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Emmerik

The Execution of Strasbourg and Geneva Human Rights Decisions in the National Legal Order

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The Execution Of Strasbourg And Geneva Human Right

Yuji Iwasawa



The Execution Of Strasbourg And Geneva Human Right:

The Execution of Strasbourg and Geneva Human Rights Decisions in the National Legal Order Thomas Barkhuysen, Michiel Leonard van Emmerik, Piet Hein P. H. M. C. Kempen, F. M. van Asbeck Centre for Human Rights Studies, 1999-03-17 In practice and legal doctrine little attention has so far been paid to the position of the applicant who has taken the long road to the European Court of Human Rights Strasbourg or a UN Human Rights Committee Geneva and finally won his/her case there Does he or she see any improvement in his/her position Does the applicant obtain real reparation The purpose of this book is to demonstrate how individual case decisions from Strasbourg and Geneva are implemented in the national legal order Is there a need for improving this implementation and if so how can such an improvement be achieved In this volume several legal practitioners and scholars deal with the issue of the execution of human rights decisions in the national legal order from different perspectives Emphasis is laid on the execution of Strasbourg decisions in the Dutch legal order but solutions in other Council of Europe member states are also discussed The book is intended for lawyers having a special interest in human rights both at the national and international level

Judgments of the European Court of Human Rights - Effects and Implementation Anja Seibert-Fohr, Mark E. Villiger, 2017-05-15 This volume deals with the domestic effects of judgments of the European Court of Human Rights as a challenge to the various levels of legal orders in Europe The starting point is the divergent impact of the ECtHR's jurisdiction within the Convention States The volume seeks new methods of orientation at the various legal levels given the fact that the Strasbourg case law is increasingly important for most areas of society Topical tendencies in the case law of the Court are highlighted and discussed against the background of the principle of subsidiarity The book includes a detailed analysis of the scope reach consequences and implementation of the Court's judgments and of the issue of concomitant damages At the same time the volume deals with the role of domestic jurisdictions in implementing the ECtHR's judgments Distinguished Judges legal academics and practitioners from various Council of Europe States are among the contributors to this volume which succeeds in bringing divergent points of view into the discussion and in developing strategies for conflict resolution

The Human Rights of Aliens under International and Comparative Law Carmen Tiburcio, 2021-10-18 This volume deals with the basic human rights of aliens from the perspective of international and comparative law It examines the rules regarding treatment of aliens and the extent to which these rules have been adopted in the domestic legislation of more than 40 different states It aims to achieve two basic goals 1 to define the status of aliens under international law that is which rights are granted to every person by international instruments and 2 to establish whether this set of rules has been adopted by the domestic legislation of the states under review The author classifies the basic human rights of aliens into seven different categories namely 1 fundamental rights 2 private rights 3 social and cultural rights 4 economic rights 5 political rights 6 public rights and 7 procedural rights For each of these categories she reviews opinions of international legal

commentators decisions of international and regional tribunals as well as national legislation domestic court decisions and opinions of local authorities **A Europe of Rights** Helen Keller,Alec Stone Sweet,2008-07-31 The European Convention on Human Rights has evolved into a sophisticated legal system whose formal reach into the domestic law and politics of the Contracting States is limited only by the ever widening scope of the Convention itself as determined by a transnational court In this book a team of distinguished scholars trace and evaluate comparatively the impact of the ECHR and the European Court of Human Rights on law and politics in eighteen national systems Ireland UK France Germany Italy Spain Belgium Netherlands Norway Sweden Greece Turkey Russia Ukraine Poland Slovakia and Austria Switzerland Although the Court s jurisprudence has provoked significant structural procedural and policy innovation in every State examined its impact varies widely across States and legal domains The book charts this variation and seeks to explain it Across Europe national officials in governments legislatures and judiciaries have chosen to incorporate the ECHR into domestic law and they have developed a host of mechanisms designed to adapt the national legal system to the ECHR as it evolves But how and why State actors have done so varies in important ways and these differences heavily determine the relative status and effectiveness of Convention rights in national systems Although problems persist the book shows that national officials are gradually but inexorably being socialized into a Europe of rights a unique transnational legal space now developing its own logics of political and juridical legitimacy **Trafficking of Human Beings from a Human Rights Perspective** Tom

Obokata,2006 It has been widely accepted that trafficking of human beings is a human rights issue However it has been difficult to address the human rights aspects of the phenomenon in practice because a comprehensive analysis of applicable human rights norms and principles has not been fully developed and therefore the nature of obligations imposed upon States is not entirely clear The purpose of this book then is to establish a human rights framework to promote better understanding of the multi faceted problems inherent in trafficking of human beings articulate obligations imposed upon States and facilitate a holistic approach The book also contains chapters on case studies at the national regional and international levels thereby combining the theory and practice *Human Rights in Turmoil* Stéphanie Lagoutte,Hans-Otto Sano,Peter Scharff Smith,2007 Are human rights gaining or losing ground This question has become relevant after two decades of unprecedented progress in developing human rights standards and institutions The political climate during the Cold War created many obstacles but the fall of the Berlin Wall in 1989 and its aftermath during the following decade created a sense of promise and progress among human rights scholars and actors Yet today actions statements and initiatives questioning the legitimacy and validity of human rights or even threatening their very existence have become a regular part of current political realities even in states traditionally dedicated to the rule of law This would have been inconceivable ten or twenty years ago At the political level human rights are gaining as well as losing ground The question of the adequacy legitimacy and scope of human rights is still a live one And weaknesses in supra national human rights protection systems have emerged

over the last twenty years It is now clear that human rights mechanisms are not well adapted to the handling of the ever increasing number of complaints or to the effective implementation of human rights This thought provoking collection of essays by leading scholars and practitioners in the field of human rights explores the ways in which human rights are currently being challenged and weakened but also strengthened in important and groundbreaking ways in different areas and settings They explore the many current debates which centre on human rights concerns debates about secularism and religious norms about minimum social standards and social security about the future regulation of citizenship about prison reform and the use of less inhumane methods of detention as well as the reform of the UN system and the challenges facing the now overburdened European Court of Human Rights

The EU's Approach to Human Rights Conditionality in Practice Elena Fierro, 2021-10-18 Human rights in the external relations of the EU may manifest itself in different manners one of them is the conditionality policy that the EU applies to third countries This study intends to explore the modalities of this conditionality policy as well as its nature and reach It also analyzes how the policy could be improved and be made more coherent and effective The point of departure is the division made between two modes of conditionality ex ante and ex post In the first case the EU issues conditions which must be fulfilled before the negotiation or conclusion of a given agreement or an action with a view to strengthening the relations The second case conditionality ex post is when conditions are already part of an agreement or an established relation The so called human rights clause or democratic clause incarnates the second modality This study explores both types of conditionality but puts a special emphasis on the second given its legal nature its reciprocity and its systematic inclusion in all framework agreements It is argued here that this clause could represent the basis of a fully fledged human rights policy of EU At present however the implementation of the clause has been fragmentary The interpretation that has prevailed the human rights clause being a mechanism of exclusively punitive nature has constituted an obstacle for its implementation In addition the clause has been activated only as a response to breaches of democratic principles and not human rights in the ACP countries and not other regions The human rights clause has been the victim of the sectorial approaches where policy choices were determined by the instrument at issue It is about time for the EU to revisit the interpretation of the clause in order to make of it a dynamic instrument integrated in a global and coherent external human rights policy

Human Rights Functions of United Nations Peacekeeping Operations Mari Katayanagi, 2021-10-25 The United Nations peacekeeping has evolved as a practical measure for preserving international peace and security Recent peacekeeping has two important features the use of force which arguably exceeds self defence on the one hand and multifunctional operations on the other The Security Council has started considering a wide range of factors including serious human rights violations as threats to international peace and security Recognising the UN's principle to seek peaceful settlement which underlies the legality of peacekeeping this research focuses on the human rights functions of multifunctional peacekeeping operations Such functions have immense potential for enhancing conflict

resolution through peaceful means In order to illustrate these issues and the diverse practice of UN peacekeeping the author of this book has dealt with four detailed case studies on El Salvador Cambodia Rwanda and the former Yugoslavia The achievements problems and defects experienced by different operations are analysed using the insights of the author's own experience in a peacekeeping operation

The Concept of the Rule of Law and the European Court of Human Rights

Geranne Lautenbach, 2013-11-28 This book analyses the concept of the rule of law in the context of international law through the case law of the European Court of Human Rights It investigates how the court has defined and interpreted the notion of the rule of law in its jurisprudence It places this analysis against a background of more theoretical accounts of the idea of the rule of law drawing in ideas of political philosophy It also provides a comparative assessment demonstrating how the idea of the rule of law has evolved in the UK France and Germany The book argues that at the core of the concept of the rule of law are the notions of legality and judicial safeguards It states that the Court has developed the requirements of legality which the work analyses in detail based on that concept It assesses the independence of the judiciary as an aspect of the rule of law in the context of the European Convention on Human Rights and the relationship between the rule of law and the substantive contents of law The book posits that the rule of law as seen at the Court is not mainly utilised with regard to freedom rights but is more concerned with procedural rights It discusses the relationship between the rule of law and the view of the Convention as a constitutional instrument of the European public order and shows that the rule of law and democracy are inextricably linked in the case law of the Court Ultimately the book demonstrates in its analysis of the Court's jurisprudence that the notion of the rule of law is a crucial part of the international legal order

Group Rights and Discrimination in International Law Natan Lerner, 2021-10-18 Group hatred disregard for the collective aspirations of religious ethnic or cultural minorities genocide ethnic cleansing apartheid and anti-Semitism have been at the roots of the greatest tragedies of our time and are a source of internal and international conflict This volume studies this wide range of problems from the perspective of modern human rights law with special emphasis on racism and religious intolerance Also dealt with are measures adopted or to be taken for the protection of specific groups including indigenous populations and migrant workers as well as the present situation regarding the conventions against genocide discrimination in education and labour and the steps and declarations for the strengthening of group identity and their advancement Special areas such as slavery affirmative action and modern models to preserve the collective personality are also discussed including protective penal measures

Domestic Application of International Law Yuji Iwasawa, 2022-10-24 This book analyses the domestic application of international law with a particular focus on the concept of direct applicability It critically examines the relevant doctrine and practice and proposes a new analytical framework It argues that international law is presumed to be directly applicable that the criteria for direct applicability are grounds to exclude rather than establish direct applicability and that the positive intent of the parties should not be a criterion It contends that direct applicability is a question of domestic law

and that domestic legal force is a prerequisite for direct applicability It also advocates a relative approach *Responding to Human Rights Violations, 1946-1999* Katarina Tomaševski, 2021-10-05 This volume maps out the response of states to human rights violations It covers the period 1946 1999 and offers a complete and unmatched record for this period Its starting point is that such responses are not established and accepted state practice Traditional if unwritten norms of states behaviour developed through centuries of silence and inaction the prevalent reaction to human rights violations by another state remains the absence of any response Furthermore this book probes into evidence of active and passive complicity by reviewing aid to countries in which violations have been taking place and diplomatic initiatives undertaken to shield violators from public opprobrium Since international law is generated through state practice the book highlights the ongoing tussle between the pre 1946 heritage of silence and inaction and the 1946 1999 haphazard pattern of responses to violations

Regional Protection of Human Rights Dinah Shelton, Paolo G. Carozza, 2013-05-30 In the second edition of *Regional Protection of Human Rights* Dinah Shelton examines the development of regional organizations and the role that human rights plays in them **National Courts and the International Rule of Law** André Nollkaemper, 2012-10-11 This book explores the way domestic courts contribute to the maintenance of the international rule of law by providing judicial control over the exercises of public powers that may conflict with international law The main focus of the book will be on judicial control of exercise of public powers by states Key cases that will be reviewed in this book and that will provide empirical material for the main propositions include *Hamdan* in which the US Supreme Court reviewed detention by the United States of suspected terrorists against the 1949 Geneva Conventions *Adalah* in which the Supreme Court of Israel held that the use of local residents by Israeli soldiers in arresting a wanted terrorist is unlawful under international law and the *Narmada* case in which the Indian Supreme Court reviewed the legality of displacement of people in connection with the building of a dam in the river Narmada under the ILO Indigenous and Tribal Populations Convention 1957 nr 107 This book explores what it is that international law requires expects or aspires that domestic courts do Against this backdrop it maps patterns of domestic practice in the actual or possible application of international law and determines what such patterns mean for the protection of the international rule of law **Documents Working Papers** Council of Europe. Consultative Assembly, 1968-01-01

Fair Balance Jonas Christoffersen, 2009 In one of the most important publications on the European Convention and Court of Human Rights in recent years a wide range of fundamental practical and theoretical problems of crucial importance are addressed in an original and critical way bringing a fresh coherent and innovative order into well known battle zones The analysis revolves around the Court's fair balance test and comprises in depth analyses of e.g. methods of interpretation proportionality the least onerous means test the notion of absolute rights subsidiarity formal and substantive principles evidentiary standards proceduralisation of substantive rights etc The author coins the term of a *preprimarity* in order to clarify the obligation of the Contracting Parties to implement the Convention in domestic law Jacobs, White, and Ovey

Bernadette Rainey, Elizabeth Wicks, Clare Ovey, 2017 The seventh edition of Jacobs White and Ovey The European Convention on Human Rights is a clear and concise companion to this increasingly important and extensive area of the law The authors examine each of the Convention rights in turn explore the pivotal cases in each area and examine the principles that underpin the Court's decisions The focus on the European Convention itself rather than its implementation in any one member state makes this book essential reading for all students looking for a concise yet authoritative overview of the work of the Strasbourg Court Online Resource Centre The text is accompanied by an Online Resource Centre that features updates on cases and legislation since publication as well as links to useful websites and further reading on the European Convention

The Limits of Leviathan Robert E. Scott, Paul B. Stephan, 2006-08-14 Much of international law like much of contract is enforced not by independent sanctions but rather through cooperative interaction among the parties with repeat dealings reputation and a preference for reciprocity doing most of the enforcement work Originally published in 2006 The Limits of Leviathan identifies areas in international law where formal enforcement provides the most promising means of promoting cooperation and where it does not In particular it looks at the International Criminal Court the rules for world trade efforts to enlist domestic courts to enforce orders of the International Court of Justice domestic judicial enforcement of the Geneva Convention the domain of international commercial agreements and the question of odious debt incurred by sovereigns This book explains how international law like contract depends largely on the willingness of responsible parties to make commitments

Contending Perspectives on Global Governance Alice D. Ba, Matthew J. Hoffmann, 2005 Global governance is fast becoming a ubiquitous term often weakly understood This unique volume challenges oversimplifications to deliver a clear sense of exactly what it means

The Ombudsman, Good Governance and the International Human Rights System Linda C. Reif, 2013-12-19 This book uses comparative law and comparative international law approaches to explore the role of human rights ombuds classic based ombuds and other types of ombuds institutions in human rights protection and promotion their methods of application of international and domestic human rights law and their roles in strengthening good governance It highlights the increasing importance of national human rights ombuds institutions globally and their roles as national human rights institutions NHRIs Chapters address ombuds institutions as mechanisms to strengthen democratic horizontal and vertical accountability the rule of law and good governance national human rights ombuds institutions as NHRIs the investigatory litigation promotional and other powers of human rights and classic based ombuds and their methods for applying international and domestic human rights law ombuds institutions and the protection and promotion of international children's rights national human rights ombuds additional mandates as OPCAT national preventive mechanisms UN Convention on the Rights of Persons with Disabilities Article 33 2 framework mechanisms and EU national equality bodies human rights ombuds and business and human rights ombuds institutions gender and women's rights the European Ombudsman and human rights national human rights ombuds and other ombuds models by region accompanied by case

studies on national human rights ombuds and the legal and extra legal factors affecting ombuds institutional effectiveness

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