Conclusion

Facts play an important role in the ECtHR's decision-making. The legal analysis in the Court's jurisprudence depends on the facts of a given case. Facts and law are intertwined in complex manners: a given factual occurrence influences what legal norms come into consideration for any legal analysis, whereas the scope of a legal norm brings into focus those facts that may fulfil the legal bill. Furthermore, the scope of a legal norm can be influenced by factual circumstances. For instance, changes in society and technology have an impact on the scope of existing legal rules (besides potentially occasioning new legislation). E.g., the question of whether and how artificial procreation ought to be regulated by law can only arise if artificial procreation factually exists. When the ECtHR decides a case, its gaze wanders between the factual circumstances of the case and the legal framework against which it assesses the facts. Which facts are considered relevant for a given legal analysis is influenced by the normative framework that is in place, while the factual event determines what norms come into consideration. Given that facts play an important role in legal decision-making, it is of pivotal importance for the factual basis on which a legal conclusion is based to be sound.

There are not many (legal) rules on how the ECtHR ought to deal with facts. This leaves the Court with quite wide discretion regarding fact-assessment. The particularities of the sphere of international adjudication and the institutional embeddedness of the European Court of Human Rights must be taken into account when critiquing its fact-assessment procedures. In some cases, the Member State, which is the defendant in a given case, may indeed be considered 'better placed' to assess certain facts than the Court. The principle of subsidiarity, tools such as the margin of appreciation, and the existence or non-existence of a European consensus may influence the way the ECtHR contends with facts. As was shown above, the Court does not always provide sound factual analyses. The Court occasionally employs notions such as being 'master of characterisation to be given in law to the facts of the case' or deeming domestic authorities 'better placed' to make factual assessments in an inconsistent manner. These concepts should not be used by the Court to avoid its own task of conducting a sound assessment of the facts.

From the facts that are presented in a given case, different inferences can be drawn. The Court is usually presented with a vast amount of information, e.g., by the parties to the case, by third party interveners, and by experts. All these participators outline how they would apply generalisations to the set of facts in the case at hand. Whether and how the Court processes these inputs in its own assessment is up to the Court. The ECtHR is not obliged to follow a particular account. At the same time, norms can become self-fulfilling prophecies if the facts are cherry-picked to fit a legal norm and to allow for a pre-defined conclusion. The Court should conduct its own fact-assessment and produce its own account in a manner that is fair, reliable, coherent, and transparent. The Court's reasons for agreeing with one factual account rather than another must be transparent and need to be explained properly. If an applicant and a Government disagree on the factual situation, the Court cannot simply hold that the Government is better placed to assess the facts. In such circumstances, the Court must explain why, in the individual case, it deems one factual account more reliable than another. Different observers can interpret the same visual data differently. It is the Court's task to elaborate on why it chose observation (or argument) A over observation (or argument) B.

Because there are not many (legal) rules on how the ECtHR is to conduct fact-assessment, this thesis introduces a methodology for critiquing the ECtHR's fact-assessment procedures. It introduces principles of scientific inquiry as a framework against which to assess the reliability of fact-analyses conducted by the ECtHR. It was shown that a middle-ground pragmatist approach provides the theoretical basis for allowing (interdisciplinary) principles of scientific method to enter legal thinking. These principles can be used to critique the ECtHR's case-law with regard to how facts are assessed. This allows the reader to detect logical flaws or inconsistencies in the Court's reasoning, and it helps consider the at times chaotic fact-assessment by the Court in a more structured manner. The arguments that are provided by the parties to a case must be dissected, and the Court ought to respond to all relevant factual claims by the parties to the case. This approach provides a new angle for critiquing the ECtHR's jurisprudence. It encourages paying greater attention to 'the facts' of a case rather than focusing only on 'the law'.

The principle of simplicity, the principles of explanatory power and external validity, and the principle of falsifiability were used as examples to show how principles of scientific method can be applied to scrutinise the ECtHR's jurisprudence. The criteria of validation demand that the Court's factual analyses be transparent and consistent. Judicial fact-assessment

must be falsifiable; factual analyses should not be pink at one point in time and grimey at another. Applying these principles allows a structured critique to emerge. The criteria of scientific method provide an analytical framework to detect flaws in the largely uncharted terrain of fact-assessment. These new categories do not constitute a one-size-fits-all framework to assess every decision by any court. They can, however, serve as an analytical framework for reading and assessing a decision that requires the reader to analyse the case in its entirety. These principles are not legal principles, nor do they determine which decision a Court ought to reach; they are no scientific roadmap to legal decision-making. The principles are a backdrop against which factual analyses can be tested and validated.

Interestingly, judges of the ECtHR have occasionally referred to principles of scientific method, implicitly or explicitly, in their opinions when pointing out flaws in the majority's line of reasoning. It is, thus, not entirely uncommon to critique the Court using these categories. The argument here does not pertain to using principles of scientific method as legal principles. The principles can be used to analytically assess the Court's manner of contending with facts in its case-law, and they also remind the reader to be self-aware and self-reflective and critical with regard to what background assumptions they bring to any thinking process they embark on. Whether these principles may also be used as legal principles can be debated and should be explored in further research. Applying Luhmann's idea of communication between systems, the criticism voiced by judges of the ECtHR in their dissenting opinions can be seen as self-irritation within the system of the ECtHR's decision-making. If the judges use language from the scientific realm, i.e. refer to principles of scientific method, to critique the majority's reasoning, this can be argued to be the first step in translating these principles into the legal code.

In times where labels such as 'facts', 'alternative facts', and the like are used generously, it is important to focus less on the labels and more on the process of inquiry that led to a label to be issued. Our gaze must continue to wander between what we observe and what inferences we draw from our experiences, but we must also remain critical of our own wandering gaze and how it influences our choices, our thinking processes, and our conclusions. We need to remain self-critical and must always strive to base our ideas on a broad factual and evidentiary basis rather than drawing rash conclusions because we pre-select the facts that fit our pre-defined ideals. Applying principles of scientific method to our thinking processes will help us in doing so.