

Book Reviews

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

(eds) T Barkhuysen, M L Emmerik and P H P H M C Van Kempen
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States have in recent times had to grapple with the issue of domestically implementing international laws to which they are a signatory. Whether civil or common law systems, the issue of how to most appropriately give domestic effect to international laws has been a challenge. Given the complexities of such an issue it is perhaps not surprising that the applicant may have been overlooked. Having undertaken the courageous decision to seek international legal redress for an injustice not dealt with adequately by the home country and having won, does the applicant see an improvement in their actual position? It is this question of the applicant's real reparation that *The Execution of Strasbourg and Geneva Human Rights Decisions in the National Legal Order* attempts to explore.

The book's emphasis is on the execution of Strasbourg and Geneva decisions in the Dutch legal order. Unlike Australia, the Netherlands is subject to two forms of international review. First, it is bound by human rights treaties, which have been concluded in the United Nations (UN) context which contain the possibility to lodge individual complaints. Whenever the treaty committees (which supervise certain UN treaties) find a violation they may issue recommendations to the violating State which are non-binding. In addition to these Geneva decisions the Netherlands is subject to the review procedure laid down in the *European Convention on Human Rights* (ECHR) which allows individual complaints to be lodged with the European Court of Human Rights, whose judgments are binding. The purpose of the book therefore is to demonstrate how individual case decisions from Strasbourg and Geneva are implemented in the national legal order and how this affects the position of an applicant and whether they receive any real improvement in their position.

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The Execution of Strasbourg and Geneva Human Rights Decisions in the National Legal Order contains 23 essays organised into six substantive sections: general introduction; public international law; execution in other member States of the Council of Europe; reopening and compensation as a general means of execution; Dutch legal practice regarding execution; execution in Dutch civil, administrative and criminal law.

The introduction contains an excellent chapter that provides a case by case (and indeed year by year and article by article) overview of judgments by the European Court of Human Rights against the Netherlands between 1960-97. This provides an excellent entry into the book, especially for those unfamiliar with the Dutch situation regarding the ECHR.

From the public international law perspective it is argued that violations of an international duty entails the obligation to provide for adequate reparations. *Restitutio in integrum* prevails and, if this is not possible, financial compensation must be paid. The chapter highlights the limitations of international law in so far as reparations for applicants are concerned. The rarity of *resitutio in integrum* and financial compensation not always provided for conspire to render national remedies for applicants pertinent.

Before embarking on an analysis of the Dutch position regarding execution of Strasbourg and Geneva decisions there is an intermediary chapter that deals with execution in other member States of the Council of Europe. This comparative analysis is a worthwhile exercise in not only highlighting the challenges posed to other countries subject to the ECHR but also to elucidate some of the common issues needed to be dealt with when trying to give effect to such judgements in a way that also directly benefits the applicant. The States examined (Norway, Russia, Belgium, Spain and Austria) all have to contend with deciding whether to reopen a case or compensate as a means of execution.

It is the issue of revision, review and reconsideration of cases that the substance of the book focuses on. The important question is whether or not it is desirable to have provisions in Dutch civil, administrative and criminal procedural law whereby final national decisions can be revised on account of European Court of Human Rights judgements and Geneva recommendations. In the case of civil and administrative law opinion is divided between review of cases or compensation in the form of damages. In criminal law, however, there is unanimity as to the possibility of revision taking into account Strasbourg decisions. Indeed none of the authors restrict the possibility of revision only to the violations of procedural or material Conventional rights.

The Execution of Strasbourg and Geneva Human Rights Decisions in the National Legal Order is an informative volume to have. It is remarkable how well the chapters flow given that the book is compiled from a selection of papers presented at a symposium held in Leiden, the Netherlands, in November 1997. It is an important addition to the literature on the domestic execution of international human rights laws. Particularly welcome is the emphasis on ways to implement international judgements to better the situation of the *actual* individual who initially sought redress. The options canvassed include the reopening of cases that have already been to the highest national court or the payment of damages. Reopening cases is invariably complex. No definitive conclusions therefore are arrived at which could be utilised in a policy environment. The value of the text however lies in the exploration of the possibility of review as a means of executing both the Strasbourg and Geneva decisions and the problems associated with it in Dutch civil and administrative law cases.

The book will prove useful for many people. Those interested in the Dutch situation alone will obviously have much to gain from reading the book. However it also has a wider use. Those who see value in comparative analysis will find the book a welcome addition. Furthermore, the book serves as another volume dealing with the issue of domestic implementation of international humanitarian laws and decisions resulting from communications made under such laws, which despite differing systems of law unites both common and civil law nations. What is particularly praiseworthy is the effort to domestically implement international decisions in order to benefit the community on a whole but also the individual applicant who is often left in a position no different to that before the communication. ●