

Perceptions of the Authority of the European Court of Human Rights

Dr. Başak Çalı
BIICL, London, March 31st 2011



Agenda

- Objective
- Methodology
- Findings
- Conclusion



Objective

What is the research about?

We looked to answer three questions:

1. How do judges view their relationship between their Apex Courts and the European Court of Human Rights?
2. What argumentative strategies do they employ in making sense of this relationship?
3. What reasons do they give for following or not following Strasbourg case law?



Methodology

How was the research carried out?

- Conducted in-depth interviews with 30 Apex Court judges from the United Kingdom, Germany, Ireland, Bulgaria and Turkey
- Asked questions focusing on the 'relationship' between Apex Courts and the Strasbourg Court.
- Captured reflective and deliberative dimensions that case-law analysis does not provide



Findings

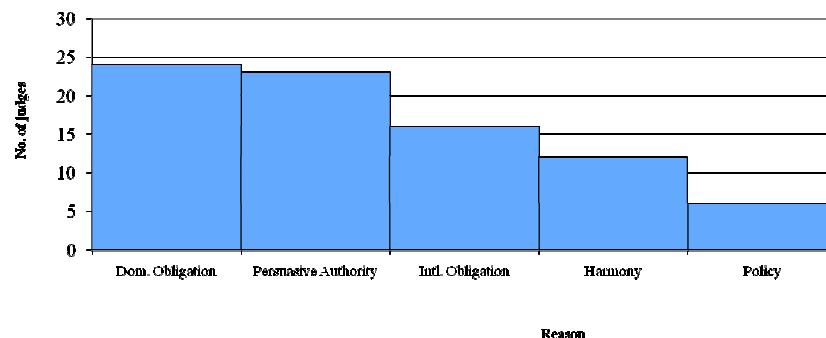
What type of arguments matter?

- Domestic frameworks are **necessary**, but not sufficient
- International legal frameworks are relevant but **not determinative**
- Authority is **dominantly** identified as a hybrid function of legal pedigree and persuasiveness



Findings

Reasons to follow the Court?



Findings Interpretive attitudes towards authority

- Nationalism and internationalism are there, but are hard to find
- Two new doctrinal attitudes towards authority have been put forward:
 - 1, Qualified Internationalism
 - 2, Qualified Nationalism



Findings Qualified Internationalists

**19 out of 30 judges are
'qualified internationalists'**

- Start from a rebuttable presumption of deference to the ECtHR
- The bases of their rebuttal:
 - Misunderstanding domestic law
 - Misunderstanding facts
 - Unclear or conflicting jurisprudence



Findings Qualified Nationalists

**5 out of 30 judges are
'qualified nationalists'**

- Start from a rebuttable deference to domestic law
- The bases of their rebuttal:
 - Absence of any guiding domestic law
 - Extremely strong and clear jurisprudence of the European Court of Human Rights



Findings Attitudes of Deference

Distribution of Doctrinal Attitudes Across the Dataset

	Internationalist	Qualified Internationalist	Qualified Nationalist	Nationalist
Bulgaria	3	4	2	0
UK	1	4	0	0
Germany	0	5	0	0
Ireland	0	1	3	1
Turkey	1	5	1	0
Total	5	19	5	1



Consensus or Conflict?

Conflict is not necessarily bad news – especially if it is a matter of harmonisation of the interpretation of human rights law and clarification of facts.



Consensus or Conflict?

The real question is **NOT** whether there is conflict.

It is **HOW** is conflict perceived.





Thank you.



Dr. Başak Çalı
London, March 31st 2011

