 28 of the ECHR Rules of Court (Rule 2023, 22 January 2024), now titled 'Inability to seat and Recusal' to avoid any existing conflicts of interest by adopting a recusal procedure.[90] The ECtHR has incorporated two additional recommendations from the ECLJ by adopting 'Practice Directions'[91] on the recusal of the judges, appended to its Rules, which outline the recusal procedure. One aims to allow applicants to know in advance the identity of the judges who will decide on their case. The other recommendation explicitly clarifies the possibility of requesting the reopening of a case after an inadmissibility decision.

In addition, on 20 March 202023, another response was brought by the ECHR to the ECLJ reports through the publication of 'Practice Directions' on third-party interventions.[92] This reform aims to increase transparency in the actions of NGOs at the ECtHR and to prevent the double game played by NGOs that often intervene covertly, both as applicants and as third-party interveners, in the same case, thus concealing their ties to parties or judges denounced in ECLJ reports. Consequently, the ECLJ reports go to the point above about opportunity structures. Conservative groups are trying to generate bad press for the Court in an effort to change its composition in the long term because these groups cannot take more affirmative actions now.

Both reports issued by the ECLJ also have some effect on the ground, as the decisions of some European judges who had formerly worked for liberal NGOs are now observed closely, as stated by

[83]Ibid.

[84]See https://eclj.org/geopolitics/echr/mettre-fin-aux-conflits-dinterets-a-la-cedh.

[85]Proposal of resolution, Document 15561, 30 November 2022, available at https://pace.coe.int/fr/files/31447#trace-1; Mireilles Isabel, 'How to remedy potential conflicts of interest of judges at the European Court of Human Rights?', written question No. 747 to the Committee of Ministers, Doc. 15095n, 23 April 2020; Milan Knezevic, 'Restoring the integrity of the European Court of Human Rights', written question No. 748 to the Committee of Ministers, Doc 15096, 24 April 2020; Wonner Martine, 'Exiger la publication d'une déclaration d'intérêts par les juges de la Cour européenne des droits de l'homme', written question No. 776 to the Committee of Ministers, Doc. 15532, 17 May 2022.

[86]Committee of experts on the system of the European Convention on Human Rights creating a drafting group on issues relating to judges of the European Court of Human Rights (DH-SYSC-JC) DH-SYSC-JC(2022)R1, 30 September 2022.

[87]The Rules of Court of 20 March 2023 have been revised to limit the influence of NGOs on judges, 78, available at https://echr.coe.int/Documents/Rules_Court_ENG.pdf.

[88]The Steering Committee for Human Rights (CDDH) created for the period 2022–2025 a drafting group on issues related to judges of the European Court of Human Rights (DH-SYSC-JC). The remit of such a group is to prepare, under the authority of the Committee of experts on the system of the ECHR (DH-SYSC), a report evaluating the effectiveness of the system for the selection and election of the Court's judges and providing additional safeguards to preserve their independence and impartiality.

[89]ECtHR, Resolution on Judicial Ethics adopted by the Plenary ECtHR, 21 June 2021.

[90]Registry of the ECtHR, Rules of Court, Strasbourg, 22 January 2024, available at https://www.echr.coe.int/documents/d/echr/Rules_Court_ENG?utm_source = brevo&utm_campaign = Conflicts%20of%20interest%20between%20Judges%20and%20NGOs%20The%20ECHR%20finally%20establishes%20a%20Recusal%20Procedure&utm_medium = email.

[91]Practice direction issued by the President of the Court in accordance with Rule 32 of the Rules of Court on 22 January 2024, available at file:///D:/Downloads/PD_recusal_judges_ENG.pdf.

[92]Practice Directions issued by the President of the Court in accordance with Rule 32 of the Rules of Court on 13 March 2023, third-party intervention under Article 36 § 2 of the Convention or under Article 3, second sentence, of Protocol No. 16, available at file:///D:/Downloads/PD_Third_Party_intervention_ENG-1.pdf.

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a European judge: 'The judges who previously worked for liberal NGOs are now scrutinized by their colleagues and the registry and no longer act as liberal judges. They prefer to adopt a more neutral stance.' Moreover, the recent candidates (like the Belgian candidate who was working for the Open Society Justice initiative) promoted by the Open Society for a European Judge position were rejected by the ECtHR.[93]

8 Discussion and conclusion

While some legal, historical and political studies have acknowledged the influence of Christianity on human rights and its potential weaponisation, we propose an analysis of the strategies applied by conservative groups and their strategies' effects on the European human rights justice system. This inquiry, limited by the range of decisions and NGOs it has analysed, describes how conservative and liberal values clash in European justice. For this reason, we scrutinized how conservative groups fight liberal organizations and try to influence the ECtHR through their Christian and traditional moral values using litigation strategies, legal arguments and procedural tactics. Rather than purely weaponising human rights (Bob 2019), conservatives seek judicial recognition of their moral constructs and moral arguments through their litigation efforts. However, when liberal groups have received some historically favorable rulings, it does not appear that conservative forces can influence the ECtHR sufficiently to sway it in the other direction, especially in areas related to the family, sexuality, LGBTQ+ rights and abortion. Therefore, except for the field of counter-terrorism, where conservatives have been successful and which is not disputed by liberal movements (that are not firmly against a harsh approach to extremism and terrorism), the conservative influence seems to be limited to dissenting opinions expressed by a few judges, without the groups managing to take the next step and follow the logic of contentious progression that has been experienced and obtained by liberal groups. Hence, it seems that the ECtHR is more influenced by and sensitive to the aspirations of liberal groups.

Nonetheless, public reports issued by one conservative group uncovering this liberal influence on the ECtHR and disclosing its strategic litigation have been another strategy for conservatives to counteract their liberal opponents. Conservatives have tried to obtain judicial recognition of the knowledge that they have acquired about liberal litigation and its effects on the ECtHR. Behind these visible efforts, the aim pursued by conservatives is to obtain, in the long term, a change in structures, opportunities, and the rules of the ECtHR that would be more fitting to their moral interests. The ECtHR has been quite reactive to these critics and has beem starting to reform its rules of functioning, particularly the election of European judges and the ethical rules of the Court. Notably, in August 2023, the more significant donors in terms of support of the work of liberal NGOs against authoritarian regimes in Eastern Europe, the Open Society Foundations, have decided 'for withdrawal and termination of large parts of our current work within the European Union (and the Council of Europe and the ECtHR), shifting our focus and allocation of resources to other parts of the world' (Dunai and Hancock 2023).

In fighting liberal values in such a way, conservative groups make moral values claims that complement their approach to human rights and oppose those promoted by liberal groups. Driven by material and moral interests, conservative organizations take creative initiatives that involve shaping or reshaping case law, identifying the impact of liberal approaches on the system of the European human rights justice system and trying to obtain compliance from the ECtHR and national states with their conservative perspective on human rights.

In terms of the contextual research agenda of the international and the European human rights systems, we conclude that an analysis of the jurisprudence of international and regional courts has

[93]Parliamentary Assembly of the Council of Europe, progress report on the Election of Judges to the European Court of Human Rights, | Doc. 15263 Add. 2 | 14 April 2021, https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid = 29114&lang = en.

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to consider that normative aspirations may cloak the instrumental use of rights. We suggest that a proper assessment requires reviewing the case law–making process with the politics of both NGO funding and international relations. To a certain extent, European case law is also the result of the fight between conservative and liberal forces that litigate worldwide even though EU law is particularly suited (on the liberal side) to combat right-wing mobilization (Cebulak 2024). This phenomenon certainly deserves to be part of a research agenda on international and regional human rights justice.

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