

INTERNATIONAL
CRIMINAL LAW
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PROSECUTING HUMAN RIGHTS OFFENCES

Rethinking the *Sword* Function
of Human Rights Law

KREŠIMIR KAMBER

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Prosecuting Human Rights Offences

Rethinking the Sword Function of Human Rights Law

By

Krešimir Kamber



BRILL

LEIDEN | BOSTON

Library of Congress Cataloging-in-Publication Data

Names: Kamber, Krešimir, author.

Title: Prosecuting human rights offences : rethinking the sword function of human rights law / by Krešimir Kamber.

Description: Leiden ; Boston : Brill, 2017. | Series: International criminal law series ; VOLUME 11 | Based on author's thesis (doctoral - Ghent University Faculty of Law, 2016) issued under title: Effective application of criminal law mechanics in human rights protection : the function of criminal prosecution in contemporary criminal justice systems. | Includes bibliographical references and index.

Identifiers: LCCN 2016050628 (print) | LCCN 2016051042 (ebook) | ISBN 9789004337756 (hardback : alk. paper) | ISBN 9789004337763 (E-book)

Subjects: LCSH: Prosecution--Decision making. | Liability for human rights violations. | Human rights--Criminal provisions. | Victims of crimes--Civil rights. | International and municipal law.

Classification: LCC K5425 .K36 2017 (print) | LCC K5425 (ebook) | DDC 341.4/8--dc23

LC record available at <https://lcn.loc.gov/2016050628>

Typeface for the Latin, Greek, and Cyrillic scripts: "Brill". See and download: brill.com/brill-typeface.

ISSN 2213-2724

ISBN 978-90-04-33775-6 (hardback)

ISBN 978-90-04-33776-3 (e-book)

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Prosecuting Human Rights Offences

International Criminal Law Series

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VOLUME 11

The titles published in this series are listed at brill.com/icls

To My Family



Preface

This book is a result of my doctoral research completed and defended at the Ghent University Faculty of Law (Belgium). The idea for this study has been born of my professional and academic experience, developed in the sphere of criminal justice and human rights. As a lawyer fortunate enough to be working in those two fascinating and vital fields of law, I have often heard some dissonant voices concerning the procedural requirement to investigate and prosecute human rights offences arising from the relevant conceptions of human rights law and the traditional criminal law doctrine on the matter. In this study I have endeavoured to understand the said procedural requirement of human rights law by observing it from the perspective of the relevant precepts of criminal law. I have thereby made an effort to conceive the manner of reduction of the conceptual gaps arising from the variances between the public-based and human rights-based assertions in the administration of criminal justice.

A number of persons have contributed to the development and realisation of this study and any attempt limited by the reasonable constraints of a preface will inevitably be imperfect and inconsistent. I am nevertheless obliged to name some of them and to ask forgiveness from all those that I would not be able to mention.

A person who has followed me through all the stages of the development of this study is my mentor and friend Tom Vander Beken to whom I shall remain forever indebted for his patient and always constructive suggestions for the improvement and realisation of the study. I also have to express my special gratitude to Gert Vermeulen and Yves Haeck with whom I have had a number of interesting and thought-provoking discussions that have inspired some of the central arguments of the study. Gert Vermeulen's assistance and support in the publication process of this book is particularly highly appreciated.

I am also thankful to Michel Tison, Françoise Tulkens, Philip Traest and Joachim Meese for their meticulous reading of an earlier version of this text and for all their insightful observations and suggestions.

Of a special importance in the preparation of this book was the editing assistance of Ivana Bendow to whom I also express my sincere appreciation.

I owe particular gratitude to all my colleagues working in the Registry of the European Court of Human Rights and to all judges of the Court with whom I have the privilege to work. Their support and astonishing competence and knowledge have been a great inspiration for the development of this study. Moreover, *mes amis strasbourgeois* deserve a special gratitude for their endless support and encouragement for my research.

Most importantly of all, I have to express my deepest sense of appreciation and respect for the immense understanding, patience and support of my wife Marija and my parents. They have constantly been the main driving force behind any achievement I have managed to make. I am therefore devoting any recognition and commendation which this book might deserve completely to them and to my daughter Nora, the most inspiring person in my life.

Any omission or possible miscomprehension expressed in this book is completely mine. The opinions expressed are my personal.

Krešimir Kamber

Strasbourg, August 2016

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Abbreviations and Acronyms

ACHR	American Convention on Human Rights, 22 November 1969
ACHPR	African Charter on Human and Peoples' Rights ("Banjul Charter"), 27 June 1981
AComHPR	African Commission on Human and Peoples' Rights
ACtHR	African Court of Human and Peoples' Rights
CAT	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, United Nations, Treaty Series, vol. 1465, p. 85, 10 December 1984
CED	International Convention for the Protection of All Persons from Enforced Disappearance, 20 December 2006
CISA	Convention Implementing the Schengen Agreement, Official Journal L 239, 22/09/2000 P. 0019–0062
CJEU	Court of Justice of the European Union
COE	Council of Europe
COE-CM/Committee of Ministers	Council of Europe, Committee of Ministers
ComAT	Committee against Torture
doc.	Document
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms, CETS No. 005, as amended by Protocols No. 11 and No. 14, 4 November 1950
EComHR	European Commission of Human Rights
ECtHR	European Court of Human Rights
ed(s).	Editor(s)
et al.	And others
EU	European Union
EU Charter	Charter of Fundamental Rights of the European Union, 26 October 2012, 2012/C 326/02
GC	Grand Chamber of the European Court of Human Rights
HRC	Human Rights Committee under Article 28 of the International Covenant on Civil and Political Rights

IACoHR	Inter-American Commission on Human Rights
IACtHR	Inter-American Court of Human Rights
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights, United Nations, Treaty Series, vol. 999, p. 171, 16 December 1966
ICJ	International Court of Justice
no(s).	Number(s)
p(p).	Page(s)
par(as).	Paragraph(s)
Protocol No. 1	Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms CETS No. 009, 20 March 1952
Protocol No. 7	Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms CETS No. 117, 22 November 1984
Rec(2000)19	Recommendation Rec(2000)19 of the Committee of Ministers to member states on the role of public prosecution in the criminal justice system of 6 October 2000
Rome Statute	Rome Statute of the International Criminal Court, 17 July 1998
TEU	Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community, 2007/C 306/01, 13 December 2007
TFEU	Treaty of the Functioning of the European Union, consolidated version, 2012/C 326/01
UN	United Nations
Universal Declaration of Human Rights	UN General Assembly, Universal Declaration of Human Rights, 217 A (III), 10 December 1948
v.	Versus
Victims Directive	Directive of the European Parliament and the Council establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, 2011/0129 (COD) PE-CONS 37/12, 30 September 2012

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