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Juridification through rights: how the European Court of Human Rights shapes higher education

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ABSTRACT

Juridification has been widely examined in national contexts across various societal sectors, yet its expansion and institutionalization in international settings, particularly within international organizations, remain underexplored. This paper contributes to the juridification through rights literature by analyzing a non-exhaustive set of European Court of Human Rights (ECtHR) case law on higher education ($n = 25$). We introduce the 4-E framework – *expansion, entanglement, elaboration, and effects* – to examine the judicialization of higher education under European human rights case law. Using a mixed-methods approach combining case law, social network, and policy analyses, we demonstrate how: (a) expansion manifests through the increasing role of human rights claims in higher education; (b) entanglement highlights the interconnectedness of multiple rights, shaping judicial interpretations; (c) elaboration occurs as legal precedents refine and consolidate legal standards over time; and (d) effects capture the impact of ECtHR rulings on legal norm diffusion, agenda setting, and institutional and national policies. Our findings underscore the role of the ECtHR in regulating higher education through human rights law, contributing to both juridification studies and the broader legal and policy discourse on European higher education governance. This study also suggests future research directions on the evolving intersection of law, education, and supranational judicial oversight.

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Juridification; judicialization; international organizations; international courts; European Court of Human Rights; human rights law; higher education

Introduction

This article aims to analyze the juridification of international organizations, focusing specifically on the judicialization of higher education through rights, i.e. the increasing role of the European Court of Human Rights (ECtHR) and human rights legal norms in informing policies and institutional governance arrangements (Goodman and Pegrum 2012; Moravcsik 2003). Thus, it contributes to ongoing debates on juridification and judicialization (Epp 1998; Kumm 2004; Slaughter 2004; Sweet and Brunell 1998) by examining how international courts, particularly the ECtHR, influence the legal landscape of higher education. In doing so, it sheds light on the role of human rights in

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shaping European higher education – an aspect largely overlooked in both education policy and higher education studies.

In recent years, research has increasingly documented the expansion of legal instruments within the education sector, illustrating how law has progressively permeated traditionally autonomous areas and intensified regulation in already governed ones. This process, broadly termed as juridification¹ or legalization (Magnussen and Nilssen 2013; Teubner 1987), reflects a growing tendency to frame conflicts and issues in legal and rights-based terms (Blichner and Molander 2008; Kotzé 2012; Selznick 1969). Alongside juridification, the term judicialization involves a shift toward judicial bodies, an expansion of judicial authority, and the increasing oversight of policy sectors through judicial legal mechanisms (Aasen et al. 2014; Blichner and Molander 2008; Teubner 1987).

While studies have explored how legal regulations transform education systems in various contexts (see Freier, Thams, and Wermke 2024; Rosén, Arneback, and Bergh 2021) less attention has been paid to higher education with only a few studies documenting such a transformation (Comandè and De Groof 2018; Stankiewicz and Ostrowicka 2020). Moreover, research has been mainly targeted to national realms, thus, studies on juridification and judicialization of international organizations and its broader impact on policy sectors remain scarce.

A key example of juridification and judicialization in Europe is the European Convention on Human Rights and Fundamental Freedoms (1950) and the establishment of the ECtHR in 1959. The Convention, ratified by 46 Member States, serves as a fundamental legal framework for human rights protection, while the ECtHR adjudicates over 40,000 applications annually. Beyond assessing domestic implementation of human rights, the ECtHR exemplifies how international judicial bodies influence governance and policy, including within higher education. The institutionalization of international courts can be viewed as a distinct aspect of juridification – judicialization – where courts play a central role in shaping legal norms and policies both nationally and internationally (Hirschl 2004).

This study employs a mixed-methods approach – combining case analysis, social network analysis, and policy documents – to operationalize what we designate as the *4 E-framework* to study juridification, in this case, applied to the case of judicialization of human rights of international organizations, particularly international courts. Using data from the HUDOC database and HUDOC EXEC,² which provides access to ECtHR case law and the execution of judgements, we examine:

- (1) *Expansion* – the broadening scope of legal oversight and the increasing application of human rights principles.
- (2) *Entanglement* – the complex interplay or interconnectedness of different rights, showing how they become intertwined and helping to expand the interpretation of individual rights.
- (3) *Elaboration* – the gradual process of building and refining legal meaning through precedents, where decisions develop and clarify the legal framework over time informing and, perhaps refining, the normative standards.
- (4) *Effects* – the extent to which ECtHR decisions impact national and European policies.

The paper proceeds as follows: first, it introduces the analytical framework, outlining key categories in juridification and judicialization. This is followed by an explanation of the research methods and data used. The results are then presented, culminating in a discussion and conclusion on the broader implications of juridification in international contexts and higher education.

Juridification through rights – an analytical framework

Despite lack of general agreement between social and legal scholars on the nature, causes and consequences of juridification (Aasen et al. 2014; Blichner and Molander 2008; Teubner 1987), there is a common understanding that the process broadly refers to a move towards judicial bodies, as in the case of the expansion of judicial authority and their impact in policy-making (Hirschl 2013; Tate and Vallinder 1997), the regulation of newly emerging areas or the ongoing oversight of already established ones (Hood 1995; Murphy 2022; Murphy and Skillen 2015), and the juridification of social relationships (Griffiths 2013; Magnussen and Nilssen 2013; Rosen 2006). Based on the academic literature on the study of jurisdiction, we advance four analytical categories to analyse juridification/judicialization through rights in the context of international organizations, more specifically, international courts – *expansion*, *entanglement*, *elaboration*, and *effects* (see Table 1).

Expansion

Expansion is a key indicator of juridification (Kotzé 2012; Selznick 1969; Teubner 1987), reflecting how rights-based frameworks increasingly shape social life. As individuals and groups use human rights to contest policies and demand state action, law extends its influence into new domains, such as animal welfare (Zapp, Frank, and Marques 2023). Habermas (1986) describes this as the ‘colonization’ of societal spheres by legal norms, shifting issues once managed through non-legal means into judicial arenas. This process leads to greater reliance on courts to interpret and enforce rights, contributing to what Kotzé (2012) terms the legalization of social relations.

The expansion of human rights is evident in the progressive development of the three generations of rights: first-generation (civil and political freedoms), second-generation (socio-economic rights), and third generation (collective or solidarity rights) (Vasak 1977). This juridification extends legal regulation beyond fundamental freedoms into

Table 1. Analytical dimensions of juridification/judicialization through rights.

Analytical Categories	Definition
<i>Expansion</i>	The broadening scope of legal oversight and the increasing application of human rights principles.
<i>Entanglement</i>	The complex interplay or interconnectedness of different rights, showing how they become intertwined and help to expand the interpretation of individual rights.
<i>Elaboration</i>	The gradual process of building and refining legal meaning through precedents, where decisions develop and clarify the legal framework over time informing and, perhaps refining, the normative standards.
<i>Effects</i>	The effects of ECtHR judgements for individuals and institutional frameworks

Source: Authors' account.

areas like healthcare, education, social welfare, and environmental law. Courts have increasingly shaped public policy by recognizing rights such as access to medical treatment (de Ruijter 2019) and emergency healthcare (Nissen 2018). A striking example is the growing recognition of environmental rights, with international organizations (Council of Europe 2024; United Nations 2022) and courts affirming the right to a healthy environment in response to the climate crisis (see Cima 2021; Heri 2022; Marques 2022).

Entanglement

The interdependence of rights has been central to UN doctrine since the 1993 Vienna World Conference, which declared all rights ‘indivisible, interdependent, and interrelated’ (Vienna Conference). Unlike the *widening* of human rights into new areas, the *deepening* of juridification highlights how rights become increasingly intertwined, leading to more complex legal interpretations. For example, civil and political rights often depend on socio-economic rights (Alston and Goodman 2013; Fredman 2008). In healthcare, the right to life (a first-generation right) is closely linked to access to medical services (a second-generation right), showing how socio-economic rights support fundamental freedoms (Langford 2009). This interplay expands judicial intervention, requiring courts to balance individual and collective rights.

The recognition of third-generation rights further illustrates this trend, as environmental concerns increasingly intersect with fundamental rights, such as the right to life and private and family life (Pedersen 2010). Courts now navigate these entanglements, shaping a dynamic legal landscape where rights are redefined in relation to one another (Boyd 2017). As this interconnectedness is codified, societies become more juridified through human rights.

Elaboration

This term captures the process by which judicial decisions, through the establishment and refinement of precedents, build and solidify a coherent body of human rights jurisprudence over time (Helfer and Slaughter 1997). While most international courts are expected to limit their focus to the specific dispute at hand, evidence shows that courts like the ECtHR rely heavily on prior rulings to inform their decisions (Frese 2021; Lupu and Voeten 2012).

This elaboration practice contributes to a process of consolidation of human rights, where courts accumulate case law that interprets, expands, and reinforces existing rights, contributing to a more predictable legal framework. This approach is often driven by efficiency but also serves to enhance the court’s legitimacy in the eyes of external audiences (Lupu and Voeten 2012). Through this process, courts not only apply rights to specific cases but also shape the scope, content, and interdependence of those rights, while simultaneously defining the boundaries of what is considered legally reasonable within the human rights framework. This process is essential for stabilizing and reinforcing the broader project of juridification through rights, an ill-studied aspect in the literature.

Effects

International courts rulings might have the impact in effecting national legal and political systems in a myriad of ways. One of the dimensions is norm diffusion. As case law evolves, *legal norms* diffuse, reinforcing shared legal standards (Lupu and Voeten 2012) within both international and national courts. This is evident in environmental rights litigation, where ECtHR jurisprudence can shape national interpretations positive obligations in the environmental context, under the right to life and the right to respect for private and family life (Heri 2022). Another effect, can be seen in the Court's capacity to trigger an *agenda-setting* effect, prompting political debates and mobilizing civil society actors (Haglund and Welch 2021). NGOs leverage ECtHR decisions to push for rights-based policies, as seen in refugee protections (Costello 2015). Finally, in relation to compliance, one key effect is *direct influence*, where states change laws to comply with judgments, as in the case of LGBTQIA+ rights (Helfer and Voeten 2014), illustrating how rulings drive domestic legal reforms (Keller and Stone Sweet 2008). From 1998 to 2014, approximately 57% of concluded cases led to adaptations in domestic case law, changes in administrative practices, or legislative and constitutional reforms (Committee of Ministers 2015). However, despite these changes, effective implementation remains a challenge, as states often fail to fully enforce rulings, resulting in recurring violations. In 2011, for instance, nearly 80% of new cases were considered as repeat cases (Hillebrecht 2014). This underscores the limitations of juridification when legal decisions lack political and institutional backing, suggesting that juridification through rights may, at times, have little to no effect.

Thus, the 4 E-framework — *expansion, entanglement, elaboration, and effects* – provide a comprehensive framework for understanding *juridification through rights* that can be both applied to national or international contexts. Here, we apply it to the case of international courts, to ECtHR, which we turn below.

Data and methods

The data for this study were retrieved from the HUDOC and HUDOC EXEC databases, which provides comprehensive access to the case law of the ECtHR and the execution of judgements. Our initial search criteria in the HUDOC database included all cases that contained the terms 'higher education' or 'universit*'. This search yielded 111 cases. After conducting a screening test to ensure that each case was directly relevant to the higher education sector, we narrowed the selection down to 25 cases. These cases form the core dataset for our analysis, representing a non-exhaustive population of ECtHR jurisprudence related to higher education. Table 2 presents the overall research design of the study, based on the operationalization of the analytical framework.

Table 2. Data, research methods and indicators/measures.

Data	Categories	Research Method	Indicators/Measures
ECtHR case law 25 cases	<i>Expansion</i>	Quantitative Description	Number of cases per decade, cumulative, and country
	<i>Entanglement</i>	Case Analysis via IRAC method	Number of rights addressed based on violations/non-violations
	<i>Elaboration</i>	Social Network Analysis (SNA)	References to other cases (centrality measure and eigenvector centrality)
	<i>Effects</i>	SNA Policy Documents Desk Research	References to other cases Policy documents, academic and grey literature

Source: Authors' account.

In *expansion*, we look at the evolution of the population of 25 cases since the first case (1968) and the most recent one (2023) per decade and cumulatively. We also provide the number and the countries where the cases were commissioned.

To apprehend the dimension of *entanglement*, we analyse the legal reasoning of each of the 25 cases using the IRAC method (Issue, Rules, Application, and Conclusion). This method is commonly employed in legal case analysis to systematically understand the structure of judicial decisions (Bittner 1990). Both authors are social scientists and jurists, and applied this approach to identify and assess the following components of each case: *issue* (the key legal question or dispute addressed by the court); *rules* (the legal standards or precedents used by the court to address the issue); *application* (the court's application of the legal rules to the facts of the case, revealing the reasoning process behind the decision – *ratio decidendi*); and *conclusion* (the final ruling or outcome of the case, including any violations found and dissenting opinions). The IRAC method allows to comprehensively apprehend the legal reasoning behind the admissible claims and to categorize the nature of the claims as well as the (potential) violations associated with each case.

In matters of *elaboration*, we employ social network analysis (SNA) to examine the gradual development of precedents set by the selected cases and their influence within the broader framework of European human rights law as it pertains to higher education. SNA was used to assess the strength of precedents among the cases. By mapping the citation patterns and relationships between cases, we were able to visualize how legal principles related to higher education have evolved and how different rulings influence each other. Within the 25 rulings, we identify references to other 315 cases (nodes) performing a total of 413 references among cases (edges). To analyze their importance and authority in the network we use the centrality measure of indegree – the number of citations per cases – and the eigenvector centrality – to survey the importance of the case, confirming their authority in the network (Fowler et al. 2007; Fowler and Sangick 2008; Lupu and Voeten 2012; Macasaet and Marques 2025).

Finally, to assess the *effects* of ECtHR rulings, we also use the centrality measure to understand the degree of legal norm diffusion within the international context. Additionally, we conducted policy documents analysis to the national action reports related to each case submitted to the Committee of Ministers of the Council of Europe (the execution body that supervises compliance with judgements) via the monitoring system HUDOC EXEC to examine the effects of each case (if any) beyond the courtroom and explore potential norm diffusion, agenda-setting and direct influence.³ This was complemented by other academic and grey literature sources, when necessary. By triangulating information from multiple sources, this approach provides insights into the real-world consequences of *juridification through rights*.

The combination of the IRAC method for in-depth legal analysis, social network analysis for precedent mapping, and policy documents analysis provides a comprehensive approach to understanding the ECtHR's case law on higher education. This methodological synergy enhances our ability to capture both the legal reasoning in individual cases and the systemic impact of these rulings on higher education sectors.

Juridification through rights – applying the 4 E-framework to the ECtHR rulings in higher education

This section presents the results of the analysis through the 4 E-framework – *expansion, entanglement, elaboration, and effects*.

Expansion – the widening of European higher education case law

Alongside other sectors that have experienced an expansion of European case law, higher education appears to follow the same trend. Figure 1 illustrates the expansion of European case law related to higher education within the ECtHR over time. From the 1960s through the 1990s, the court addressed only a single relevant case, reflecting limited engagement with higher education issues during this period. However, a significant increase in the number of cases began in the 2000s, when 8 cases were adjudicated, bringing the cumulative total to 10 by the end of that decade. This trend continued into the 2010s, with the ECtHR addressing its highest number of cases—13 in total – raising the cumulative figure to 23. In the 2020s, the court addressed 3 additional cases, bringing the total to 25. This trajectory clearly demonstrates the increasing juridification of higher education under European human rights law, particularly from the 2000s onwards.

In terms of geographical distribution, most cases come from Türkiye, with 14 cases, representing over half of the sample. Other countries include Romania with 3 cases and Russia with 2 cases. Several countries, including Belgium, Georgia, Greece, Italy, Moldova, Ukraine, and the United Kingdom, have one case each. This distribution highlights Türkiye's prominent role in higher education-related cases before the ECtHR, consistent with its status as the country with the highest number of applications to the court overall. We next turn to the entanglement dimension.

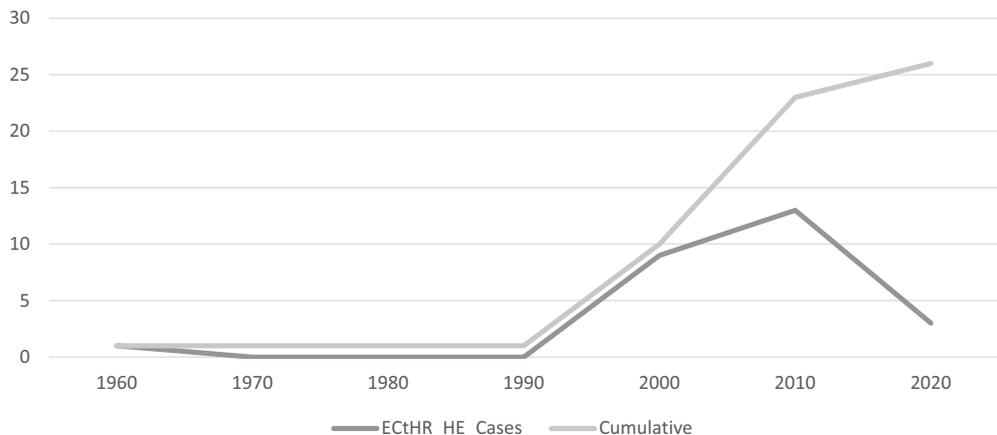


Figure 1. Expansion of juridification through rights in European higher education. Source: Authors' account

Entanglement – the interplay of rights in European higher education

The interdependence of rights is also evident in European higher education cases. In fact, in over half of the 25 cases analyzed, more than one right is at issue. These cases illustrate the ‘deepening’ of juridification, where individual rights are increasingly seen as interconnected rather than separate, resulting in more nuanced interpretations and broader judicial interventions. Table 3 offers a comprehensive overview of the legal issues and rights involved in European higher education cases adjudicated by the ECtHR.

Unsurprisingly, the right to education (Article 2 of Protocol No. 1 of the European Convention on Human Rights) is the most frequently addressed right in European higher education cases, appearing in 12 instances. More relevant to this analysis, as a socio-economic right, the right to education was only considered independently in 2 cases. In the remaining 10 cases, it was linked with potential violations of civil and political rights, such as the prohibition of discrimination ($n = 6$), the right to private and family life ($n = 4$), freedom of expression ($n = 3$), freedom of thought, conscience, and religion ($n = 1$), and the right to a fair trial ($n = 1$). This demonstrates that safeguarding and ensuring access to education often requires a broader consideration of other rights.

In cases involving the intersection of education and discrimination (Article 14 – prohibition of discrimination), the ECtHR found violations in 5 instances, along with 2 dissenting opinions. Most of these cases involve issues related to access to education, such as language, physical characteristics, type of education, or disabilities. In the landmark case *Belgian Linguistic* (ID1), concerning the use of languages in education, the court ruled that laws regulating the language of instruction based on territoriality do not violate the right to education. However, the State must ensure individuals can access educational institutions within its territory, indirectly establishing an obligation to prevent discriminatory barriers, such as denying access to official or subsidised French-language schools in six bilingual communes (Dutch and French).

In *Moraru* (ID24), the court found no objective or reasonable justification for denying a woman who did not meet the height and weight requirements the chance to take the entrance exam for military medicine. The court noted that Romanian law does not stipulate that military physicians must perform tasks requiring physical strength beyond what is expected of a medical professional. While selection criteria for higher education are not inherently contrary to the right to education, they must be based on reasonable and objective grounds to avoid constituting discrimination. Similarly, in *Altınay* (ID11), the court ruled that the differential treatment of students due to a new weighting system, which applied different criteria to general high school students and vocational school students without transitional measures, was disproportionate to the aim of improving university standards, effectively discriminating against the applicant, and depriving him of access to higher education. In *Çam* (ID16) and *Enver* (ID19), the issue of education-discrimination was raised in two distinct contexts: a university’s failure to provide reasonable accommodations for a student who had a severe accident during his studies, and the refusal to enrol a blind student in the Turkish National Music Academy, with authorities failing to make reasonable accommodations to ensure both students could enjoy their right to education on an equal footing with others.

The right to education also intersects with the right to private and family life (Article 8) and the right to freedom of expression (Article 10), though these

connections are not free from conflicting interpretations. For example, in the four cases where Article 8 was considered alongside the right to education (*Belgian Linguistic* (ID1), *Leyla* (ID3), *Catan* (ID10), and *Enver* (ID19)), the court did not find a violation or the need to assess the claim in all but one. In *Catan* (ID10), a dissenting opinion argued that the imposition of an alien script (Cyrillic over Latin alphabet), combined with intimidation and harassment by authorities, undermined the applicants' linguistic and cultural identity, violating their right to private and family life, as language is a crucial social aspect under Article 8. In practice, Article 8 is often considered in isolation, particularly in cases related to employer-employee relationships in higher education institutions (*Novoseletskiy*, ID4 and *Copland*, ID6), the failure of domestic courts to protect a university professor's reputation (*Ion*, ID15), or the annulment of an equivalence certification for a foreign university degree (*Convertito*, ID23).

Regarding Article 10, only two cases addressed the connection between education and freedom of expression, both revealing disagreements among the judges. In *İrfan* (ID9) and *Çölgeçen* (ID18), the Strasbourg court ruled that the disciplinary sanctions imposed on the applicants (suspension and expulsion) for petitioning the university to offer optional Kurdish language courses were disproportionate and unjustified, infringing upon their right to education. In *İrfan* (ID9), Article 10 is mentioned, while in *Çölgeçen* (ID19), the claim is informed-only *in light of* Article 10. In both cases, the majority did not find a violation of Article 10, but dissenting opinions highlighted the issue. In *İrfan* (ID9), Judge Cabral Barreto argued that the case should have been examined under Article 10. In *Çölgeçen* (ID19), two judges believed the sanctions were primarily due to the expression of opinions in the petition, pointing to a violation of Article 10, with the impact on the right to education being secondary.

In *Macaté* (ID25), the prohibition of discrimination was discussed in a partial dissenting opinion of five judges. While the court found a violation of Article 10 due to the suspension and labelling of a children's book featuring same-sex relationships, which infringed on the author's freedom of expression, the dissenting judges argued that the case should have been treated as a discriminatory response to the book's content. They advocated for explicitly recognizing that measures restricting pro-LGBTQIA+ information or ideas amount to discrimination, without requiring that the complainants' sexual orientation be a factor, challenging the court's usual approach of considering discrimination based on individual characteristics.

The entanglement of human rights in European higher education cases highlights how interconnected and evolving these rights are. Some relationships, such as between education and discrimination, are strongly anchored, reflecting the court's consistent rulings on ensuring equal access to education. Other connections, like education and the right to private and family life, appear more tenuous or even conflicting, as seen the dismissals of claims or in the dissenting opinions of Article 8. Meanwhile, emerging dynamics between education and freedom of expression illustrate the Court's gradual adaptation to new societal contexts. This evolving interpretation of the European Convention⁴ paired with judicial creativity not only solidifies existing precedents both also gradual transforms human rights jurisprudence, making it a living, adaptable framework, as we discuss below.

Elaboration – between solidification and refinement

Based on social network analysis, in this section, we show the elaboration of the solidification and refinement of legal reasonings or principles to inform questions related to European higher education, i.e. legal precedents. Table 4 shows the measures of degree centrality and eigenvector centrality to the case law in study (Figure 2 for a visualisation). Interestingly, the case with the highest number of citations from other cases and with the highest importance score is *Leyla* (ID3). By looking at Table 3, one can see that the case examined whether a university’s ban on wearing headscarves violated several applicant’s rights. The Strasbourg court found that there was no violation to any right in assessment (Articles 8, 9, and 14 of the Convention and Article 2 of Protocol No. 1).

However, *Leyla* (ID3) stands as the foundational and most influential case for European higher education, as it marks the first time in the history of the Strasbourg court that the right to education was applied and extended to higher education, setting a critical precedent with far-reaching implications for future cases in this domain,⁵



Figure 2. Network of European higher education case law (by degree centrality, in-degree). Source: Author’s account

Table 3. Overview of cases, legal issues and human rights.

ID	Case	Brief synopsis of the legal issue	Education	Freedom of Expression	Freedom of assembly and association	Freedom of thought, conscience, or religion	Private and family life	Prohibition of discrimination	Fair Trial
1	<i>Relating to Certain Aspects of the Laws on the Use of Languages in Education in Belgium v. Belgium</i> [1968] (<i>Belgian Linguistic</i>)	Examined whether the language laws in Belgium violated the right to education and were discriminatory	Violation	N/A	N/A	N/A	No Violation	Violation	N/A
2	<i>E.H. v. Greece</i> [2001]	Analyzed whether the excessively lengthy proceedings in Greek administrative courts regarding the recognition of the applicant's foreign degree violated his right to a fair trial	N/A	N/A	N/A	N/A	N/A	N/A	Violation
3	<i>Leyla Şahin v. Turkey</i> [2005]	Examined whether a university's ban on wearing headscarves violated several applicant's rights.	No Violation	No Violation	N/A	No Violation	No Violation	N/A	N/A
4	<i>Novoseletskiy v. Ukraine</i> [2005]	Examined whether Ukraine's failure to restore the applicant's right to his university's flat violated his right to respect for private life.	N/A	N/A	N/A	N/A	Violation	N/A	N/A
5	<i>Mürsel Eren v. Turkey</i> [2006]	Considered whether HE authority's annulment of an applicant's exam results violated his right to education.	Violation	N/A	N/A	N/A	N/A	N/A	N/A
6	<i>Copland v. The United Kingdom</i> [2007]	Considered whether monitoring an employee's communications at work (HE College) violated her right to private life.	N/A	N/A	N/A	N/A	Violation	N/A	N/A
7	<i>Emine Aracı v. Turkey</i> [2008]	Examined whether the Turkish courts' handling of the applicant's challenge to her university's decision violated her right to a fair trial.	N/A	N/A	N/A	N/A	N/A	N/A	Violation
8	<i>Pogulyayev v. Russia</i> [2008] ^a	Determined whether the failure to enforce domestic court judgments in favour of the applicant violated his right to a fair trial and peaceful enjoyment of possessions.	N/A	N/A	N/A	N/A	N/A	N/A	Violation

(Continued)



Table 3. (Continued).

ID	Case	Brief synopsis of the legal issue	Education	Freedom of Expression	Freedom of assembly and association	Freedom of thought, conscience, or religion	Private and family life	Prohibition of discrimination	Fair Trial
9	<i>İrfan Temel and Others v. Turkey</i> [2009]	Considered whether disciplinary sanctions on students requesting Kurdish language courses violated their right to education and freedom of expression.	Violation	Dissenting Opinion	N/A	N/A	N/A	N/A	N/A
10	<i>Catan and Others v. The Republic of Moldova and Russia</i> [2012]	Assessed if the closure of Moldovan-language schools in Transdnistria violated the right to education and whether Russia and Moldova were responsible.	Violation	N/A	N/A	N/A	Dissenting Opinion	Dissenting Opinion	N/A
11	<i>Altınay v. Turkey</i> [2013]	Considered whether the Turkish authorities' implementation of a new university entrance system without transitional measures violated the applicant's rights.	Violation	N/A	N/A	N/A	N/A	Violation	N/A
12	<i>Tarantino and Others v. Italy</i> [2013]	Assessed whether Italy's <i>numerus clausus</i> (limited admission) system for university medical courses violated the right to education.	No Violation/ Dissenting Opinion	N/A	N/A	N/A	N/A	N/A	N/A
13	<i>Hasan Yazıcı v. Turkey</i> [2014]	Examined whether the excessive length of administrative proceedings regarding the applicant's right to a higher pension based on HE qualifications violated his right to a fair trial	N/A	N/A	N/A	N/A	N/A	N/A	Violation
14	<i>Mustafa Erdoğan and Others v. Turkey</i> [2014]	Examined whether civil defamation penalties imposed on the applicants for criticizing the Constitutional Court violated their freedom of expression.	N/A	Violation	N/A	N/A	N/A	N/A	No Violation
15	<i>Ion Cârstea v. Romania</i> [2014]	Examined whether Romanian authorities failed to protect the applicant's reputation following the publication of a defamatory article.	N/A	N/A	N/A	N/A	Violation	N/A	N/A
16	<i>Çam v. Turkey</i> [2016]	Considered whether Türkiye's refusal to enrol a blind student in a HE music academy violated her right to education and non-discrimination.	Violation	N/A	N/A	N/A	N/A	Violation	N/A

(Continued)

Table 3. (Continued).

ID	Case	Brief synopsis of the legal issue	Education	Freedom of Expression	Freedom of assembly and association	Freedom of thought, conscience, or religion	Private and family life	Prohibition of discrimination	Fair Trial
17	<i>Şahin Kuş v. Turkey</i> [2016]	Examined whether retroactively annulling the applicant's equivalence certificate violated his right to private life.	N/A	N/A	N/A	N/A	Violation	N/A	N/A
18	<i>Çöğgeçen and Others v. Turkey</i> [2017]	Examined whether the suspension of university students for requesting Kurdish language courses violated their rights to education and freedom of expression.	Violation	Dissenting Opinion	N/A	N/A	N/A	N/A	N/A
19	<i>Enver Şahin v. Turkey</i> [2018]	Assessed whether Türkiye violated the applicant's right to education by failing to provide accessibility accommodations at university.	Violation	N/A	N/A	N/A	No Violation	Violation	N/A
20	<i>Kula v. Turkey</i> [2018]	Considered whether disciplinary sanctions on a university professor for participating in a TV program violated his freedom of expression.	N/A	Violation	N/A	N/A	N/A	N/A	N/A
21	<i>Tuskia and Others v. Georgia</i> [2018]	Considered whether the dispersal of protesting university professors and the fines imposed violated their rights to freedom of expression and assembly.	N/A	Violation	N/A	N/A	N/A	N/A	Violation
22	<i>Mehmet Reşit Arslan and Orhan Bingöl v. Turkey</i> [2019]	Examined whether the refusal to provide prisoners with access to the Internet for educational purposes violated their right to education.	Violation	N/A	N/A	N/A	N/A	N/A	No Violation
23	<i>Convertito and Others v. Romania</i> [2020]	Examined whether the annulment of state diplomas due to administrative irregularities violated the applicants' right to private life.	N/A	N/A	N/A	N/A	Violation	N/A	N/A
24	<i>Moraru v. Romania</i> [2021]	Assessed if the rejection of the applicant's military school application based on height and weight requirements violated her right to education and non-discrimination.	Violation	N/A	N/A	N/A	N/A	Violation	N/A

(Continued)



Table 3. (Continued).

ID	Case	Brief synopsis of the legal issue	Education	Freedom of Expression	Freedom of assembly and association	Freedom of thought, conscience, or religion	Private and family life	Prohibition of discrimination	Fair Trial
25	<i>Macatė v. Lithuania</i> [2023]	Considered whether the suspension and labelling of a children's book containing same-sex relationships violated the author's freedom of expression.	N/A	Violation	N/A	N/A	N/A	Dissenting Opinion	N/A

Source: Authors' account.

^aA violation of Article 1 of Protocol No. 1 – protection of property – was also found. Due to space constraints in the table, we chose not to create a new column.

Table 4. Network measures of European higher education case law.

Degree Centrality		Eigenvector Centrality	
Case	indegree	Case	v
<i>Leyla</i>	11	<i>Leyla</i>	0.78
<i>Belgian Linguistic</i>	6	<i>Belgian Linguistic</i>	0.58
<i>Mürsel Eren</i>	5	<i>Hasan Yazıcı</i>	0.29
<i>Catan</i>	3	<i>Mürsel Eren</i>	0.19
<i>Irfan</i>	2	<i>Catan</i>	0.13

Source: Author's account.

Although the provision [Article 2 of Protocol No. 1] makes no mention of higher education, there is nothing to suggest that it does not apply to all levels of education, including higher education [...]. Consequently, it would be hard to imagine that institutions of higher education existing at a given time do not come within the scope of the first sentence of Article 2 of Protocol No 1. Although that Article does not impose a duty on the Contracting States to set up institutions of higher education, any State doing so will be under an obligation to afford an effective right of access to them. (*Leyla Sahin v. Turkey* [2005] para 134–137)

Additionally to the access principle, *Leyla* (ID3) also applied for the first time to higher education the idea that in order for the right to be effective, the individual should be able of ‘drawing profit from the education received, that is to say, the right to obtain, in conformity with the rules in force in each State, and in one form or another, official recognition of the studies which he has completed’ (ibid. para 152).⁶ Nevertheless, this right is not absolute, and may be subject to limitations regulated by the State, but these limitations are only compatible with the right to education if ‘there is a reasonable relationship of proportionality between the means employed and the aim sought to be achieved’ (ibid. para 154). Therefore, the triad of access-official recognition-reasonable limitations⁷ has been gradually reinforced in every case dealing with European higher education sectors⁸ with reference to the *Belgian Linguistic* (ID1) case as the foundational interpretation to the right of education, and *Leyla* (ID3) as the first to apply it to higher education.

Irfan (ID9), *Catan* (ID10) and *Mürsel* (ID5) are frequently cited not only for reaffirming the principles established in earlier cases applying and expanding the right to education with higher education but also for their significant contributions in linking the right to education with other fundamental rights. For example, *Mürsel* (ID5) [application of 2002] was the first case to apply Article 6 (right to a fair trial) in the context of European higher education, ‘leaving the door open for the application of Article 6 to the right of education’ (see *Emine Araç* [2008], para 23). Similarly, *Catan* (ID10) underscored the ‘importance of the fundamental principles of universality and non-discrimination in the exercise of the right to education’ (see *Çam* [2016], para 64), while also recognizing the interconnection between Article 8 (right to private and family life) and the right to education (see *Enver Şahin* [2018], para 59). Likewise, *Irfan* (ID9) emphasized the necessity to ‘read [the right to education] in light of Article 10 of the Convention’ (see *Çölgeçen* [2017]). Additionally, general principles stemming from *Catan* (ID16) are gaining gradual prominence in Strasbourg case law, including: (a) the interpretation and application of the right to education must consider other relevant rules and

principles of international law applicable between Contracting Parties, and (b) the Convention must be interpreted, as far as possible, in harmony with other international law norms (see *Çam* [2016], para 53 and *Enver Şahin* [2018], para 60).

Thus, European higher education case law has not only been solidified and refined over time, primarily through the application and expansion of the right to education in higher education but has also evolved through key cases that consistently integrate and interpret this right in relation to other fundamental human rights.

Effects – norm diffusion, agenda-setting, and direct influence

The case law of the ECtHR concerning higher education sector has produced significant effects at both the international and national levels, which can be categorized into legal norms diffusion, agenda-setting, and direct influence (see [Table 5](#)).

One of the most notable effects is the *diffusion of legal norms*. At the international level, 16 cases explicitly reference previous ECtHR judgments, highlighting the interconnectedness of the Court's jurisprudence and the way its decisions contribute to a broader framework of human rights law,⁹ as in the case of *Leyla* (ID3) (11 references), *Belgian Linguistic* (6 references), *Mürsel* (ID5) (5 references), and *Catan* (ID10) (3 references). This indicates that ECtHR rulings do not operate in isolation but instead build upon and reinforce existing legal principles, ensuring consistency and coherence in

Table 5. Type of effects in ECtHR case law referring to higher education.

Type of Effect		Number of Cases & ID
<i>Legal norms diffusion</i>	International	16 cases explicit refer to other ECtHR judgements (ID1, ID3, ID4, ID5, ID9 to ID21)
	National	14 cases explicit mention publication and dissemination of cases through the national judicial system (ID4 to ID6, ID9, ID11, ID14 to ID18, ID20, ID22, ID24, ID25)
<i>Agenda-setting</i>		6 cases influenced international or national policies discussions and arrangements on HR issues (ID1, ID3, ID10, ID14, ID19, ID25)
<i>Direct Influence</i>	Individual	21 cases resulted in the awarding of pecuniary or non-pecuniary damages (including court expenses), with some cases involving multiple beneficiaries No Violations (ID3 & ID12) Not paid (ID10)
	Constitutional or Legislative Amendments	7 cases led to constitutional or legislative amendments (ID1, ID2, ID6, ID9, ID16, ID20, ID25)
	New Legislation	8 cases led to new legislation (ID1, ID2, ID6, ID9, ID11, ID18, ID22, ID24)
	Institutional Practices, Procedures or Regulations (amendment, update, creation, enforcement)	5 cases led to changes in institutional practices (ID2, ID9, ID11, ID16, ID22)
	Abolishment of Regulations	3 cases led to abolishment of regulations (ID9, ID11, ID20)
	Enforcement of Regulatory Frameworks	1 case led to enforcement of regulatory frameworks (ID19)
	Renovation of public buildings	1 case led to the renovation of a university buildings (ID19)

Source: Authors' account.

human rights protection, especially in matters of right to education and the right to non-discrimination. At the national level, the diffusion of legal norms is evident, with 14 case studies explicitly referencing the dissemination of ECtHR judgments within domestic judicial systems. This process has led to the integration of European case law into judicial practices, both at the court level and within legal and judicial education institutions. As a result, these institutions play an important role in shaping domestic legal interpretations and guiding national courts in harmonizing national judicial systems with European human rights standards.

In addition to the diffusion of legal norms, certain ECtHR cases have played a significant *agenda-setting* role by influencing discussions on human rights issues within higher education policy at both national and international levels. Although this effect is less widespread than legal diffusion, six cases have been identified as contributing to policy debates. For instance, the *Belgian Linguistic* (ID1) case elevated linguistic rights and educational discrimination to legal and policy discussions. It influenced European legal frameworks such as the *Framework Convention for the Protection of National Minorities* (Council of Europe 1995), which strengthened protections for linguistic minorities in education. The case also sparked policy debates on linguistic minorities in countries like Spain and the United Kingdom (Williams and Rainey 2002). Another example is *Leyla* (ID3), which stimulated a broad debate across Europe on religious freedom and secular policies. This is evident in critiques by human rights organizations and its influence on French policies, reinforcing the 2004 law prohibiting religious symbols in public schools (Human Rights Watch 2004). Similarly, *Macatè* (ID25) contributed to the international discourse and advocacy on the interlink between freedom of expression and the right to non-discrimination in matters of LGBTQIA+ rights (2022). Meanwhile, *Mustafa* (ID14) played a role in developing human rights awareness initiatives, such as an *Action Plan on the Prevention of Human Rights Violations* adopted by the Turkish government. Likewise, *Enver* (ID19) led to a campaign on disability rights in higher education, spearheaded by the Turkish Council of Higher Education. These cases have served as reference points for discussions on human rights protection in higher education, prompting further reflection on how states should align their legal and institutional frameworks with the standards established by the Court.

A third type of effect and the most significant one, the ECtHR rulings have also had *direct influence* on individual, institutional and policy levels. On the individual level, 21 cases resulted in the awarding of pecuniary or non-pecuniary damages, including compensation for court expenses (except ID10 that is still pending and is still being followed by the HUDOC-EXEC). These cases illustrate the Court's role in providing remedies for human rights violations while also showing the limitations in enforcement when states fail to comply with judgments as in the case of Russia (ID10).

At the institutional and policy levels, ECtHR rulings have led to substantial legal and structural changes. Eight cases have resulted in constitutional or legislative amendments, demonstrating the Court's ability to shape national legal frameworks and compel states to bring their laws into compliance with human rights standards. Similarly, seven cases have led to the adoption of new legislation, further illustrating how ECtHR jurisprudence serves as a catalyst for legal reforms in the field of higher education. For instance, *Irfan* (ID9) and *Çölgeçen* (ID18) led to the amendment of legislation and the introduction of

a new regulation in Turkish HE system allowing students to request universities to provide optional course for a language without being subject to disciplinary proceedings.

In addition, five cases have led to amendments, updates, or the creation and enforcement of institutional practices, procedures, and regulations, highlighting the impact of ECtHR rulings on the internal functioning of higher education institutions. In *Altmay* (ID11), beyond legislative amendments to laws governing national entrance examinations for higher education, the Turkish educational system also implemented transitional measures within secondary education to promote equal access to higher education. Similarly, in *Çam* (ID16), in addition to legislative changes introducing new safeguards for disabled students, the ECtHR ruling influenced institutional regulations and procedures, leading to reforms in enrolment processes and teaching methods. Meanwhile, in *Mehmet* (ID22), besides the repeal and introduction of new legislation concerning the execution of sentences and preventive measures in penitentiary institutions, the ruling also impacted prison practices, ensuring that prisoners were granted access to the internet for educational purposes.

In three instances, the Court's decisions have led to the abolishment of regulatory frameworks. For example, in *Kula* (ID20), the ruling resulted in the repeal of the *Disciplinary Regulations for Managers and Officials in Higher Education Institutions* and Section 20 of the *Civil Servants Act* (Law No. 657), which required authorization to leave one's designated place of residence. Meanwhile, *Enver* (ID19) led to both the explicit enforcement of regulations on the right to education for students with disabilities at the university level and broader reforms in the higher education sector. This case also prompted the renovation of a university building to improve accessibility, demonstrating how ECtHR decisions can directly translate into structural improvements in higher education infrastructure.

Overall, the Court's rulings not only contribute to the evolution of European human rights standards in higher education but also foster tangible transformations at both international and national levels, reinforcing their significance in shaping the legal landscape of higher education across Europe.

Discussion & conclusion

The aim of this paper was to analyze the juridification of higher education through rights, specifically examining how the ECtHR has expanded, entangled, elaborated, and shaped the effects of legal principles within the European human rights' legal frameworks. By investigating these processes, this study sheds light on the evolving role of European human rights law in higher education and the increasing legal oversight in this domain.

The results reveal an *expansion* of legal oversight into higher education, particularly over the past two decades. This reflects a broader juridification trend, wherein legal norms penetrate previously non-legal spheres, as described by Habermas (1986) in his theory of juridification as the 'colonization' of societal domains by legal reasoning. This phenomenon is evident in the ECtHR's jurisprudence, where the legal framework governing human rights is increasingly applied to higher education governance, higher education institutions, individuals and the principles governing the sector. The *entanglement* of rights emerges as another defining characteristic, with cases demonstrating how the right to

education intersects with other fundamental rights, such as non-discrimination, freedom of expression, and private and family life. This aligns with the argument that civil and political rights are inherently connected to socio-economic rights (Alston and Goodman 2013; Fredman 2008), as effective access to education often hinges on broader systemic guarantees of equality and personal freedoms. Through this process, the ECtHR has reinforced the notion that higher education is not merely an administrative policy area but a rights-bearing domain where multiple human rights concerns must be balanced. The *elaboration* of legal principles has been critical in shaping the ECtHR's higher education jurisprudence. By developing and refining its interpretations over time, the Court has progressively clarified the scope and application of the right to education, reinforcing its relationship with other rights and expanding its doctrinal reach. This aligns with the broader role of international courts in building a coherent human rights framework through legal precedent (Helfer and Slaughter 1997). Moreover, it reinforces the understanding that the ECtHR relies on prior ruling to inform their decisions (Frese 2021; Lupu & Voeten 2012). The *effects* of ECtHR case law on higher education have proven to be multi-layered, with judgments influencing domestic legislation, institutional policies, and broader policy discussions and frameworks.

The implications of this study are twofold. First, for the study of juridification in international courts, the ECtHR's role illustrates how judicial bodies extend the scope of human rights law, not only influencing national policies but also contributing to the institutionalization of a transnational legal framework that informs and regulates European higher education. This demonstrates how courts play an increasingly significant role in shaping regional and global governance (Hirschl 2004), reinforcing legal standards beyond national borders. Second, for European higher education, the study highlights the growing role of law in shaping governance structures through European human rights legal standards, an area that deserves greater attention in academic scholarship.

Thus, the ongoing juridification of higher education reflects a dynamic interplay between legal expansion, the entanglement of rights, the refinement of legal norms, and the broader effects of judicial intervention. Ultimately, the 4-E framework—*expansion, entanglement, elaboration, and effects*—offers a valuable analytical lens for understanding how juridification and judicialization processes unfold through rights, providing a structured approach to examine the role of courts in shaping legal and policy transformations across different sectors.

Notes

1. For consistency, we opt for the term juridification.
2. HUDOC-EXEC is a database managed by the Council of Europe that provides access to information related to the execution of judgments from the ECtHR rulings by member states.
3. Out of the 25 cases, reports were unavailable for five. In *Leyla* (ID3) and *Tarantino* (ID12), no reports were issued as no violations were found. In *Emine* (ID7) and *Pogulyayev* (ID8), reports were not required. For *Tuskia* (ID21), there is no report in the database.

4. This idea is rooted on the established principle that the Convention is a living instrument and should be interpreted in the light of present-day conditions (see *Marckx v. Belgium* [1979] 13 June 1979, Series A no. 31; *Airey v. Ireland* [1979] Series A no. 32; and *Mamatkulov and Askarov v. Turkey* [2005], nos. 46827/99 and 46,951/99).
5. A significant reference was made in the *Belgian Linguistic* case, where the Belgian authorities, later accepted by the Strasbourg court, clarified that the right to education ‘for the purposes of the present case, includes access to nursery, primary, secondary, and higher education’ (1968,18).
6. This principle was firstly applied also in the *Belgian Linguistic* [1968] case and *Kjeldsen, Busk Madsen and Pedersen v. Denmark* [1976] Series A, no. 23
7. A reference to a complementary element is mentioned by the Judge Pinto de Albuquerque in a dissenting opinion in *Tarantino and Others v. Italy* [2013], with the idea that state parties should also ‘promote access to education for every child, if necessary, by creating additional possibilities’ also applied to higher education institutions (p. 18).
8. See *Mürsel Eren v. Turkey* [2006], *Emine Araç v. Turkey* [2008], *İrfan Temel and Others v. Turkey* [2009], *Catan and Others v. The Republic of Moldova and Russia* [2012], *Altınay v. Turkey* [2013], *Tarantino and Others v. Italy* [2013], *Çam v. Turkey* [2016], *Çölgeçen and Others v. Turkey* [2017], *Enver Şahin v. Turkey* [2018], and *Mehmet Reşit Arslan and Orhan Bingöl v. Turkey* [2019].
9. This analysis only counts the references within the population of 25 cases in reference to higher education. The number of references might be substantially larger than this representation given the entanglement nature of human rights.

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