

European Human Rights Law The Human Rights Act 1998 And The European Convention On Human Rights

Confusion about the differences between the Council of Europe (the parent body of the European Court of Human Rights) and the European Union is commonplace amongst the general public. It even affects some lawyers, jurists, social scientists and students. This book will enable the reader to distinguish clearly between those human rights norms which originate in the Council of Europe and those which derive from the EU, vital for anyone interested in human rights in Europe and in the UK as it prepares to leave the EU. The main achievements of relevant institutions include securing minimum standards across the continent as they deal with increasing expansion, complexity, multidimensionality, and interpenetration of their human rights activities. The authors also identify the central challenges, particularly for the UK in the post-Brexit era, where the components of each system need to be carefully distinguished and disentangled.

The European Court of Human Rights between Law and Politics provides a comprehensive analysis of the origins and development of one of the most striking supranational judicial institutions. The book brings together leading scholars and practitioners to cast new light on the substantial jurisprudence and ongoing political reform of the Court. The broad analysis based on historical, legal, and social science perspectives provides new insights into the institutional crisis of the Court and identifies the lessons that can be learned for the future of the European Convention on Human Rights and Fundamental Freedoms. The European Court of Human Rights is in many ways an unparalleled success. The Court embarked, during the 1970s, upon the development of a progressive and genuinely European jurisprudence. In the post-Cold War era, it went from being the guarantor of human rights solely in Western Europe to becoming increasingly involved in the transition to democracy and the rule of law in Eastern Europe. Now the protector of the human rights of some 800 million Europeans from 47 different countries, the European system is once again deeply challenged - this time by a massive case load and by the Member States' increased reluctance towards the Court. This book paves the way for a better understanding of the system and hence a better basis for choosing the direction of the next stage of development.

Kluwer Law International is happy to announce the third edition of Van Dijk & Van Hoof's classic work: Theory & Practice of the European Convention on Human Rights. The developments which have taken place under the Convention since the second edition was published have been numerous & comprehensive, & the Convention has gained a central position in the legal systems of many European countries. Three Protocols have been added to the Convention; the number of Parties to the Convention has grown from twenty-two to no less than thirty-six; & the case-law concerning the Convention has increased significantly. Like its predecessors, this third edition offers a full description of the present procedural practice & case-law of both the European Commission & the European Court of Human Rights, & is an indispensable guide. Protocol No. 11 to the Convention, which will enter into force by the end of 1998, will drastically change the supervisory system under the Convention, establishing one Court. This new Court will also perform the present functions of the Commission & it is expected that it will be guided by the Commission's procedures & working methods, & by its case-law concerning admissibility. This new edition will therefore remain relevant for the practice & case-law of the new Court for many years to come.

By analysing the European Court of Human Rights (TM) jurisprudence and philosophical debates on personal autonomy, identity and integrity, the book offers a critical analysis of the possibility of different versions of personal freedom emerging in the case law which may restrict rather than enhance personal freedom.

The European system of human rights protection faces institutional and political pressures which threaten its very survival. These institutional pressures stem from the backlog of applications before the European Court of Human Rights, the large number of its judgments that remain unimplemented, and the political pressures that arise from sustained attacks on the Court's legitimacy and authority, notably from politicians and jurists in the United Kingdom. This book addresses the theme which lies at the heart of these pressures: the role of national parliaments in the implementation of judgments of the Court. It combines theoretical and empirical insights into the role of parliaments in securing domestic compliance with the Court's decisions, and provides detailed investigation of five European states with differing records of human rights compliance and parliamentary mobilisation: Ukraine, Romania, the United Kingdom, Germany, and the Netherlands. How far are parliaments engaged in implementation, and how far should they be? Do parliaments advance or hinder human rights compliance? Is it ever justifiable for parliaments to defy judgments of the Court? And how significant is the role played by the Parliamentary Assembly of the Council of Europe? Drawing on the fields of international law, international relations, political science, and political philosophy, the book argues that adverse human rights judgments not only confer obligations on parliamentarians but also create opportunities for them to develop influential interpretations of human rights and enhance their own democratic legitimacy. It makes an authoritative contribution to debate about the future of the European and other supranational human rights mechanisms and the broader relationship between democracy, human rights, and legitimate authority.

The scale and variety of acts of religious intolerance evident in so many countries today are of enormous contemporary concern. This 2005 study attempts a thorough and systematic treatment of both Universal and European practice. The standards applicable to freedom of religion are subjected to a detailed critique, and their development and implementation within the UN is distinguished from that within Strasbourg, in order to discern trends and obstacles to their advancement and to highlight the rationale for any apparent departures between the two systems. This dual focus also demonstrates the acute need for the European Court to heed the warnings from various patterns of violation throughout the world illustrated by the Human Rights Committee and the Special Rapporteur on freedom of religion or belief.

The Interpretation and Application of the European Convention of Human Rights: Legal and Practical Implications, offers an analysis of important legal issues pertaining not only to the ECHR itself but also to the effect that it has on and also receives from other areas of international law

Transnational business activities are important drivers of growth for developing and the least developed countries. However, they can also negatively impact the enjoyment of human rights. In some cases, multinational enterprises (MNEs) have even been accused of grave human rights abuses in the territory of the states where their subsidiaries operate. Since the parent companies of many MNEs are incorporated under the law of European states, those countries' domestic law and the European legal framework play a crucial role in establishing how their activities should be conducted – also throughout their supply chains – and which remedies will be available when corporate human rights violations occur. In recent years, the European Union, the Council of Europe and their Member States have been adopting policies and legislation to ensure respect for human rights by businesses and have developed a body of related case law. These legal instruments can be considered the European responses to the challenges posed at international-law level, and they constitute the focus of research of this book. Through its collected chapters – written by scholars and practitioners under the direction of the editor, Angelica Bonfanti – the book identifies the European solutions to the business and human rights international legal issues, provides an overall assessment of their effectiveness, and examines their potential evolution.

The book assesses the EU Returns Directive against international human rights norms and standards. Izabella Majcher explores protection gaps in the EU return policy and highlights how the provisions of the Directive should be implemented in line with member states' human rights obligations. Informed by this assessment, the book discusses draft amendments to the Directive, proposed by the European Commission in September 2018.

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The European Convention on Human Rights and Fundamental Freedoms is by now tremendously influential in the legal practice of over forty European states, including the United Kingdom. It is therefore essential that students and lawyers be familiar with the law and procedures of the European Court of Human Rights in Strasbourg. This second edition of the innovative and highly acclaimed European Human Rights Law has been extensively updated to cover the major developments of recent years, including the reform of the European Court of Human Rights, expansion of the system to central and eastern Europe, and the incorporation of the European Convention on Human Rights into British law. The book introduces both the process and the substance of this increasingly important area of European law. Presenting extracts from key cases alongside clear and intelligent commentary, Janis, Kay, and Bradley explain the legal rules and court system that has evolved in Strasbourg, how the Court works, and how European human rights law is enforced both at the national and international level. It also puts European human rights law into a useful comparative framework alongside human rights cases decided by courts in the United States and Canada.

In light of recent criticism of the EU and Strasbourg, Mary Arden makes an invaluable contribution to the debate on transnational courts and human rights. Drawing on years of experience as a senior judge, she explains clearly how human rights law has evolved, and the difficult balances that judges have to strike when interpreting it.

This insightful book considers how the European Court of Human Rights (ECHR) is faced with numerous challenges which emanate from authoritarian and populist tendencies arising across its member states. It argues that it is now time to reassess how the ECHR responds to such challenges to the protection of human rights in the light of its historical origins.

Explores how the European Court of Human Rights understands 'democracy' and might support more deliberative, participatory and inclusive practices.

A right to equality and non-discrimination is widely seen as fundamental in democratic legal systems. But failure to identify the human interest that equality aims to uphold reinforces the argument of those who attack it as morally empty or unsubstantiated and weakens its status as a fundamental human right. This book argues that an understanding of the human interest which equality aims to uphold is feasible within the jurisprudence of the European Court of Human Rights (ECtHR) and the European Court of Justice (ECJ). In comparing the evolution of the prohibition of discrimination in the case-law of both Courts, Charilaos Nikolaidis demonstrates that conceptual convergence within the European Convention on Human Rights (ECHR) and the EU on the issue of equality is not as far as it might appear initially. While the two bodies of equality law are extremely divergent as to the requirements they impose, their interpretation by the international judiciary might be properly analysed under a common light to emphasise the substantive dimension of equality in European Human Rights law. The book will be of great use and interest to scholars and students of human rights, discrimination law, and European politics.

Previous editions published : 2nd (2005) and 1st (2001).

The European Convention on Human Rights (ECHR) entered into force on 3 September 1953 with binding effect on all Member States of the Council of Europe. It grants the people of Europe a number of fundamental rights and freedoms (right to life, prohibition of torture, prohibition of slavery and forced labour, right to liberty and security, right to a fair trial, no punishment without law, right to respect for private and family life, freedom of thought, conscience and religion, freedom of expression, freedom of assembly and association, right to marry, right to an effective remedy, prohibition of discrimination) plus some more by additional protocols to the Convention (Protocols 1 (ETS No. 009), 4 (ETS No. 046), 6 (ETS No. 114), 7 (ETS No. 117), 12 (ETS No. 177) and 13 (ETS No. 187)). Any person who feels his or her rights under the ECHR have been violated by the authorities of one of the Member States can bring a case to the European Court of Human Rights, established under the Convention. The States are bound by the Court's decisions. The Committee of Ministers of the Council of Europe make sure that the decisions are properly executed. Today the Court receives thousands of petitions annually, demonstrating the immense impact of the Convention and the Strasbourg Court. Professor Grabenwarter's Commentary deals with the Convention systematically, article-by-article, considering the development and scope of each article, together with the relevant case-law and literature.

This title provides analysis of the EU's human rights commitments through legislation, case law, and policy documents.

Key developments to the EU's engagement with human rights, both internally and externally, are examined and it covers the topics of non-discrimination and competition law, migration, trade policy, and development cooperation.

The European Court of Human Rights, by Angelika Nussberger is the first title in a new series, The Elements of International Law. Providing a fresh, objective, and non-argumentative approach to the discipline of international law, this series is an accessible go-to source for practicing international lawyers, judges and arbitrators, government and military officers, scholars, teachers, and students. In this volume, Professor Nussberger explores the Court's uniqueness as an international adjudicatory body in the light of its history, structure, and procedure, as well as its key doctrines and case law. This book also shows the role played by the Court in the development of modern international law and human rights law. Tracing the history of the Court from its political context in the 1940s to the present day, Nussberger engages with pressing questions about its origins and internal workings. What was the best model for such an international organization? How should it evolve within more and more diverse legal cultures? How does a case move among different decision-making bodies? These questions help frame the six parts of the book, whilst the final section reflects on the past successes and failures of the Court, shedding light on possible future directions.

The European Unions jurisprudence is responsible for a complex body of human rights law which pursues a busy, multi-tiered agenda and is essential for the lawful and the effective operation and development of the EU polity and its legal order. This in

A critical discussion of EU and ECHR migration and refugee law, this book analyses the law on asylum and immigration of third country-nationals. It focuses on how the EU norms interact with ECHR human rights case law on migration, and the pitfalls of European human rights pluralism.

This edited collection investigates where the European Convention on Human Rights as a living instrument stands on migration and the rights of migrants. This book offers a comprehensive analysis of cases brought by migrants in different stages of migration, covering the right to flee, who is entitled to enter and remain in Europe, and what treatment is owed to them when they come within the jurisdiction of a Council of Europe member state. As such, the book evaluates the case law of the European Convention on Human Rights concerning different categories of migrants including asylum seekers, irregular migrants, those who have migrated through domestic lawful routes, and those who are currently second or third generation migrants in Europe. The broad perspective adopted by the book allows for a systematic analysis of how and to what extent the Convention protects non-refoulement, migrant children, family rights of migrants, status rights of migrants, economic and social rights of migrants, as well as cultural and religious rights of migrants.

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The Right to Equality in European Human Rights Law The Quest for Substance in the Jurisprudence of the European Courts Routledge

Revision of author's thesis (doctoral)--University of Amsterdam, 2012.

This book brings together researchers from the fields of international human rights law, EU law and constitutional law to reflect on the tug-of-war over the positioning of the centre of gravity of human rights protection in Europe. It addresses both the position of the Convention system vis-à-vis the Contracting States, and its positioning with respect to fundamental rights protection in the European Union. The first part of the book focuses on interactions in this triangle from an institutional and constitutional point of view and reflects on how the key actors are trying to define their relationship with one another in a never-ending process. Having thus set the scene, the second part takes a critical look at the tools that have been developed at European level for navigating these complex relationships, in order to identify whether they are capable of responding effectively to the complexities of emerging realities in the triangular relationship between the EHCR, EU law and national law. Chapter 10 of this book is freely available as a downloadable Open Access PDF under a Creative Commons Attribution-Non Commercial-No Derivatives 3.0 license. https://s3-us-west-2.amazonaws.com/tandfbis/rt-files/docs/Open+Access+Chapters/9781138121249_oachapter10.pdf

The EU Fundamental Rights Agency (FRA) was established to provide evidence-based policy advice to EU institutions and Member States. By blending social science research with traditional normative work, it aims to influence human rights policy processes through new ways of framing empirical realities. The contributors to this volume critically examine the experience of the Agency in its first decade, exploring FRA's historical, political and legal foundations and its evolving record across major strands of EU fundamental rights. Central themes arising from these chapters include consideration of how the Agency manages the tension between a mandate to advise and the more traditional approach of human rights bodies to 'monitor', and how its research impacts the delicate equilibrium between these two contesting roles. FRA's experience as the first 'embedded' human rights agency is also highlighted, suggesting a role for alternative and less oppositional orientations for human rights research. While authors observe the benefits of the technocratic approach to human rights research that is a hallmark of FRA's evidence-based policy advice, they also note its constraints. FRA's policy work requires a continued awareness of political realities in Brussels, Member States, and civil society. Consequently, the complex process of determining the Agency's research agenda reflects the strategic priorities of key actors. This is an important factor in the Agency's role in the EU human rights landscape. This pioneering position of the Agency should invite reflection on new forms of institutionalized human rights research for the future.

The European Human Rights Culture – A Paradox of Human Rights Protection in Europe? analyses the political term "European Human Rights Culture", a term first introduced by EU Commission President Barroso. Located in the fields of comparative law and European law, this book analyses, through first-hand interviews with the European judiciary, the judicial perspective on the European human rights culture and sets this in context to the political dimension of the term. In addition, it looks at the structures and procedures of the Court of Justice of the European Union (CJEU) and the European Court of Human Rights (ECtHR), and explains the embedding of the Courts' legal cultures. It offers an in-depth analysis of the margin of appreciation doctrine at both the CJEU and ECtHR, and shows its value for addressing human rights grievances.

The European Court of Human Rights increasingly refers to international law in its case law, but its interpretation of it is often problematic. This book examines whether the Court has been able to create a coherent approach to the evaluation of international law and, ultimately, whether it has been able to contribute to its development.

This book critically appraises the European Convention on Human Rights as it faces some daunting challenges. It argues that the Convention's core functions have subtly changed, particularly since the ending of the Cold War, and that these are now to articulate an 'abstract constitutional model' for the entire continent, and to promote convergence in the operation of public institutions at every level of governance. The implications - from national compliance, to European international relations, including the adjudication of disputes by the European Court of Human Rights - are fully explored. As the first book-length socio-legal examination of the Convention's principal achievements and failures, this study not only blends legal and social science scholarship around the theme of constitutionalization, but also offers a coherent set of policy proposals which both address the current case-management crisis and suggest ways forward neglected by recent reforms.

The European Court of Human Rights is one of the main players in interpreting international human rights law where issues of general international law arise. While developing its own jurisprudence for the protection of human rights in the European context, it remains embedded in the developments of general international law. However, because the Court does not always follow general international law closely and develops its own doctrines, which are, in turn, influential for national courts as well as other international courts and tribunals, a feedback loop of influence occurs. This book explores the interaction, including the problems arising in the context of human rights, between the European Convention on Human Rights and general international law. It contributes to ongoing debates on the fragmentation and convergence of international law from the perspective of international judges as well as academics. Some of the chapters suggest reconciling methods and convergence while others stress the danger of fragmentation. The focus is on specific topics which have posed special problems, namely sources, interpretation, jurisdiction, state responsibility and immunity.

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.

Without understanding the legal culture of the judges a full understanding of Strasbourg's rulings seems hardly possible. Through interviews, field observations and case law analysis, this book fills this need and offers a fresh approach towards convergence in Europe.

The UK's engagement with the legal protection of human rights at a European level has been, at varying stages, pioneering, sceptical and antagonistic. The UK government, media and public opinion have all at times expressed concerns about the growing influence of European human rights law, particularly in the controversial contexts of prisoner voting and deportation of suspected terrorists as well as in the context of British military action abroad. British politicians and judges have also, however, played important roles in drafting, implementing and interpreting the European Convention on Human Rights. Its incorporation into domestic law in the Human Rights Act 1998 intensified the ongoing debate about the UK's international and regional human rights commitments. Furthermore, the increasing importance of the European Union in the human rights sphere has added another layer to the relationship and highlights the complex relationship(s) between the UK government, the Westminster Parliament and judges in the UK, Strasbourg and Luxembourg. The book analyses the topical and

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contentious issue of the relationship between the UK and the European systems for the protection of human rights (ECHR and EU) from doctrinal, contextual and comparative perspectives and explores factors that influence the relationship of the UK and European human rights. EU commitment to human rights policies has grown following the Lisbon Treaty. Taking stock of those developments, this book describes the framework, actors, policies, and strategies of human rights across the EU and how their impact is felt. Contributed to by scholars from across the EU, this provides an in-depth and holistic view of the issues.

Many people believe passionately in human rights. Others - Bentham, Marx, cultural relativists and some feminists amongst them - dismiss the concept of human rights as practically and conceptually inadequate. This book reviews these classical critiques and shows how their insights are reflected in the case law of the European Court of Human Rights. At one level an original, accessible and insightful legal commentary on the European Convention, this book is also a groundbreaking work of theory which challenges human rights orthodoxy. Its novel identification of four human rights schools proposes that we alternatively conceive of these rights as given (natural school), agreed upon (deliberative school), fought for (protest school) and talked about (discourse school). Which of these concepts we adopt is determined by particular ways in which we believe, or do not believe, in human rights.

The system of the European Convention of Human Rights imposes positive obligations on the state to guarantee human rights in circumstances where state agents do not directly interfere. In addition to the traditional/liberal negative obligation of non-interference, the state must actively protect the human rights of individuals residing within its jurisdiction. The liability of the state in terms of positive obligations induces a freestanding imperative of human rights that changes fundamentally the perception of the role of the state and the participatory ability of the individual, who can now assert their human rights in all circumstances in which they are relevant. In that regard, positive obligations herald the most advanced review of the state's business ever attempted in international law. The book undertakes a comprehensive study of positive obligations: from establishing the legitimacy of positive obligations within the system of the Convention to their practical implementation at the national level. Analysing in depth legal principles that pervade the whole system of the Convention, a coherent methodological framework of critical stages and parameters is provided to determine the content of positive obligations in a consistent, predictable and realistic manner. This study of the Convention explains and critically analyses the state's positive obligations, as imposed by the European Court of Human Rights, and sets out original proposals for their future development. The book will be of interest to those who study, research or practice public law, civil rights and liberties or international/European human rights law.

Provides broad and deep insight in the core concepts and principles of the European Convention of Human Rights.

This book is a systematic commentary on half a century of case law on the Convention system made by a group of legal experts from various universities and legal disciplines. It provides a guide of the rights protected under ECHR as well as a better understanding, open to supranational scenarios, of fundamental rights in the respective Constitutions. Our intention is not only to make available a mere case law commentary. This work indeed offers succinct information on the most consolidated lines of case law and this is probably where it is most useful. Nevertheless there is also academic reflection, which we believe is nowadays essential as Europe is becoming more than a continent: it is, above all, a civilisation, with a common language of rights, a developing *ius commune*.

This book undertakes a critical analysis of international human rights law through the lens of queer theory. It pursues two main aims: first, to make use of queer theory to illustrate that the field of human rights law is underpinned by several assumptions that determine a conception of the subject that is gendered and sexual in specific ways. This gives rise to multiple legal and social consequences, some of which challenge the very idea of universality of human rights. Second, the book proposes that human rights law can actually benefit from a better understanding of queer critiques, since queer insights can help it to overcome heteronormative beliefs currently held. In order to achieve these main aims, the book focuses on the case law of the European Court of Human Rights, the leading legal authority in the field of international human rights law. The use of queer theory as the theoretical approach for these tasks serves to deconstruct several aspects of the Court's jurisprudence dealing with gender, sexuality, and kinship, to later suggest potential paths to reconstruct such features in a queer(er) and more universal manner.

The European Convention on Human Rights is the most successful system for the enforcement of human rights in the world. However, to date its full potential for protecting children's rights has not been explored as attention has focused on the UN Convention on the Rights of the Child. This unique book provides the first analysis of the extensive case law of the Commission and the Court of Human Rights on all issues concerning children and their rights. This study is important as a study of the regional protection of children's rights and, moreover, the case law itself can be directly applied in the legal system of nearly every European country, including the UK. The book includes chapters on the rights of the child under the European Convention on Human Rights in relation to education, protection from abuse, the right to identity, child care, juvenile justice, health care and immigration and the family. It also explores the potential of the Strasbourg mechanism for the protection of children's rights and thus provides a practical and vital guide to the study and use of the European Convention in the broad area of children's rights.

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