REVIEWS AND ANNOTATIONS

Gerards, Janneke – Fleuren, Joseph (eds.). Implementation of the European Convention on Human Rights and of the judgments of the ECtHR in national case law. Cambridge: Intersentia, 2014. 358 pp.

The European Convention on Human Rights (hereinafter "the ECHR") together with the case-law of the European Court of Human Rights (hereinafter "the ECtHR" or "the Strasbourg court") has had a tremendous impact on national legal systems. It has been generally observed that the ECHR and the Strasbourg court's jurisprudence regularly influence not only the individual case, but also domestic case-law, legislation, and political systems as such.[1] The extent of such an influence and successful implementation of the ECtHR's judgments is, however, dependant on various domestic actors who give effect to these judgments.[2]

The book edited by Janneke Gerards and Joseph Fleuren contributes to the bourgeoning volume of literature concerned with the domestic path of the ECHR and the implementation of the Strasbourg court's case-law as it particularly concentrates on the role of national courts, i. e. the institutions that presumably play an essential role in the ECHR system. The book first examines what requirements related to the application of the ECHR, and the implementation of the ECtHR's judgments by national courts, have been formulated by the Strasbourg court. Next, it addresses whether and how the national courts actually respond to these requirements and what techniques they use to comply. Furthermore, the book also addresses the recent criticism of the ECtHR raised in the United Kingdom and the Netherlands especially and asks what the impact of this criticism at the national level is.

The structure of the book under review corresponds with the questions posed. In the introductory part (Chapter 1) the editors describe the overall goal of the book, its structure, approach and methodology. The second part (Chapter 2) analyses the ECtHR's demands on the national courts when interpreting the ECHR and giving effect to the Strasbourg case-law. The third part (Chapters 3–8) consists of six country reports from Belgium, France, Germany, the Netherlands, Sweden and the United Kingdom. Every country report, authored by a national expert, begins with a brief description of the constitutional system of the respective country and of the status of international law in domestic law. Next, the reports analyse judicial implementation of the ECHR rights and the impact of the ECtHR's judgments on the national judicial decision-making. At the end, every report addresses the debates about the Strasbourg court's legitimacy and its criticism. The final part (Chapter 9) compares the country reports' findings, answers the research questions posed in the introduction, and draws up more general conclusions.

Within the second part of the book Janneke Gerards examines the Strasbourg court's attitude towards national courts. Emphasizing the ECtHR's strategies and techniques such as margin of appreciation, judicial minimalism, adherence to procedural review and the phenomena of judicial dialogue, she claims the ECtHR does not treat the domestic courts as mere "marionettes", but rather as equal partners with "shared responsibility" for the protection of human rights.

[1] From numerous literature see e. g. HELFER, L. R., VOETEN, E. International Courts as Agents of Legal Change: Evidence from LGBT Rights in Europe. *International Organization*. 2014, Vol. 68, No. 1; KOSAŘ, D. Policing Separation of Powers: A New Role for the European Court of Human Rights? *European Constitutional Law Review*. 2012, Vol. 8, No. 1; STONE SWEET, A., KELLER, H. (eds.). *A Europe of Rights: The Impact of the ECHR on National Legal Systems*. Oxford: OUP, 2008; BLACKBURN, R., POLAKIEWICZ, J. (eds.). *Fundamental Rights in Europe: the ECHR and its Member States 1950–2000*. Oxford: OUP, 2001.

[2] STONE SWEET, A. A Cosmopolitan Legal Order: Constitutional Pluralism and Rights Adjudication in Europe. *Journal of Global Constitutionalism*. 2012, Vol. 1, No. 1, p. 73.

This chapter refers extensively to the ECtHR case-law and to the relevant literature, and thus provides a good and up-to-date overview of the debates of the Strasbourg court's attitude towards national courts. Furthermore, Gerards goes beyond these sources and also provides information gained from interviews with the judges and registrars of the Strasbourg court. Sometimes, unfortunately, it is not easy to recognise whether the claims in this chapter are empirical or rather normative ones.

As it is not the purpose of this review to reproduce the content of every single country report, it might be generally said that the national reporters provide a good picture of the judicial treatment of the ECHR and the ECtHR's case-law in the respective countries. The reporters extensively cite domestic case-law and literature, which shall be particularly appreciated by the foreign scholars because many of these cited sources are otherwise inaccessible due to language barriers. The country reports tend to discuss several important domestic cases and then generally assess the prevailing practice in the country. There is nothing wrong about this approach. But, for the sake of more nuanced comparison between the countries and providing a reader with a more realistic view of the day-to-day usage of the ECHR rights at the national courts, indicating also the quantitative information about the references to the ECHR and ECtHR in national case-law, at least from the secondary sources (as only the Belgian and the UK reports partially do),[3] would greatly improve the volume.

The final chapter is the most valuable one as it synthesizes the country reports' findings and formulates general conclusions. The authors state that the constitutional relation between domestic and international law (monism or dualism) is not a decisive factor as the impact of the ECHR on the national case-law is significant in all of the studied countries. Although the domestic courts occasionally set aside the national legislation conflicting with the ECHR,[4] the major tool of domestic implementation of the ECHR and the Strasbourg court's judgments is the treaty-conform interpretation of the national law. In this regard, the authors found that the national courts indeed do not act as "the marionettes" of the ECtHR. The courts often adapt the Strasbourg case-law and translate it for domestic purposes, which sometimes includes bending, twisting and narrowing of the scope of the Strasbourg judgments. The book also argues that constitutional traditions matter, especially those regarding the separation of powers doctrine. The Swedish and also the Dutch courts especially (i. e. courts in the countries rather reluctant to constitutional review) show greater deference to the legislator than the rest of the analysed countries. Next, the criticism of the ECtHR occurs in all of the studied countries, however, varies profoundly in the intensity and forms it takes – ranging from criticism of particular judgments up to the political criticism questioning the legitimacy of the ECHR system as such (the latter type takes place mainly in the UK and the Netherlands, whereas the debates in other countries are less intensive).

Nevertheless, it is to be emphasized that generalization of these conclusions for the whole ECHR system is very problematic due to the case selection of the countries studied. The editors justify their selection of the countries on the grounds of a *"great diversity in constitutional systems for implementation of international law and judicial review*." (p. 10). On the other hand, recent scholarship shows that these are not the only factors that might matter for the domestic implementation of ECHR rights. The literature stresses the role of human rights expertise and awareness within the jurisdiction, domestic institutional capacity and political culture.[5] Nevertheless, all the countries studied by the reviewed book are "old" Council of Europe members

[3] See pp. 116 and 123, and 319 respectively.

[4] With the exception of the British courts that are only empowered to signal an inconsistency between an Act of Parliament and the ECHR by using the declaration of incompatibility, but themselves cannot disapply any Act of Parliament.

from Western (and Northern) Europe with a tradition of human rights protection. There is not a single case study of any post-communist Central and Eastern European state or a state reporting systemic (e. g. Italy) and severe (e. g. Turkey or Russia) human rights problems. Due to the case selection, the authors of the book neglect judicial treatment of the ECHR in countries with rather limited human rights awareness and severe human rights problems. It is clear that the book cannot cover all the 47 Council of Europe member states. Still, if a more representative sample of countries was selected, the conclusions of the book would be further generalizable and more useful.

All in all, despite this critical comment, the book edited by Gerards and Fleuren is a welcome contribution to the literature on implementation of the ECHR. It is particularly valuable because the authors provide a lot of information about the domestic "life" of the ECHR rights – not only about the domestic judgments but, timely, also about the overall public and political debate on the Strasbourg court's role and legitimacy.

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Sornarajah, Muthucumaraswamy. The International Law on Foreign Investment. Cambridge: Cambridge University Press, 2010. 524 p.

The Cambridge University Press has agreed to print this book in its third edition again maybe for Lawyers to have a good knowledge and understanding in the recent trend of the development of International investment law. As a whole, each concept applies not only for the development of the trend of law to developed countries but also to certain developing countries too.

A short review at The Cambridge University Press' cover of this book tells us an idea that " Gives recent seismic upheavals in the world's money market, an updated edition of an authoritative, reliable textbook on the international law of foreign investment has rarely been so timely". Sornarajah's classic text surveys how international law has developed to protect foreign investments by multinational actors and to control any misconducts on their part. Its analyses treaty-base methods and examines the effectiveness of bilateral and regional investment treaties. It also considers the reverse flow of investments from emerging industrializing powers such as China and Brazil and explores the retreat from market-oriented economics to regulatory controls by offering thought- provoking analysis of, not only the law, but also to related developments in economic and political sciences. Sornarajah also gives immediacy and relevance to discipline. This book is a required reading for all postgraduate and undergraduate international law student specialising in the law of foreign investments."[1]

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[5] See e. g. ANAGNOSTOU, D., MUNGIU-PIPPIDI, A. Domestic Implementation of Human Rights Judgments in Europe: Legal Infrastructure and Government Effectiveness Matter. *European Journal of International Law*. 2014, Vol. 25, No. 1; HILLEBRECHT, C. Implementing International Human Rights Law at Home: Domestic Politics and the European Court of Human Rights. *Human Rights Review*. 2012, Vol. 13, No. 3.

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[1] SORNARAJAH, M. *The International Law on Foreign Investment*. Cambridge: Cambridge University Press, 2010 in cover of this book.

[2] Ibid, in cover of this book.